

## Massachusetts Health Connector Appeals Unit

### FINAL APPEAL DECISION

**Appeal Decision:** Denied

**Hearing Issue:** 2015 Tax-Year Penalty

**Hearing Date:** November 1, 2016

**Decision Date:** February 27, 2017

### **AUTHORITY**

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

### **JURISDICTION**

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file a hardship 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 November 1, 2016. The Appellant offered testimony under oath or affirmation.

At the end of the hearing, the record was closed. The hearing record consists of the Appellant's testimony and the following documents which were admitted in evidence:

- Exhibit 1: 10/11/16 Appeal case information from Schedule HC
- Exhibit 2: 7/26/16 Appeal case information from Schedule HC
- Exhibit 3: 3/18/16 Appeal (4 pages)
- Exhibit 4: 7/26/16 Notice of Hearing (3 pages)
- Exhibit 5: 10/11/16 Notice of hearing (4 pages)

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant appealed from the assessment of a seven-month penalty against the Appellant on his 2015 joint state income tax return. (Exhibit 1)
2. The Appellant's federal adjusted gross income (AGI) in 2015 was \$60,387. The Appellant's filing status in 2015 was Married Filing Jointly with no dependents. The Appellant resided in Bristol County in 2015. The Appellant turned twenty-five years old on January 11, 2015. (Exhibit 1)
3. The Appellant was aware of the requirements of the individual mandate throughout 2015. The Appellant had insurance coverage only in January and February of 2015. (Appellant's testimony; Exhibit 1)
4. The Appellant worked for the same employer, a supermarket chain, throughout 2015. The employer offered health insurance coverage to full-time employees through the labor union that represented employees such as the Appellant. In January or February 2015, the Appellant became a full-time employee and, as such, eligible for health insurance coverage through his employer. His union steward told the Appellant that he "must have the coverage." (Appellant's testimony)
5. The Appellant expected to receive his employer-sponsored health insurance card in the mail. He never checked on the status of his insurance or the insurance card and just assumed that he had the insurance coverage, until he moved back to the mainland in January 2016 and learned that he did not have coverage. (Appellant's testimony)
6. From November 2014 to January 16, 2016, the Appellant worked for his employer in Martha's Vineyard. While there, he lived in a housing unit owned by his employer for which he paid a weekly rent of \$30. His unit did not have a mailbox for him to use. The Appellant asked his employer to provide a mailbox for him at this housing unit, and the employer refused to do so. The Appellant did not check into getting a post office box to receive mail. (Appellant's testimony)
7. In his 3/18/16 appeal, the Appellant checked off "Other" for the grounds for his appeal and wrote in, "employer denied accessibility to coverage."
8. According to Table 2 of Schedule HC 2015, the Appellant was not eligible for government-subsidized health insurance, as his 2015 AGI exceeded \$47,190 for a family size of two.
9. According to Table 3, Affordability, of Schedule HC 2015, the Appellant could have afforded to pay a monthly premium of \$372 for health insurance coverage in 2015, based on his Married Filing Jointly with no dependents filing status and 2015 federal AGI.
10. According to Table 4, Premiums, of Schedule HC 2015, the Appellant could have purchased health insurance coverage for himself in the private market in 2015 for a monthly premium of \$144, based on his age and county of residence in 2015.

## **Massachusetts Health Connector Appeals Unit**

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

MGL Chapter 11M, § 2, also called the “individual mandate,” requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable.” Residents who do not obtain insurance are subject to a tax penalty. The tax penalty is assessed for “each of the months” that the individual did not have health insurance, as required by the individual mandate. However, 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. MGL Chapter 111M, § 2(b). The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2015 should be waived, either in whole or in part.

In this case, the Appellant had health insurance coverage in 2015 only during the first two months of the year. The Appellant acknowledges that he was eligible for coverage through his employer for the rest of the year, since his employment status had changed to full time in early 2015; and, contends that his employer denied him access to this coverage by not providing the Appellant with a mailbox at his employer-owned housing unit on Martha’s Vineyard. I am not persuaded by this argument. The Appellant understood his obligation under the individual mandate in 2015, yet he made no serious attempt to obtain coverage once he lost coverage at the end of February 2015. Not having a mailbox at his housing unit in Martha’s Vineyard was not an insurmountable obstacle to him confirming that he had health insurance coverage during 2015. He could have called his employer or his union steward by phone to check on the status of his health insurance card and his health insurance coverage in general. Also, if communicating by mail was so important to the Appellant, he could have checked into receiving mail through the local post office or in care of the employer’s supermarket. Instead, he went through all of 2015 without taking any action to ensure that he had health insurance coverage.

Therefore, I conclude that the Appellant has not established either that he had health insurance coverage after February 2015 or that he had any basis for a hardship appeal for not obtaining health insurance that provided minimum creditable coverage, under 956 CMR 6.08.

Accordingly, the Appellant’s seven-month penalty for 2015 shall not be waived or reduced.

### **ORDER**



Penalty Overturned in Full  
 Penalty Overturned in Part

Penalty Upheld  
 Other

**PENALTY ASSESSED**

Number of months appealed: 7

Number of months assessed: 7

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

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

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

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

## Massachusetts Health Connector Appeals Unit

### FINAL APPEAL DECISION

**Appeal Decision:** Approved in Part/Denied in Part

**Hearing Issue:** 2015 Tax-Year Penalty

**Hearing Date:** November 1, 2016

**Decision Date:** February 24, 2017

### **AUTHORITY**

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

### **JURISDICTION**

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file a hardship 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 November 1, 2016. The Appellant offered testimony under oath or affirmation.

At the end of the hearing, the record was left open until November 15, 2016, for the Appellant to submit additional evidence. On November 7, 2016, the Appellant submitted additional evidence, and the record was closed on November 4, 2016. The hearing record consists of the Appellant's testimony and the following documents which were admitted in evidence:

- Exhibit 1: Appeal case information et al (5 pages)
- Exhibit 2: 4/27/16 Appeal (61 pages)
- Exhibit 3: 10/11/16 Notice of Hearing (4 pages)
- Exhibit 4: 1/21/15 MassHealth Letter Denying MassHealth, Health Safety Net, and Children's MSP, and 11/7/16 fax transmittal sheets (3 pages)

### **FINDINGS OF FACT**

## Massachusetts Health Connector Appeals Unit

The record shows, and I so find:

1. The Appellant appealed from the assessment of a twelve-month penalty on his 2015 state income tax return. (Exhibit 1)
2. The Appellant's filing status in 2015 was Single with no dependents. His adjusted gross income (AGI) for 2015 was \$46,751. He resided in Plymouth County. The Appellant turned forty-three years old in 2015. (Exhibit 1)
3. The Appellant did not have health insurance coverage in 2015 that met MCC standards. (Appellant's testimony)
4. By letter dated January 21, 2015, MassHealth notified the Appellant that he did not qualify for MassHealth, Health Safety Net, or the Children's Medical Security Plan. (Exhibit 4)
5. In his 4/27/16 appeal, the Appellant checked off as the grounds for his appeal that: "During 2015, you purchased health insurance that did not meet minimum creditable coverage standards because that is what your employer offered, and you felt that your circumstances prevented you from buying other insurance that met the requirements."
6. The Appellant had employer-sponsored insurance throughout 2015. The coverage did not meet MCC standards only because it did not include any mental health coverage. The Appellant paid a \$50 bi-weekly premium for the coverage and also made a bi-weekly HSA contribution. (Appellant's testimony)
7. According to Table 3, Affordability, of the Schedule HC 2015, the Appellant could have afforded to pay a monthly premium of up to \$313 for health insurance coverage in 2015, based on his filing status and 2015 federal AGI.
8. According to Table 2 of the Schedule HC 2015, the Appellant was not eligible for government-subsidized insurance since his federal AGI was more than \$35,010 for a family of one.
9. According to Table 4, Premiums, of the Schedule HC 2015, the Appellant could have purchased health insurance for himself in the private market in 2015 for a monthly premium of \$261, based on his age and county of residence in 2015.

## ANALYSIS AND CONCLUSIONS OF LAW

MGL Chapter 11M, § 2, also called the "individual mandate," requires every adult resident of Massachusetts to obtain insurance coverage "[s]o long as it is deemed affordable." Residents who do not obtain insurance are subject to a tax penalty. The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2015 should be waived, either in whole or in part.

## Massachusetts Health Connector Appeals Unit

In this case, the Appellant acknowledges that he did not have MCC-compliant coverage in 2015, but contends that he had employer-sponsored coverage that met MCC standards with the exception of mental health services and that his circumstances prevented him from buying other insurance that would have met the MCC standards. The Appellant further contends that he checked into getting MCC coverage through the Health Connector more than once in 2015 and either was denied or was shown a plan that would have cost him more than three times the amount he paid for his employer-sponsored coverage. I am not persuaded by the Appellant's contentions. There is no document in the record indicating that the Appellant either applied to the Health Connector for coverage in 2015 or was denied coverage by the Health Connector in 2015. The documentation in the record indicates only that the Appellant's application to MassHealth for coverage was denied due to the Appellant's income being too high.

Moreover, the Appellant has not established that his circumstances prevented him from purchasing insurance that met MCC standards for a \$261 monthly premium in 2015, when his 2015 AGI shows that he could have afforded to pay up to \$313 monthly for such coverage in 2015. Rather, the Appellant simply preferred the savings involved in purchasing his employer's non-compliant coverage.

Therefore, I conclude that the Appellant has not established that he had any basis for a hardship appeal for not obtaining health insurance that provided minimum creditable coverage in 2015, under 956 CMR 6.08.

Nevertheless, while not MCC-compliant, the Appellant had health insurance coverage in 2015 that substantially met MCC standards, and the Appellant paid a not insignificant amount for that coverage. In recognition of this, it is appropriate that his penalty be reduced to some extent

Accordingly, the Appellant's twelve-month penalty for 2015 shall be reduced to a six-month penalty.

### **ORDER**

Penalty Overturned in Full  
 Penalty Overturned in Part

Penalty Upheld  
 Other

### **PENALTY ASSESSED**

Number of months appealed: 12

Number of months assessed: 6

## **Massachusetts Health Connector Appeals Unit**

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

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

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

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

Hearing Officer

cc. Connector Appeals Unit

# **CONNECTOR APPEALS UNIT**

## **FINAL APPEAL DECISION**

**Appeal Decision:** xx Penalty Overturned in Full      \_\_\_\_\_Penalty Upheld  
    \_\_ Penalty Overturned in Part

**Hearing Issue:** Appeal of the 2015 Tax Year Penalty

**Hearing Date:** January 9, 2017

**Decision Date:** March 15, 2017

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The appellant appeared at the hearing which was held by telephone on January 9, 2017. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2015
- Exhibit 2: Statement of Grounds for Appeal-2015 signed and dated by Appellant on May 3, 2016
- Exhibit 3: Notice of Hearing sent to Appellant dated September 28, 2016 for October 31, 2016 hearing
- Exhibit 4: Letter to Appellant from Connector dismissing appeal and Appellant's request to Connector Appeals Unit for vacating of dismissal received by Connector on November 9, 2016
- Exhibit 5: Notice of Hearing sent to Appellant dated December 7, 2016 for January

# **CONNECTOR APPEALS UNIT**

9, 2017 hearing

Exhibit 6: July 8, 2015 letter from adjuster to Appellant and spouse regarding homeowner's insurance claim for June 10, 2015 fire

Exhibit 7: Demand for payment and shut-off notice addressed to appellant dated October 1, 2015 from electricity company

## **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, who filed a 2015 Massachusetts tax return as a single person with no dependents claimed, was 47 years old in 2015. Appellant's partner and two sons lived in the household (Exhibit 1).
2. Appellant lived in Essex County, MA in 2015 (Exhibit 1).
3. Appellant's Federal Adjusted Gross Income for 2015 was \$73,867. Appellant's partner did not work in 2015 and the appellant gave the partner and sons financial support (Exhibit 1).
4. Appellant was self-employed in 2015 (Testimony of Appellant).
5. Appellant tried to find health insurance in 2015. Appellant felt health insurance was not affordable (Testimony of Appellant).
6. Appellant was uninsured all of 2015. Appellant has been assessed a tax penalty for the year; the appellant has appealed this assessment, claiming that the appellant received shut-off notices for basic utilities or had a basic utility shut off during 2015, and that the appellant incurred a fire which caused substantial household and personal damage (Exhibits 1, 2, Testimony of Appellant).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2015 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2015. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2015.
8. According to Table 3 of Schedule HC for 2015, the appellant with no dependents who filed taxes as a single person with an adjusted gross income of \$73,867 could afford to pay \$495 per month for health insurance. According to Table 4, Appellant, age 47 and living in Essex County, could have purchased insurance for \$256 per month (Schedule HC, Tables 3 and 4, 2015).

## **CONNECTOR APPEALS UNIT**

9. Private insurance was affordable for the appellant in 2015 (Schedule HC for 2015).

10. According to Table 2 of Schedule HC for 2015, Appellant, earning more than \$35,010 per year would have been ineligible for the Connector Care program (Table 2 of Schedule HC-2015).

11. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; or the sudden responsibility for providing full care for an aging parent or other family member in 2015 (Testimony of Appellant).

12. Appellant did not fall more than thirty days behind in mortgage payments in 2015 (Testimony of Appellant).

13. Appellant owned a home in 2015. In June, 2015, Appellant had a house fire. The house and many household items and furniture were damaged. The entire house had smoke damage, One room was a total loss. Appellant had to move out of the house for two months. While appellant was given funds for lodging, other expenses increased because of the fire. Appellant still has not been received all of the insurance money that Appellant is entitled to (Testimony of Appellant, Exhibit 6).

14. In October, 2015, Appellant received a shut-off notice from Appellant's electricity provider (Testimony of Appellant, Exhibit 7).

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

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2015 should be waived, either in whole or in part.

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

## **CONNECTOR APPEALS UNIT**

Appellant had no health insurance in 2015. Appellant has been assessed a tax penalty for twelve months. The appellant appealed this assessment. Exhibits 1 and 2.

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

Appellant testified that Appellant was self-employed all year. Appellant, therefore, had no access to employer-sponsored health insurance. See the testimony of the appellant which I find credible.

According to Table 2 of Schedule HC for 2015, Appellant, earning more than \$35,010 per year, would have been ineligible for the Connector Care program. See Table 2 of Schedule HC-2015, 956 CMR 12.00 et. seq. and Exhibit 1. There is no evidence in the record that the appellant was eligible for any other government-sponsored plan.

According to Table 3 of Schedule HC for 2015, the appellant filing as a single person with no dependents claimed, with an adjusted gross income of \$73,867, could afford to pay \$495 per month for health insurance. According to Table 4, Appellant, age 47 and living in Essex County, could have purchased insurance for \$256 per month. See Exhibit 1. Affordable health insurance was available through the Connector. Appellant could have applied and enrolled during the open enrollment period in late 2014 through January 31, 2015.

Affordable health insurance was available to the appellant all of 2015. Because of this, we need to determine whether pursuant to 956 Code of Massachusetts Regulations 6.08, a hardship exception is applicable in this matter.

Pursuant to 956 CMR 6.08(1)(b), an individual who received a shut-off notice for a utility or who had utilities shut off is deemed to have experienced a financial hardship so that insurance was not affordable for the individual. Appellant testified that Appellant received a shut-off notice for electricity during 2015. This testimony is corroborated by Exhibit 7, a shut off-notice dated October 1, 2015 sent to Appellant. I determine that the appellant experienced a financial hardship pursuant to 956 CMR 6.08(1)(b) such that health insurance was not affordable for the appellant.

The appellant also had a substantial loss of household and personal items when Appellant's home caught fire in June, 2015. One room was totally destroyed and the rest of the house had smoke damage. Appellant, the sons, and partner had to move out for two months. See Exhibit 6 and the testimony of the appellant which I find to be credible. Pursuant to 6.08(1)(d)(4), I find that Appellant experienced a hardship such that the health insurance was not affordable to the appellant.

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Based upon the facts summarized above, I determine that Appellant's penalty should be waived. Appellant experienced a financial hardship such that insurance was unaffordable.

Appellant should note that any waiver granted here is for 2015 only and is based upon the specific facts I have found to be true and should not assume that the same determination will be made should Appellant be assessed a penalty in the future.

### **PENALTY ASSESSED**

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

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

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

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

Hearing Officer

Cc. Connector Appeals Unit

## Massachusetts Health Connector Appeals Unit

### FINAL APPEAL DECISION

**Appeal Decision:** \_\_\_X\_\_\_ Penalty Overturned in Full \_\_\_ Penalty Upheld  
\_\_\_ Penalty Overturned in Part

**Hearing Issue:** Appeal of the 2015 Tax Year Penalty

**Hearing Date:** March 15, 2017

**Decision Date:** March 26, 2017

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#### **AUTHORITY**

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

#### **JURISDICTION**

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

#### **HEARING RECORD**

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

## Massachusetts Health Connector Appeals Unit

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2015;
3. Health Connector's Notice of Hearing (3 pages; dated 10/13/16);
4. Hearing Officer's Notation That Appellant Did Not Appear for Hearing (1 page, dated 11/7/16);
5. Appellant's Request to Vacate Dismissal of Appeal with Appellant's Handwritten Note Supporting Appeal (1 page, dated 2/10/17); and
6. Health Connector's Second Notice of Hearing (3 pages, dated 2/22/17).

### FINDINGS OF FACT

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

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

2. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2014 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2014. See 956 Code Mass. Regs. 6.05. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2015.<sup>1</sup>

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<sup>1</sup> The DOR Instructions are published online at the Department of Revenue web site <http://www.mass.gov/dor/2015ScheduleHCInstructions> and are also available in the

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3. DOR assessed a 7 month penalty on the Appellant's 2015 Massachusetts personal income tax return. Exhibit 1. The basis for the penalty assessment is that the Appellant had health insurance coverage for the months of November and December (2 months) but not for January – October 2015 (10 months). Exhibit 1. I find that the DOR's assessment is factually correct, based on both Exhibit 1 and on the Appellant's hearing testimony. (The penalty calculation is 12 months minus 2 months insured = 10 months minus the 3-month administrative grace period = 7 penalty months.)

4. At the beginning of 2015 the Appellant was 24 years old and resided in [name of city or town omitted] in Middlesex County, Massachusetts. Exhibit 1.

5. The Appellant's 2015 tax return was filed as a single person with no dependents and reports \$38,135 in federal adjusted gross income (AGI). Exhibit 1.

6. The Appellant's 2015 AGI is somewhat more than 300% of the federal poverty level for a one-person household (\$35,010). DOR Table 2.

7. The Appellant moved to Massachusetts to attend graduate school. She completed her degree in December 2014. Testimony and Exhibit 2.

8. In early 2015 the Appellant began a succession of part-time jobs that did not offer her health insurance benefits. The jobs included working as a substitute teacher and as a summer camp counselor. Testimony.

9. In August 2015 the Appellant was offered her current job as an elementary school teacher in a public school. The Appellant enrolled in the health plan offered by her employer, which took effect in November 2015 after the employer's required 60 day waiting period.

10. The Appellant's annual salary as a public school teacher in 2015 was \$45,000 per year. The Appellant was compensated at this rate for four months in 2015 (September – December). The Appellant's earnings during prior months (January –

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state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2015.

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August) were at a lower rate, which accounts for the fact that her federal adjusted gross income for 2015 (\$38,135) is lower than her annual teacher's salary (\$45,000). Testimony and Exhibit 1.

11. The Appellant's living expenses include \$92,000 in student loans for her undergraduate and masters degrees. Testimony.

12. The Appellant was insured for 2016 and 2017 as a public school teacher. Testimony.

### ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the Department of Revenue's (DOR) assessment of a tax penalty because the Appellant did not have health insurance coverage for all of 2015. The issue to be decided is whether the penalty should be waived, either in whole or in part. See Exhibits 1 and 2.

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

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

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

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Connector's regulations also provide for a "hardship" appeal from the assessment of a penalty. 956 Code Mass. Regs. 6.07 and 6.08. The grounds for a hardship appeal are summarized in the Statement of Grounds for Appeal – 2015 that the Appellant signed and filed in this case. See Exhibit 2.

The Appellant in this appeal became insured as soon as she obtained a full-time job that offered her health insurance benefits starting in November 2015 after a 60 day waiting period. The issue is whether she should be penalized during the period earlier in the year when she was employed in a succession of part-time jobs that did not offer her health insurance coverage. Notably, the Appellant's income was lower earlier in 2015 before she was offered a full-time job as a public school teacher. The decisive element, however, is that she had just completed her masters degree in December 2014 that led to her full-time employment later in 2015 and that she had \$92,000 in student loans. I conclude, therefore, that that Appellant could not afford health insurance during the portion of 2015 before she obtained full-time employment and that the penalty should be waived under the Health Connector's financial hardship regulation. See 956 Code Mass. Regs. 6.08 (1) (e) ("[Appellant] experienced financial circumstances such that the expense of purchasing health insurance . . . would have caused [her] to experience a serious deprivation of food, shelter, clothing or other necessities.").

### **PENALTY ASSESSED**

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

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

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

### **NOTIFICATION OF ASSESSMENT**

## **Massachusetts Health Connector Appeals Unit**

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

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

Cc: Connector Appeals Unit

# **CONNECTOR APPEALS UNIT**

## **FINAL APPEAL DECISION**

**Appeal Decision:** xx Penalty Overturned in Full      \_\_\_\_\_Penalty Upheld  
       Penalty Overturned in Part

**Hearing Issue:** Appeal of the 2015 Tax Year Penalty

**Hearing Date:** January 9, 2017

**Decision Date:** March 13, 2017

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The appellant appeared at the hearing which was held by telephone on January 9, 2017. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2015
- Exhibit 2: Statement of Grounds for Appeal-2015 signed and dated by Appellant on May 13, 2016 with letter in support of appeal attached
- Exhibit 3: Notice of Hearing sent to Appellant dated October 17, 2016 for November 9, 2016 hearing
- Exhibit 4: Appellant's letter to Connector Appeals Unit dated November 21, 2016 requesting hearing
- Exhibit 5: Notice of Hearing sent to Appellant dated December 7, 2016 for January 9, 2017 hearing

# **CONNECTOR APPEALS UNIT**

- Exhibit 6: Appellant's Mortgage statement, June, 2015
- Exhibit 7: Appellant's car loan bill, January, 2015
- Exhibit 8: Appellant's car insurance bill, 2016
- Exhibit 9: Appellant's telephone, internet bill, May, 2016
- Exhibit 10: Appellant's home owner's insurance bill, 2015
- Exhibit 11: Appellant's credit card bill, January, 2015
- Exhibit 12: Appellant's water and sewer bill due January 28, 2015
- Exhibit 13: Appellant's direct deposit voucher, pay stub, February, 2016
- Exhibit 14: Final Appeal Decision, 2013 tax year dated September 14, 2014

## **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, who filed a 2015 Massachusetts tax return as a single person with no dependents claimed, was 48 years old for most of 2015 (Exhibit 1).
2. Appellant lived in Bristol County, MA in 2015 (Exhibit 1).
3. Appellant's Federal Adjusted Gross Income for 2015 was \$43,080 (Exhibit 1).
4. Appellant had the same full-time job all of 2015. Appellant, who worked 40 hours a week, was paid \$20.00 an hour. Appellant was not offered health insurance through employment. Appellant still has the same job and is still uninsured (Testimony of Appellant, Exhibit 13).
5. Appellant did try to find health insurance through the Connector in 2015. Appellant did not qualify for any subsidy. Appellant felt health insurance was too expensive (Testimony of Appellant).
6. Appellant was uninsured all of 2015. Appellant has been assessed a tax penalty for the year; the appellant has appealed this assessment, claiming that the appellant received shut-off notices for basic utilities or had a basic utility shut off during 2015 and that the cost of purchasing health insurance would have caused the appellant to experience a serious deprivation of basic necessities (Exhibits 1, 2, Testimony of Appellant).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2015 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2015. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for

## **CONNECTOR APPEALS UNIT**

2015.

8. According to Table 3 of Schedule HC for 2015, the appellant with no dependents who filed taxes as a single person, with an adjusted gross income of \$43,080 could afford to pay \$265 per month for health insurance. According to Table 4, Appellant, age 48 and living in Bristol County, could have purchased insurance for \$256 per month (Schedule HC, Tables 3 and 4, 2015).

9. Private insurance was affordable for the appellant in 2015 (Schedule HC for 2015).

10. According to Table 2 of Schedule HC for 2015, Appellant, earning more than \$35,010 per year would have been ineligible for the Connector Care program (Table 2 of Schedule HC-2015).

11. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2015 (Testimony of Appellant).

12. Appellant did not fall more than thirty days behind in mortgage payments in 2015 (Testimony of Appellant).

13. Appellant's home was heated with oil in 2015. Appellant did not get regular oil deliveries. Instead, Appellant called and asked for a delivery when the appellant needed oil. There were times during 2015 when the appellant could not afford to pay for oil and did not have any delivered. In the early spring, Appellant ran out of oil and did not have heat or hot water (Testimony of Appellant, Exhibit 2 attachment).

14. Appellant had the following monthly expenses for basic necessities in 2015: mortgage and property tax-\$981; water and sewer-\$12; home owner's insurance-\$75; heat (oil)-\$100 most months; electricity-\$45; telephone and internet-\$188; food-\$240; car payment-\$239; car insurance-\$104; gas-\$160; clothing \$30. The appellant had \$1,000 in car repairs during 2015. Appellant also had approximately \$8,000 of credit card debt (Testimony of Appellant, Exhibits 6 through 10, 12, 13).

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

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2015 should be waived, either in whole or in part.

## **CONNECTOR APPEALS UNIT**

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.

Appellant had no health insurance in 2015. Appellant has been assessed a tax penalty for twelve months. The appellant appealed this assessment. Exhibits 1 and 2.

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

Appellant testified that Appellant was employed at the same job all year. Appellant was not offered insurance through employment. See the testimony of the appellant which I find credible. Appellant had no access to employer-sponsored insurance in 2015.

According to Table 2 of Schedule HC for 2015, Appellant, earning more than \$35,010 per year, would have been ineligible for the Connector Care program. See Table 2 of Schedule HC-2015, 956 CMR 12.00 et. seq. and Exhibit 1. There is no evidence in the record that the appellant was eligible for any other government-sponsored plan.

According to Table 3 of Schedule HC for 2015, the appellant filing as a single person with no dependents claimed, with an adjusted gross income of \$43,080, could afford to pay \$265 per month for health insurance. According to Table 4, Appellant, age 48 and living in Bristol County, could have purchased insurance for \$256 per month. See Exhibit 1. Affordable health insurance was available through the Connector. Appellant could have applied and enrolled during the open enrollment period in late 2014 through January 31, 2015.

Affordable health insurance was available to the appellant all of 2015. Because of this, we need to determine whether pursuant to 956 Code of Massachusetts Regulations 6.08, a hardship exception is applicable in this matter.

## **CONNECTOR APPEALS UNIT**

Pursuant to 956 CMR 6.08(1)(b), an individual who received a shut-off notice for a utility or who had utilities shut off is deemed to have experienced a financial hardship so that insurance was not affordable for the individual. Appellant testified, and I find the testimony credible, that Appellant's home was heated with oil in 2015. Appellant did not get regular oil deliveries. Instead, Appellant called and asked for a delivery when the appellant needed oil. There were times during 2015 when the appellant could not afford to pay for oil and did not have any delivered. In the early spring, Appellant ran out of oil and did not have heat or hot water. I determine that the appellant experienced a financial hardship pursuant to 956 CMR 6.08(1)(b).

In addition, I determine that the cost of purchasing health insurance would have caused the appellant to suffer a serious deprivation of basic necessities. If we consider the appellant's monthly bills for necessities, car repairs, and credit card debt, the appellant had little or no disposable income left for the purchasing of health insurance. Appellant's monthly bills came to approximately \$2,200, not counting credit card payments and car repair bills. Monthly income, before taxes, was about \$3,200. Insurance would have cost Appellant a minimum of \$256 per month. Given income and expenses, little or nothing would have been left for basic necessities. See 956 CMR 6.08(3).

Based upon the facts summarized above, I determine that Appellant's penalty should be waived. Appellant experienced a financial hardship such that insurance was unaffordable.

Appellant should note that any waiver granted here is for 2015 only and is based upon the specific facts I have found to be true and should not assume that the same determination will be made should Appellant be assessed a penalty in the future.

### **PENALTY ASSESSED**

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

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

# **CONNECTOR APPEALS UNIT**

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

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

Hearing Officer

Cc. Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION

**Appeal Decision:** xx Penalty Overturned in Full      \_\_\_\_\_Penalty Upheld  
\_\_\_\_ Penalty Overturned in Part

**Hearing Issue:** Appeal of the 2015 Tax Year Penalty

**Hearing Date:** January 9, 2017

**Decision Date:** March 2, 2017

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

One of the appellants appeared at the hearing which was held by telephone on January 9, 2017. The procedures to be followed during the hearing were reviewed with the appellant who was sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2015
- Exhibit 2: Statement of Grounds for Appeal 2015 signed by Appellant on May 16, 2016 with attachment
- Exhibit 3: Notice of Hearing sent to Appellant dated October 17, 2016 for a hearing on November 19, 2016
- Exhibit 3a: Notice of Hearing sent to Appellant dated December 7, 2016 for a hearing on January 9, 2017
- Exhibit 4: Appellant's letter dated December 9, 2016 in support of appeal with list of expenses

## Massachusetts Health Connector Appeals Unit

### FINDINGS OF FACT

The record shows, and I so find:

1. Appellants were 55 and 53 years old in 2015. They filed their 2015 Massachusetts tax return jointly with no dependents claimed (Exhibits 1, and 2; Testimony of Appellant).
2. Appellants lived in Bristol County, MA in 2015 (Exhibit 1).
3. Appellants' Federal Adjusted Gross Income for 2015 was \$37,011 (Exhibit 1).
4. In 2015, one of the appellants was employed all year. Appellant had health insurance through employment. The employer paid the full premium for the appellant. The employer did offer a plan for a couple. If Appellant wanted the spouse covered, they would have had to buy a family plan and pay approximately \$750 a month for the coverage (Testimony of Appellant).
5. In 2015, the other appellant was self-employed. This appellant was uninsured all year. Appellant had had insurance until 2014 when the appellant lost coverage. Appellant did not try to obtain coverage in 2015 (Testimony of Appellant).
6. The appellant who had no health insurance all year has been assessed a penalty for twelve months. The spouse, insured all year, has not been assessed a penalty (Testimony of Appellant, Exhibit 1).
7. The appellants filed for an appeal of the penalty in May, 2016, claiming that the cost of purchasing insurance would have caused them to experience a serious deprivation of basic necessities (Exhibits 1 and 2).
8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2015 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2015. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2015.
9. According to Table 3 of Schedule HC for 2015, the appellants filing jointly with no dependents claimed with a Federal adjusted gross income of \$37,011 could afford to pay \$183 per month for health insurance. According to Table 4, Appellants, 55 and

## **Massachusetts Health Connector Appeals Unit**

53 years old and living in Bristol County, could have purchased insurance for \$611 per month for a plan for the couple. One of the appellants had free insurance through employment. The other appellant could have spent up to \$183 a month. This appellant could have purchased coverage for \$305 for an individual plan. Private insurance was not affordable for the appellant who needed coverage in 2015 (Schedule HC for 2015, Testimony of Appellant).

10. According to Table 2 of Schedule HC for 2015, Appellants, earning less than \$47,190, the income limit for a family of two, would have been eligible for the ConnectorCare program based upon income (Table 2 of Schedule HC-2015, Exhibit 1).

11. Appellants did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2015 (Testimony of Appellant).

12. Appellants did not fall more than thirty days behind in mortgage payments in 2015 (Testimony of Appellant).

13. Appellants received shut-off notices for a basic utility, their telephone, in 2015. Their service was cut off at least once, possibly twice during the year (Testimony of Appellant).

14. Appellants had the following monthly expenses for basic necessities in 2015: mortgage including property taxes-\$1,181; home owners insurance- about \$100; water-\$40; heat -\$120; telephone and internet-\$160; electricity-\$140; food-\$500; car insurance-\$125; gas-\$60; clothing \$30; out-of-pocket medical and dental expenses-\$55. (Testimony of Appellant, Exhibit 2 attachment).

15. Early in 2015, one of the appellants inherited an orchard. The appellants had to pay \$6,000 in property taxes for the property in 2015. The appellants also had credit card debt and had to pay \$200 a month to pay off this debt (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 2015 should be waived in whole, in part, or not at all.

## Massachusetts Health Connector Appeals Unit

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.

One appellant who had no health insurance all of 2015 has been assessed a penalty for twelve months. The other appellant who was insured all year has not been assessed a penalty. The appellants have appealed the assessment, claiming that the cost of purchasing health insurance would have caused them to experience a serious deprivation of basic necessities. See Exhibits 1 and 2.

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

According to Table 3 of Schedule HC for 2015, the appellants filing jointly with no dependents claimed with a Federal adjusted gross income of \$37,011 could afford to pay \$183 per month for health insurance. According to Table 4, Appellants, 55 and 53 years old and living in Bristol County, could have purchased insurance for \$611 per month for a plan for the couple. One of the appellants had free insurance through employment. The other appellant could have afforded \$183 a month. This appellant could have purchased coverage for \$305 for an individual plan. Private insurance was not affordable for the appellant who needed coverage in 2015. See Schedule HC for 2015 and the testimony of Appellant which I find to be credible.

One appellant had insurance through employment at no cost. The spouse could have been covered, but the cost to the couple would have been about \$750 a month, significantly more than the couple were deemed able to afford. The uninsured appellant was self-employed and, therefore, had no access to insurance through employment. No affordable insurance was available through employment. See the testimony of the appellant which I find to be credible, and Schedule HC, Table 3.

## Massachusetts Health Connector Appeals Unit

The uninsured appellant was eligible for ConnectorCare if we consider the couple's yearly joint income only. Their income was \$37,011, less than the limit for ConnectorCare for a family of two, \$47,190. See Exhibit 1 and Table 2 of Schedule HC and 956 Code of Massachusetts Regulations 12.00 for eligibility requirements. However, in order to be eligible for the ConnectorCare program, an individual must be eligible for a Federal advance premium tax credit under the Affordable Care Act because part of the cost of the premium for ConnectorCare is paid for by this tax credit.

To be eligible for the tax credit where one spouse has coverage which meets minimal essential coverage and the other is uninsured, the individual coverage available to the employed spouse must be unaffordable according to Federal standards. See 26 CFR 1.36B-2 (c)(3)(v)(2). In this matter, the insured spouse paid nothing for the coverage, making it affordable. Given this, the uninsured spouse, under the Affordable Care Act, is deemed to have had access to affordable coverage through employment. The uninsured appellant was, therefore, not eligible for a tax credit and, therefore, not eligible for ConnectorCare coverage. See 956 CMR 12.00 et. seq. for eligibility requirement for ConnectorCare.

There was no affordable insurance available to the uninsured appellant in 2015. An individual plan through the Connector was not affordable. The appellant was self-employed with no access through employment. The spouse's coverage was unaffordable considering standards set by the Commonwealth. Finally the appellant was not eligible for ConnectorCare coverage because under Federal law, the appellant was ineligible for an advance premium tax credit. Being ineligible for a tax credit made the appellant ineligible for a ConnectorCare plan.

Since no affordable insurance was available to the appellant, Appellant's penalty must be waived. See Massachusetts General Laws, Chapter 111M, Section 2.

I note that even if affordable insurance had been available to the appellant, the penalty would be waived because of financial hardship pursuant to 956 CMR 6.08(1)(b). Appellant received several shut-off notices for telephone service and had service cut off at least once in 2015. Having service for a basic utility such as telephone cut off constitutes financial hardship making the purchase of health insurance unaffordable.

Appellants should note that the waiver of the penalty is based upon the facts determined to be true in 2015. They should not assume that a similar determination will be made in the future should they be assessed a penalty for failure to have health insurance.

## Massachusetts Health Connector Appeals Unit

### **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 2015.

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

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

Cc. Connector Appeals Unit

## Massachusetts Health Connector Appeals Unit

### FINAL APPEAL DECISION

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

**Hearing Issue:** Appeal of the 2015 Tax Year Penalty

**Hearing Date:** March 15, 2017

**Decision Date:** March 24, 2017

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### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

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

## Massachusetts Health Connector Appeals Unit

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2015;
3. Wife's Letter in Support of Appeal (1 page, undated);
4. Wife's Airline Flight Information (2 pages);
5. Health Connector's 2014 Approved Appeal Notice (1 page, dated 12/26/15);
6. Appellant's Request to Vacate Dismissal of Appeal (1 page, received 15/5/16);
7. Prior Hearing Officer's Notation That Appellant Did Not Appear for Hearing (1 page, dated 1/23/17);
8. Appellant's Request to Vacate Dismissal of Appeal (1 page, received 2/21/17);
9. Health Connector's Notice of Hearing (3 pages; dated 10/17/17);
10. Health Connector's Second Notice of Hearing (3 pages; dated 12/21/16); and
11. Health Connector's Third Notice of Hearing (3 pages; dated 2/22/17).

### FINDINGS OF FACT

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

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

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

## Massachusetts Health Connector Appeals Unit

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 2015.<sup>1</sup>

3. DOR did not assess a penalty against the Husband on the Appellants' 2015 Massachusetts personal income tax return that he filed jointly with his Wife and dependent child. Exhibit 1. For 2015 the Appellant was insured for the months of January – September using COBRA coverage from a prior employer. No penalty was assessed for the months of October-December (3 months) due to the application of the 3-month administrative grace period. Starting in January 2016 the Husband was insured through the Health Connector. Exhibit 1 and Testimony.

4. DOR assessed a 3 month penalty against the Wife for 2015. Exhibit 1. The basis for the penalty assessment is that the Wife was insured for the months of May – July (3 months). The DOR applied the 3-month administrative grace period to the periods before and after May – July to arrive at the 3 month penalty assessment. Exhibit 1. The Wife appealed the penalty assessment. Exhibit 2.

5. The Husband resided in Massachusetts for all of 2015 and filed a Massachusetts tax return that reported \$98,338 in federal adjusted gross income. Exhibit 1 and Testimony.

6. The Wife and the minor child did not live in Massachusetts in 2015 while she attended college in another country. The Wife and child visited the Husband in Massachusetts starting on April 19 and ending on June 21, 2015, and she was insured in Massachusetts during the period of her visit (May – July). I base this finding on the Husband's hearing testimony, on the Wife's letter in support of the Appeal (Exhibit 3), and on the written airline flight information prepared by Expedia (Exhibit 4). This information is consistent with the information reported on the tax return (Exhibit 1).

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

## Massachusetts Health Connector Appeals Unit

### ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Wife's appeal from the Department of Revenue's (DOR) assessment of a tax penalty because she was not insured in Massachusetts for all of 2015. The issue to be decided is whether the penalty should be waived, either in whole or in part. See Exhibits 1 and 2.

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

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

The decision in this appeal turns on the provision in Massachusetts law that residents of Massachusetts are required to obtain health insurance coverage. See Mass. Gen. Laws c. 111M, sec. 2 (a), above. The evidence presented in support of the appeal demonstrates that the Wife did not reside in Massachusetts in 2015, and thus she was not subject to the individual mandate under state law. Rather the Wife visited her

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

## **Massachusetts Health Connector Appeals Unit**

Husband during the period April 19 – June 23, 2015, and she obtained temporary health insurance coverage while she was in Massachusetts. The Husband did reside in Massachusetts in 2015, but the Department of Revenue did not assess a penalty against the Husband as he was insured in 2015. See further 2015 DOR Instructions for Massachusetts Schedule HC, at page HC-2 (“Part-year residents are not required to file Schedule HC if they were residents of Massachusetts for less than three full months.”).

Accordingly, I waive the entire penalty assessed against the joint income tax return that Husband and Wife filed in Massachusetts for 2015.

### **PENALTY ASSESSED**

Number of Months Appealed: \_\_\_\_\_3\_\_\_\_\_ Number of Months Assessed: \_\_0\_\_\_\_\_

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

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

### **NOTIFICATION OF ASSESSMENT**

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

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

Cc: Connector Appeals Unit

# **CONNECTOR APPEALS UNIT**

## **FINAL APPEAL DECISION**

**Appeal Decision:** X Penalty Overturned in Full \_\_\_\_\_Penalty Upheld  
Penalty Overturned in Part

**Hearing Issue:** Appeal of the 2015 Tax Year Penalty

**Hearing Date:** January 20, 2017

**Decision Date:** March 15, 2017

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

Appellant appeared at the hearing, which was held on January 20, 2017. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

- Exhibit 1: Notice of Hearing sent to Appellant dated December 21, 2016
- Exhibit 2: Appeal Case Information Sheet from Schedule HC 2015
- Exhibit 3: Statement of Grounds for Appeal 2015 signed by Appellant on June 1, 2016
- Exhibit 4: Statement in Support of Appeal

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant was 30 years old in 2015 and filed a 2015 Massachusetts tax return as single, with no dependents claimed (Exhibit 2).
2. Appellant lived in Suffolk County, MA in 2015 (Exhibit 2).
3. Appellant's Adjusted Gross Income for 2015 was \$21,964 (Exhibit 2).

## **CONNECTOR APPEALS UNIT**

4. During 2015, Appellant worked at several different jobs and the jobs had waiting periods for eligibility for employer sponsored insurance (Testimony of Appellant and Exhibit 4).
5. During 2015, Appellant's jobs ended prior to Appellant becoming eligible for employer sponsored health insurance (Testimony of Appellant and Exhibit 4).
6. Appellant's income was changeable and unstable during 2015 (Testimony of Appellant).
7. Appellant applied for government subsidized health insurance in early 2015, but did not get a notice about eligibility (Testimony of Appellant).
8. During 2016, Appellant began coverage under employer sponsored health insurance and was covered at the time of the hearing (Testimony of Appellant).
9. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2015 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2015. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2015.
10. According to Table 3 of Schedule HC for 2015 a single person with no dependents with an adjusted gross income of \$21,964 could afford to pay \$50 per month for private insurance. According to Table 4, Appellant, aged 30 and living in Suffolk County could have purchased private insurance for \$204 per month.
11. Private insurance was not considered to be affordable for Appellant in 2015 (Schedule HC for 2015).
12. According to Table 2 of Schedule HC for 2015, Appellant, earning less than \$35,010, would have met the income eligibility guidelines for government subsidized insurance.
13. Appellant was not homeless during 2015. Appellant did not fall behind in rent payments nor receive any shut-off notices (Testimony of Appellant).
14. Appellant did not incur a significant and unexpected increase in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or a fire, flood, natural disaster, or other unexpected natural or human-caused event (Testimony of Appellant).
15. Appellant had the following monthly expenses for basic necessities during 2015: rent \$765; utilities \$300; telephone \$60; food \$500; supplies \$100; clothing \$50; motorcycle insurance \$96; motorcycle maintenance \$50; gasoline \$40; public transportation \$87; medical expenses \$430. These expenses totaled approximately \$2,478 per month (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 2015 should be waived, either in whole or in part.

# **CONNECTOR APPEALS UNIT**

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

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

During 2015, Appellant worked at several different jobs, and the jobs had waiting periods for eligibility for employer sponsored health insurance. The jobs ended prior to Appellant becoming eligible for the employer’s insurance. Appellant’s income was changeable and unstable during 2015. Appellant applied for government subsidized health insurance in early 2015, but did not receive a notice about eligibility. According to Table 3 of Schedule HC for 2015 a single person with no dependents with an adjusted gross income of \$21,964 could afford to pay \$50 per month for private insurance. Appellant could have purchased private insurance for \$204 per month. Private insurance was not considered affordable for Appellant. Appellant, earning less than \$35,010, would have met the income eligibility guidelines for government subsidized health insurance. See Schedule HC for 2015 and Testimony of Appellant, which I find to be credible. Since Appellant potentially had access to affordable insurance, we need to consider whether Appellant experienced a financial hardship as defined by 956 CMR 6.08.

Appellant was not homeless during 2015. Appellant did not fall behind in rent payments nor receive any shut-off notices. Appellant did not incur a significant and unexpected increase in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or a fire, flood, natural disaster, or other unexpected natural or human-caused event. Appellant worked at several different positions. Appellant’s income was changeable and unstable. Appellant’s basic monthly expenses were \$2,478. Appellant’s monthly income was \$1,830. Therefore, I find that Appellant experienced financial circumstances such that the expense of purchasing health insurance that met minimum creditable coverage standards would have caused a serious deprivation of food, shelter, clothing or other necessities. See Testimony of Appellant, which I find to be credible and 956 CMR 6.08 (1) (e).

I find that the penalty assessed against Appellant for 2015 should be waived in its entirety.

## **PENALTY ASSESSED**

Number of Months Appealed: 12

Number of Months Assessed: 0

## **CONNECTOR APPEALS UNIT**

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

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

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

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



## Massachusetts Health Connector Appeals Unit

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2015;
3. Appellant's Letter in Support of Appeal (1 page, dated 5/19/16);
4. Prior Hearing Officer's Notation That Appellant Did Not Appear for Hearing (1 page, dated 12/15/16);
5. Appellant's Request to Vacate Dismissal of Appeal and Information Supporting Appeal (1 page, received 2/15/17);
6. Health Connector's Notice of Hearing (3 pages; dated 11/17/16); and
7. Health Connector's Second Notice of Hearing (3 pages; dated 2/22/17).

### FINDINGS OF FACT

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

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

2. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2014 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2014. See 956 Code Mass. Regs. 6.05. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2015.<sup>1</sup>

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

## Massachusetts Health Connector Appeals Unit

3. DOR assessed a 12 month penalty on the Appellant's 2015 Massachusetts personal income tax return. Exhibit 1. The basis for the penalty assessment is that the Appellant did not have health insurance coverage at any time in 2015. Exhibit 1. I find that the DOR's assessment is factually correct, based on both Exhibit 1 and on the Appellant's hearing testimony.

4. At the beginning of 2015 the Appellant was 24 years old and resided in [name of city or town omitted] in Worcester County, Massachusetts. Exhibit 1.

5. The Appellant's 2015 tax return was filed as a single person with no dependents and reports \$17,851 in federal adjusted gross income (AGI). Exhibit 1. See also Exhibit 3.

6. The Appellant's 2015 AGI is substantially less than 300% of the federal poverty level for a one-person household (\$35,010). DOR Table 2.

7. Under DOR Table 3, the Appellant could afford to pay \$40.90 per month for health insurance in 2015. (The calculation is 2.75 % multiplied by \$17,851 AGI = \$490.90 per year divided by 12 months = \$40.90 per month.)

8. Under DOR Table 4 (Region 2), health insurance coverage would have cost the Appellant \$144 per month for individual coverage at his age (under 30 age bracket) and location in Massachusetts.

9. In 2014 the Appellant lived at home with his parents. In 2015 the Appellant moved into his first apartment. The Appellant contends that he had not anticipated the actual cost of living in a separate apartment. Testimony and Exhibit 5.

10. In 2014, 2015 and 2016 the Appellant worked for the same employer, a restaurant. The Appellant steadily increased his role at his job, from support staff, to bartender, to management. Testimony.

11. In early 2016 the Appellant enrolled in health insurance coverage through the Health Connector, based on an increase in his income. Testimony.

12. In 2015, the Appellant's employment income was devoted to paying his rent, utilities, and car insurance. Testimony.

## Massachusetts Health Connector Appeals Unit

### ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the Department of Revenue's (DOR) assessment of a tax penalty because the Appellant did not have health insurance coverage in 2015. The issue to be decided is whether the penalty should be waived, either in whole or in part. See Exhibits 1 and 2.

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

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

The evidence in this appeal establishes that the Appellant could not afford health insurance based on his 2015 income. His federal adjusted gross income reported on his state income tax return was less than 300% of the federal poverty level, he could afford to pay only \$40.90 per month for health insurance under the objective standards set

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

## Massachusetts Health Connector Appeals Unit

forth in DOR Table 3, and health insurance would have cost \$144 per month for individual coverage even at his young age. See, e.g., Findings of Fact, Nos. \*\*, above. What is less clear in the Appellant's presentation of the reasons for his appeal is why he was not enrolled in a government subsidized health plan in 2015. As his employment income increased, however, the Appellant did obtain health insurance coverage through the Health Connector in early 2016.

Under these circumstances I consider it appropriate to waive the penalty for the one year at issue under the Health Connector's financial hardship regulations. See 956 Code Mass. Regs. 6.08 (1) (e) (Appellant "experienced financial circumstances such that the expense of purchasing health insurance . . . would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities."). The Appellant should not assume, however, that he would successfully obtain a waiver again if he does not maintain his health insurance coverage in future years.

### **PENALTY ASSESSED**

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

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

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

### **NOTIFICATION OF ASSESSMENT**

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

## **Massachusetts Health Connector Appeals Unit**

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

Cc: Connector Appeals Unit

## Massachusetts Health Connector Appeals Unit

### FINAL APPEAL DECISION

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

**Hearing Issue:** Appeal of the 2015 Tax Year Penalty

**Hearing Date:** January 24, 2017

**Decision Date:** February 24, 2017

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#### **AUTHORITY**

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

#### **JURISDICTION**

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

#### **HEARING RECORD**

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

## Massachusetts Health Connector Appeals Unit

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2015;
3. Appellant's Letter in Support of Appeal (1 page, dated 5/30/16);
4. Appellant's Bank Statements (4 pages, dated Jan. – June 2015);
5. Prior Hearing Officer's Notations that Appellant Did Not Appear for Hearing (1 page, dated 12/15/16);
6. Health Connector's Notice of Hearing (3 pages, dated 11/17/16); and
7. Health Connector's Second Notice of Hearing (3 pages, dated 12/21/16).

### FINDINGS OF FACT

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

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

2. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2014 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2014. See 956 Code Mass. Regs. 6.05. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2015.<sup>1</sup>

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

## Massachusetts Health Connector Appeals Unit

3. DOR assessed a 5 month penalty on the Appellant's 2015 Massachusetts personal income tax return. Exhibit 1. The basis for the penalty assessment is that the Appellant had health insurance coverage for the months of September – December (4 months) but not for the months of January – August in 2015 (8 months). Exhibit 1. I find that the DOR's assessment is factually correct, based on Exhibit 1, on the Appellant's hearing testimony, and on the Appellant's letter (Exhibit 3). (The penalty calculation is 12 months minus 4 months insured = 8 months minus 3-month administrative grace period = 5 penalty months [January – May].)

4. DOR did not assess a penalty against the Appellant's Wife, who did not join the appeal and was not present at the appeal hearing. Exhibits 1 and 2. In 2015 the Wife was employed as a public school teacher at an annual salary of approximately \$75,000, and she had health insurance coverage through her job. Testimony.

4. At the beginning of 2015 the Appellant was 34 years old (the same age as his Wife) and resided in [name of city or town omitted] in Suffolk County, Massachusetts. Exhibit 1.

5. The Appellant's 2015 tax return was filed as a married couple filing jointly with one dependent and reports \$108,557 in federal adjusted gross income (AGI). Exhibit 1.

6. I find that the Appellant's 2015 AGI was approximately \$33,557 (The calculation is \$108,557 total AGI minus \$75,000 Wife's teaching salary = \$33,557).

7. The Husband and his Wife were both insured in 2014 and in 2016, when the Husband was employed and had health insurance as a job benefit. Testimony.

8. At the beginning of 2015 the Husband was one of the principals at a technology startup firm. In this position the Husband had no income and no health insurance benefits were offered to him for the months of January through August. His Wife was pregnant (the child was born in September 2015), and they were living on the Wife's salary, their savings, and a bank loan. Testimony and Exhibit 3. See also Exhibit 4 (Husband's monthly bank balances).

## Massachusetts Health Connector Appeals Unit

9. The Husband started a new full-time job in September 2015. He enrolled in his new employer's health plan, with coverage starting in September. Testimony and Exhibit 3. See also Exhibit 1 (insured as of September).

10. The Appellant (Husband) was unable to enroll in his Wife's health plan during the months in 2015 when he was uninsured due to the operation of the open enrollment period. Testimony.

11. I sought to adapt the affordability standards in DOR Tables 3 and 4 to the evidence presented by this appeal. Treating the Husband as an individual (since his Wife was insured), individual coverage would cost the Husband \$204 per month under DOR Table 4 (Region 2) at his age and location in Massachusetts. Based on his separate federal adjusted gross income for all of 2015 (\$33,557 per year), the Husband could afford to pay \$136 per month for health insurance under DOR Table 3. (The calculation is  $\$33,557 \text{ AGI} \times 4.85\% = \$1,627.51 \text{ per year} \div 12 = \$135.62 \text{ per month}$ .)

12. The Appellant did not present any specific evidence as to living expenses (except for the summary bank checking account balances), apart from his general statement in Exhibit 3 that, "Obtaining health insurance at any cost would have deleteriously impacted my ability to continue operating my business [my livelihood] and provide for the livelihood of my growing family." (emphasis in original).

### ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the Department of Revenue's (DOR) assessment of a tax penalty because the Appellant did not have health insurance coverage in 2015 for the months of January - August. The issue to be decided is whether the penalty should be waived, either in whole or in part. See Exhibits 1 and 2.

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

## Massachusetts Health Connector Appeals Unit

affordable” under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector). Mass. Gen. Laws c. 111M, sec. 2 (a).<sup>2</sup> Any health insurance policy must also satisfy the Massachusetts minimum credible coverage standards (“MCC”) in order to avoid the penalty. Mass. Gen. Laws c. 111M, sec. 2 (b). See also 956 Code Mass. Regs. 5.01 and 5.03.

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

In this case, it is undisputed that the Appellant (Husband) was not insured for the 8-month period January through August 2015 and that the DOR correctly assessed a 5 month penalty against the Husband. No penalty was assessed against the Wife because she was insured for all of 2015 through her teaching job. Moreover, the coverage problem is limited to the beginning of 2015, as there was testimony that Husband and Wife were both insured in 2014 and in 2016. See, e.g., Findings of Fact, Nos. 3, 4 and 7, above.

This appeal is not easily resolved due to the \$108,557 in federal adjusted gross income (AGI) that Husband and Wife had jointly in 2015. Looking at the Husband separately, however, shows that the Husband’s share of the AGI was \$33,557 for the year as a whole and, more importantly, that the Husband did not have any earned income for the eight-month period (January – August) when he was self-employed as a principal at a technology startup company where he was not offered health insurance as a job benefit. See, e.g., Findings of Fact, Nos. 5, 6 and 8, above.

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

## Massachusetts Health Connector Appeals Unit

For the uninsured period – including the 5 months (January – May) when DOR assessed a penalty – applying the objective standards in DOR Tables 3 and 4 indicates that the Husband was not able to afford health insurance coverage: individual coverage would cost \$204 per month while the Husband could afford to pay \$136 per month. That calculation assumes that the Husband’s \$33,557 share of the joint AGI was earned over the entire year, but the evidence indicates that the Husband did not have earned income before September 2015. I conclude, therefore, that the Husband was not able to afford health insurance during the period when DOR assessed a penalty against him. See Mass. Gen. Laws c. 111M, sec. 2 (a), above. See, e.g., Findings of Fact, No. 11, above.

For the foregoing reasons, I waive the entire penalty assessed against the Husband for 2015. I note that it is likely that I would have reached a different result in this appeal if there had not been evidence that the open enrollment period barred the Husband from enrolling in his Wife’s health plan. See Findings of Fact, No. 10, above.

### **PENALTY ASSESSED**

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

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

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

### **NOTIFICATION OF ASSESSMENT**

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2014 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been

## **Massachusetts Health Connector Appeals Unit**

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

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

Cc: Connector Appeals Unit

## Massachusetts Health Connector Appeals Unit

### FINAL APPEAL DECISION

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

**Hearing Issue:** Appeal of the 2015 Tax Year Penalty

**Hearing Date:** March 15, 2017

**Decision Date:** March 27, 2017

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### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

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

## Massachusetts Health Connector Appeals Unit

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellants' Statement of Grounds for Appeal – 2015;
3. Appellants' Letter in Support of Appeal (1 page, dated 7/20/16);
4. Prior Hearing Officer's Notation That Appellants Did Not Appear for Hearing (1 page, dated 12/16/16);
5. Health Connector's Notice Dismissing Appeal (1 page, dated 1/25/17);
6. Appellants' Request to Vacate Dismissal of Appeal (1 page, dated 2/12/17);
7. Health Connector's 2015 Health Insurance Premium Quote (1 page, dated 1/1/15);
8. Health Connector's 2015 Dental Insurance Premium Quote (1 page, dated 1/6/15);
9. Health Connector's 2016 Health Insurance Premium Bill (1 page, dated 6/1/16);
10. Probate Court Guardianship Decree (4 pages, dated 11/5/14);
11. Appellants' 2015 MA Schedule HC (3 pages, dated 4/14/16);
12. Health Connector's Notice of Hearing (3 pages; dated 11/17/16); and
13. Health Connector's Second Notice of Hearing (3 pages; dated 11/17/16).

### FINDINGS OF FACT

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

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

2. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2014 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2014. See 956 Code Mass. Regs. 6.05. Table 2 sets forth

## Massachusetts Health Connector Appeals Unit

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 2015.<sup>1</sup>

3. DOR assessed an 8 month penalty against the Husband and an 8 month penalty against the Wife on the Appellants' 2015 Massachusetts personal income tax return. Exhibit 1. The basis for the penalty assessment is that the Husband and Wife each had health insurance coverage in January 2015 but not for the remainder of the year. Exhibit 1. I find that the DOR's assessment is factually correct, based on both Exhibit 1 and on the Husband's hearing testimony. (The penalty calculation is 12 months minus 1 month insured = 11 months uninsured minus the 3-month administrative grace period = 8 penalty months.)

4. At the beginning of 2015 the Husband was 46 years old (the Wife is younger) and they resided in [name of city or town omitted] in Worcester County, Massachusetts. Exhibit 1.

5. The Appellants' 2015 tax return was filed as a married couple filing jointly with 4 dependents and reports \$69,723 in federal adjusted gross income (AGI). Exhibit 1.

6. The Appellants' 2015 AGI is less than 300% of the federal poverty level for a six-person household (\$95,910). DOR Table 2. See also Exhibit 11, at line 11 (both Husband and Wife eligible for government-subsidized health insurance in 2015).

7. Under DOR Table 3, the Appellants could afford to pay \$430 per month for health insurance in 2015. (The calculation is 7.40 % multiplied by \$69,723 AGI = \$5,159.50 per year divided by 12 months = \$429.95 per month.)

8. Under DOR Table 4 (Region 2), health insurance coverage would have cost the Appellants \$624 per month for family coverage at the Husband's age (45-49 age bracket) and location in Massachusetts. Alternatively, health insurance would have cost the

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

## Massachusetts Health Connector Appeals Unit

Husband and Wife 511 per month to insurance themselves without their children. DOR Table 4 (Region 2).

9. In 2015 the Husband was employed as an independent contractor. The Wife owned and operated a small business. Neither the Husband nor the Wife were offered health insurance coverage through their employment. Testimony and Exhibit 11, at line 10.

10. In 2015 the Appellants had 3 children. The two younger children were insured by MassHealth. The older child was a student at a private college or university located in Massachusetts. Testimony. A niece also lived with the Appellants. In late 2014 a Probate Court decree gave the Appellants permanent guardianship of their niece. Exhibits 10 and 3 and Testimony. See also Exhibit 1 (4 dependents).

11. In 2014 and in January 2015 the Appellants were covered by government subsidized health insurance. Testimony and Exhibit 11, at lines 4a, 4b, 4f, and 7. See also Exhibits 7, 8 and 9.

12. In January 2015 the Appellant's received a notice of a substantial increase in their monthly premiums from the Health Connector, although there had been no comparable adjustment in their income or living arrangements. Testimony and Exhibit 7 (\$629.12 per month for medical insurance) and Exhibit 8 (\$99.62 per month for dental insurance). The premium quotes did not provide a "premium tax credit" -- or government subsidy -- for either the medical or dental coverage. Exhibits 7 and 8. Compare Findings of Fact, No. 7, above (Appellants could afford to pay \$430 per month for medical insurance under DOR Table 3).

13. According to the Appellants, they sought to investigate the 2015 premium increase with the Health Connector but never received a reply. The Appellants were unable to afford the premium increase and did not pay the premium that was billed for coverage for February 2015. Testimony.

14. For 2016 the Appellants resumed their health insurance coverage through the Health Connector when their monthly premium decreased to \$246 per month for medical coverage. Testimony and Exhibit 9. For 2016, the actual monthly premium in the amount

## Massachusetts Health Connector Appeals Unit

of \$499 was reduced by a \$253 premium tax credit leaving the \$246 per month premium to be paid by the Appellants. Exhibit 9.<sup>2</sup>

15. For 2017 the Appellants continued to be insured through the Health Connector. Testimony.

16. The Appellants incur substantial annual expenses for their child's college education, in addition to her scholarship and financial aid. Testimony.

### ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the Department of Revenue's (DOR) assessment of a tax penalty because they did not have health insurance coverage in 2015 after January. The issue to be decided is whether the penalty should be waived, either in whole or in part. See Exhibits 1 and 2.

I begin by summarizing the legal rules that underlie this appeal. The tax penalty was enacted by the Massachusetts Legislature to encourage compliance with what is known as the "individual mandate" under the Massachusetts Health Care Reform Act of 2006. The individual mandate requires that all Massachusetts residents, age 18 and older, "shall obtain and maintain" health insurance coverage, as long as it is "deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector). Mass. Gen. Laws c. 111M, sec. 2 (a).<sup>3</sup> Any health insurance policy must also satisfy the Massachusetts minimum credible coverage standards ("MCC") in order to avoid the penalty. Mass. Gen. Laws c. 111M, sec. 2 (b). See also 956 Code Mass. Regs. 5.01 and 5.03.

If these requirements are not met, a tax penalty is assessed for "each of the months" that the person did not have health insurance, as required by the individual mandate. Mass. General Laws c. 111M, sec. 2(b). There is, however, a three-month grace period for any lapse in coverage to allow the taxpayer to make the transition between health insurance policies. Connector's Administrative Bulletin 03-10, applying

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<sup>2</sup> I note that different insurers were involved: Harvard Pilgrim for 2015 and Tufts Health Direct for 2016. Exhibits 7 and 9.

<sup>3</sup> The schedule is reprinted in DOR Tables 3 and 4 referred to in this Decision.

## Massachusetts Health Connector Appeals Unit

Mass. Gen. Laws c. 111M, sec. 2 (b). See also DOR Instructions, at page HC-3. The Connector's regulations also provide for a "hardship" appeal from the assessment of a penalty. 956 Code Mass. Regs. 6.07 and 6.08. The grounds for a hardship appeal are summarized in the Statement of Grounds for Appeal – 2015 that the Appellant signed and filed in this case. See Exhibit 2.

In this case, the evidence demonstrates an effort to be covered by health insurance, as required by the individual mandate under state law. The Appellant were covered in 2014, in January 2015, again in 2016, and for 2017 to date. The Appellants assert that they were unable to pay the increased amount of the \$629.12 per month premium that they were quoted for coverage in 2015. See Exhibit 7. Their position finds support in the hearing record. First, they resumed their coverage through the Health Connector for 2016 when the premium quote was reduced to \$246 per month. See Exhibit 9. Second, under the objective standards set forth in DOR Table 3 the Appellants could not afford to pay the \$629 monthly premium that was quoted for 2015. See, e.g., Findings of Fact, Nos. 6 - 8, above. Given the limited information available it is not possible to ascertain why the Appellants encountered this problem in 2015. However, the evidence is sufficient to determine that they were not able to pay the premium quoted for 2015 and should not, therefore, be subject to a penalty.

Accordingly, I will waive the entire penalty assessed against both Husband and Wife for 2015. See Mass. Gen. Laws c. 111M, sec. 2 (a), above. See also 956 Code Mass. Regs. 6.08 (1) (e) ("[Appellants] experienced financial circumstances such that the expense of purchasing health insurance that met minimum creditable coverage standards would have caused [them] to experience a serious deprivation of food, shelter, clothing or other necessities.").

### **PENALTY ASSESSED**

Number of Months Appealed: (Husband) 8                      Number of Months Assessed: 0

Number of Months Appealed: (Wife) 8                      Number of Months Assessed: 0

## **Massachusetts Health Connector Appeals Unit**

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

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

### **NOTIFICATION OF ASSESSMENT**

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

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

Cc: Connector Appeals Unit

## Massachusetts Health Connector Appeals Unit

### **FINAL APPEAL DECISION**

**Appeal Decision:** Denied

**Hearing Issue:** 2015 Tax-Year Penalty

**Hearing Date:** December 20, 2016

**Decision Date:** March 27, 2017

#### **AUTHORITY**

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

#### **JURISDICTION**

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file a hardship 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 December 20, 2016. The Appellant offered testimony under oath or affirmation.

At the end of the hearing, the record was closed. The hearing record consists of the Appellant's testimony and the following documents which were admitted in evidence:

- Exhibit 1: Appeal Case Information
- Exhibit 2: 8/29/16 Appeal (12 pages)
- Exhibit 3: 11/22/16 Notice of Hearing (4 pages)

#### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant appealed from the assessment of a twelve-month penalty against him on his 2015 state income tax return. (Exhibit 1)

2. The Appellant's filing status in 2015 was Single with no dependents. The Appellant's federal AGI in 2015 was \$26,844. The Appellant resided in Hampden County in 2015. The Appellant turned fifty-five years old in early March 2015. (Exhibit 1)
3. The Appellant was not employed in 2015 and received no income from wages or salary in 2015. Seventy percent of the Appellant's adjusted gross income in 2015 came from capital gains (more than 90% were long-term), and the rest of his income came from interest and dividends. All of this income came from an account that the Appellant had set up for retirement, although it was not a tax-deferred account. In 2015, the Appellant began transferring money from this account to tax-deferred accounts in order to avoid taxes on his capital gains, interest and dividends, in the future. (Appellant's testimony; Exhibit 2)
4. The Appellant did not become aware of the consequences and significant size of his 2015 long-term capital gains until he received from his broker the Form 1099 for his account, in February 2016. (Appellant's testimony; Exhibit 2)
5. The Appellant did not have any health insurance coverage in 2014 or 2015. The Appellant has never applied for health insurance coverage through the Health Connector. The Appellant does not have health insurance coverage currently. (Appellant's testimony)
6. According to Table 2 of the Schedule HC 2015, the Appellant was eligible for government-subsidized insurance in 2015, since his 2015 AGI was less than \$35,010 for a family of one.
7. According to Table 3, Affordability, of the Schedule HC 2015, the Appellant could have afforded to pay up to 4.00% of his AGI for health insurance in 2015, based on his 2015 AGI and single tax filing status. This meant that the Appellant could have afforded to pay a monthly premium of up to \$89.48 for health insurance coverage in 2015, based on his filing status and federal AGI that year.
8. According to Table 4, Premiums, of the Schedule HC 2015, the Appellant could have purchased health insurance coverage for himself in the private market in 2015 for a monthly premium of \$306, based on his county of residence and age in 2015.
9. The Appellant did not know in 2015 that health insurance coverage was available to him in 2015 for a monthly premium of \$89.48. If the Appellant had known that he could get coverage at this price, he would have purchased the coverage in 2015. (Appellant's testimony)

## **ANALYSIS AND CONCLUSIONS OF LAW**

## Massachusetts Health Connector Appeals Unit

MGL Chapter 11M, § 2, also called the “individual mandate,” requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable.” Residents who do not obtain insurance are subject to a tax penalty. However, 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. MGL Chapter 11M, § 2(b). The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2015 should be waived, either in whole or in part.

In this case, while acknowledging that he might have been eligible for government-subsidized coverage in 2015, the Appellant contends that, up until he learned of his significant capital gains in February 2016, he thought that he would not be subject to a tax penalty because his 2015 adjusted gross income was below the income threshold for assessing a penalty, as it had been in 2014. However, the whole point of the individual mandate is to get people insured, not to assess them a tax for not doing so. If the Appellant thought that he might be eligible for subsidized coverage, he should have applied for coverage through the Health Connector, learned the cost, and then decided what to do. The Appellant would have found out that he could have obtained coverage in 2015 for less than \$90 monthly, based on a projected income of \$26,844, and a monthly premium of much less than that based on a projected income of \$7,160.65, without including the 2015 investment income. In either case, the Appellant admitted at hearing that he could have afforded to pay for health insurance coverage in 2015, in either situation.

Nevertheless, I recognize that the Appellant’s circumstances in 2015 were new to him. I credit the Appellant’s testimony that he did not realize the consequences of his taking substantial capital gains in his “retirement” account in 2015, until he received tax documents from his broker in February 2016. Moreover, as the Appellant had never previously applied to the Health Connector for coverage, he was unfamiliar with the process and was unaware that eligibility for subsidized coverage is driven by the applicant’s projected income during the year and that the applicant can adjust their projected income at anytime during the course of year, if their income changes.

Based on the above circumstances, I conclude that health insurance that provided minimum creditable coverage was not affordable to the Appellant in 2015, under 956 CMR 6.08(3).

Accordingly, the Appellant’s twelve-month penalty shall be waived in full for 2015.

### **ORDER**



Penalty Overturned in Full  
 Penalty Overturned in Part

Penalty Upheld  
 Other

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

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

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

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

Hearing Officer

**Addendum:** As the Appellant is now more familiar with the process, if the Appellant has not already done so, I encourage him to submit an application to the Health Connector for health insurance coverage.

cc. Connector Appeals Unit

## Massachusetts Health Connector Appeals Unit

### FINAL APPEAL DECISION

**Appeal Decision:** Approved

**Hearing Issue:** 2015 Tax-Year Penalty

**Hearing Date:** December 20, 2016

**Decision Date:** March 29, 2017

### **AUTHORITY**

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

### **JURISDICTION**

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file a hardship 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 December 20, 2016. The Appellant offered testimony under oath or affirmation.

At the end of the hearing, the record was left open until January 3, 2017, for the Appellant to submit additional evidence. The Appellant submitted additional evidence on December 22, 2016, and the record was closed. The hearing record consists of the Appellant's testimony and the following documents which were admitted in evidence:

- Exhibit 1: Appeal Case Information
- Exhibit 2: 9/1/16 Appeal (7 pages)
- Exhibit 3: 11/22/16 Notice of Hearing (4 pages)
- Exhibit 4: Copy of Appellant's Medicare Card (2 pages)

### **FINDINGS OF FACT**

The record shows, and I so find:

## Massachusetts Health Connector Appeals Unit

1. The Appellant appealed from the assessment of a twelve-month penalty against him on his 2015 state income tax return. (Exhibit 1)
2. The Appellant's filing status in 2015 was Single with no dependents. The Appellant's federal AGI in 2015 was \$128,992. The Appellant resided in Suffolk County in 2015. The Appellant turned sixty-nine years old in 2015. (Exhibit 1)
3. The Appellant was aware of the individual mandate in 2015. (Appellant's testimony)
4. The Appellant retired in 2013, when he was laid off and could not find any work. He was unemployed throughout 2015. (Appellant's testimony)
5. The Appellant did not indicate that he had Medicare coverage at Line 4c of his 2015 Schedule HC, when he filed his 2015 tax return on April 18, 2016. Instead, he indicated that he had private insurance coverage. (Exhibit 3)
6. The Appellant did not have private insurance coverage in 2015. (Appellant's testimony)
7. The Appellant had health insurance coverage through Medicare Parts A and B, in all of 2015. The Appellant has been enrolled in Part A since 2011 and Part B since 2013. (Appellant's testimony; Exhibit 4)

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

MGL Chapter 11M, § 2, also called the "individual mandate," requires every adult resident of Massachusetts to obtain insurance coverage "[s]o long as it is deemed affordable." Residents who do not obtain insurance are subject to a tax penalty. However, 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. MGL Chapter 111M, § 2(b). The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2015 should be waived, either in whole or in part.

In this case, while the Appellant did not indicate it on his 2015 tax return, the Appellant did in fact have Medicare coverage throughout 2015. Instead, the Appellant mistakenly checked off that he had private insurance coverage in 2015.

As the Appellant has established that he had Medicare coverage throughout 2015, I conclude that the Appellant met the requirement under the individual mandate to have health insurance that provided minimum creditable coverage in 2015.

Accordingly, the Appellant's twelve-month penalty for 2015 shall be waived in full.

## Massachusetts Health Connector Appeals Unit

### ORDER

Penalty Overturned in Full  
 Penalty Overturned in Part

Penalty Upheld  
 Other

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

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

### NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

cc. Connector Appeals Unit

# **CONNECTOR APPEALS UNIT**

## **FINAL APPEAL DECISION**

**Appeal Decision:** \_\_\_**X**\_\_\_ Penalty Overturned in Full      \_\_\_ Penalty Upheld  
                                 \_\_\_ Penalty Overturned in Part

**Hearing Issue:** Appeal of the 2015 Tax Year Penalty

**Hearing Date:**  
February 17, 2017

**Decision Date:**  
March 23, 2017

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### **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 February 17, 2017

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

Exhibit 1: Notice of Hearing dated January 26, 2017

Exhibit 2: Appeal Case Information from form Schedule HC

Exhibit 3: Written Statement of Appeal

Exhibit 4: Documents from prior Appeal Dates

### **FINDINGS OF FACT**

# **CONNECTOR APPEALS UNIT**

The record shows, and I so find:

1. The Appellant is 28 years old and is married. His wife is 27 years old. Appellants live in Bristol County.
2. Appellant is employed in engineering.
3. Appellant does have health insurance in 2017. Appellants had insurance in 2016.
4. The Appellants monthly expenses totaled \$3,655.00, consisting of rent \$1,000.00, heat and electricity \$250.00 internet and cable \$60.00, cell phones \$170.00, car payments 2 cars \$225.00 car insurance \$200.00, car gas \$240.00, food \$480.00, credit card \$200.00, clothing \$300.00, entertainment \$280.00, toiletries \$80.00, student loan \$200.00
5. The Appellant did not submit a Statement of Grounds for Appeal-2015, but should have submitted a statement as grounds for appeal “During 2015, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. I will hear the appeal under those grounds.
6. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2015. Table 1 sets forth the income eligibility standards for various family sizes at 150% of the federal poverty level and Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard for the government-subsidized health insurance program. See Mass. G.L. c. 118H, s.3(a)(1). Tables 5 and 6 set forth the tax penalties for 2015.
7. Based on the appellant’s federal adjusted gross income and the above referenced tables, I find the appellant may have been eligible for subsidized health insurance, since Appellants income of \$40,314.00 was less than \$47,190.00. The monthly premium for health insurance available on the private market in Bristol County for a 27 year old married person with zero dependents was \$287.00. The tables reflect that Appellants could afford \$241.88. This is more than what the appellants are deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions)

## **ANALYSIS AND CONCLUSIONS OF LAW**

## CONNECTOR APPEALS UNIT

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

The Appellant did not submit a Statement of Grounds for Appeal-2015, but should have submitted a statement as grounds for appeal “During 2015, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. I will hear the appeal under those grounds.

The Health Care Reform Act of 2006 requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage “so long as it is deemed affordable” under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). However, individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”) are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 13-1, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2013-releases/tir-13-1.html>. For 2015, 150 percent of the FPL was \$23,595.00 for a divorced person with one dependents. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf>; see also 830 Mass. Code Regs. 111M.2.1(5)(c) (2008). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months. *Id.*

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

## **CONNECTOR APPEALS UNIT**

Appellant reported a federal AGI of \$40,314.00 in 2015, and Appellants filing status was married with zero dependents. EX 2. According to the Affordability Schedule established by the Connector's board and included in the Instructions and Worksheets of the 2015 Massachusetts Schedule HC, Appellants could afford to pay \$241.88 monthly for health insurance. See 2014 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to him from the Premium Tables, at a cost of \$287.00 monthly for coverage which appellants could not afford. *Id.* at Table 4.

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

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

Accordingly, Appellant's appeal is **ALLOWED**, and the 2015 penalty assessed is **OVERTURNED**.

### **PENALTY ASSESSED**

Number of Months Appealed:   24        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 2011 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2011.

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

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

## **CONNECTOR APPEALS UNIT**

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

Cc: Connector Appeals Unit

# **CONNECTOR APPEALS UNIT**

## **FINAL APPEAL DECISION**

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

**Hearing Issue:** Appeal of the 2015 Tax Year Penalty

**Hearing Date:** December 20, 2016

**Decision Date:** March 24, 2017

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### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The appellant appeared at the hearing which was held by telephone on December 20, 2016, and testified under oath. The hearing record consists of the appellant's testimony and the following documents which were admitted into evidence without his objection:

- Ex. 1—Statement of Grounds for Appeal—2015
- Ex. 1A—Letter from the appellant dated September 19, 2016
- Ex. 1B—Letter from the appellant's employer dated September 14, 2016
- Ex. 1C—Consulting Agreement dated January 5, 2015
- Ex. 1D—Computer printout of booking confirmations and e-tickets
- Ex. 1E—Department of Homeland Security Approval of H1B visa from October 1, 2015 through August 18, 2018
- Ex. 1F—Invoices dated May 1, 2015, February 28, 2015, January 5, 2015 and January 30, 2015

# **CONNECTOR APPEALS UNIT**

Ex. 1G—Bills for cable and internet service from Fusion for the months of July and August, 2015

Ex. 1H—2015 Schedule HC

Ex. 2—Appeal Case Information from Schedule HC <sup>1</sup>

Ex. 3—Notice of Hearing

## **FINDINGS OF FACT**

The record shows, and I so find:

1. The appellant is 34-years-old, is married and has a minor daughter. In 2015, he had minimum creditable coverage health insurance for the months of October through December. (Testimony, Ex. 2)
2. The appellant is a Spanish citizen. For portions of 2015 and in prior years, he lived in Barcelona in a house owned by his wife's family. Expenses for his Barcelona house, including cable and internet service, were billed in his name to that address. (Testimony, Ex. 1G)
3. In December, 2014, the appellant was hired by a Massachusetts company as a consultant and continued in that capacity until September 30, 2015. His work required him to travel to and live in the state for several weeks at a time. The company put him up in a corporate apartment and paid all his travel expenses. He would then return to Barcelona and continue to provide services to the company from there. (Testimony, Exs. 1B, 1C)
4. In 2015, the appellant traveled to Boston from Barcelona and back on three occasions: from February 2<sup>nd</sup> until February 28<sup>th</sup>; from April 7<sup>th</sup> until May 1<sup>st</sup>; and from June 13<sup>th</sup> until July 10<sup>th</sup>. On September 22, 2015, he flew to the U.S. in order to relocate and was issued a H1B visa by the Department of Homeland Security for the period of October 1, 2015 through August 18, 2018. (Testimony, Ex. 1D)
5. The appellant was hired by the company as a full-time employee on October 1, 2015, at which time he enrolled in employer health insurance for the remainder of the year. (Testimony, Ex. 1B)
6. From January 1<sup>st</sup> through September 30<sup>th</sup>, the appellant had health insurance in Spain. (Testimony, Ex. 1A)

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<sup>1 1</sup> Ex. 2 is a computer printout that extracts information submitted by the appellant on Schedule HC as part of his 2015 Massachusetts income tax return. It also contains information about prior appeals, if any.

## **CONNECTOR APPEALS UNIT**

7. The appellant consulted a tax accountant and was advised to file a U.S. and Massachusetts tax return for the 2015 tax year because he resided in the country for more than 183 days. (Testimony)
8. The appellant was enrolled in employer health insurance throughout 2016. (Testimony)

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

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

The appellant submitted a statement of grounds for appeal (Ex. 1), claiming that the individual mandate did not apply to him because during 2015, “other” circumstances prevented him from purchasing health insurance. He also submitted a letter (Ex. 1A) with his statement in which he stated in part that he traveled back and forth from Spain to Massachusetts from January until the end of September as a consultant and was subsequently hired on a full-time basis effective October 1, 2015. He further stated that he was covered by Spanish health insurance until he became a full-time employee in Massachusetts at which time he enrolled in employer insurance for the duration of the year.

The appellant did not have minimum creditable coverage health insurance from January through September. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a tax penalty; for Tax Year 2015, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. Since the appellant was uninsured in Massachusetts for nine months, he was assessed a penalty of six months (i.e. the months of uninsurance less the gap period of three months.)

The appellant testified credibly that he was hired as a consultant by a Massachusetts company at the end of 2014, and traveled back and forth from Barcelona where he lived to Boston approximately three times in 2015 prior to October 1<sup>st</sup>. He testified that the company put him up in a corporate apartment and paid for his travel expenses. He testified that he lived in Barcelona with his family in a house owned by his wife’s family, and paid for household expenses there which were billed in his name. He testified that he became a full-time employee of the company on October 1, 2015,

## **CONNECTOR APPEALS UNIT**

and was issued a H1B visa at that time. Finally, he testified that until October 1<sup>st</sup>, he had Spanish health insurance, and thereafter he enrolled in employer insurance for the remainder of the year.

Although the appellant spent chunks of time in Massachusetts prior to October 1, 2015, he did not take up residence in the state until he became a full-time employee on October 1, 2015. The documentation he submitted including his consulting agreement, booking confirmations and e-tickets, and Barcelona household expenses, established that prior to that date he traveled back and forth while maintaining a principal place of residence in Spain where his family lived. The instructions on the 2015 Schedule HC, (page HC-2) set forth the following relevant information for part-year residents: "If you moved into Massachusetts during 2015, the mandate to obtain and maintain health insurance applies to you beginning on the first day of [the] third month following the month you became a resident of Massachusetts." Hence, since the appellant moved to the state in October, 2015, the mandate applies to him beginning on January 1, 2016, for purposes of this analysis. Even though he was not required to obtain insurance prior to then, he enrolled in employer insurance simultaneous with becoming a resident.

Accordingly, based on the foregoing, the appellant's request for a waiver from the penalty is **granted** for the months in question. The determination that he is eligible for a waiver is with respect to 2015, only and is based upon the extent of information submitted by him in this appeal.

### **PENALTY ASSESSED**

Number of Months Appealed: 6

Number of Months Assessed: 0

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

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

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

# **CONNECTOR APPEALS UNIT**

Hearing Officer

Cc: Connector Appeals Unit

# **CONNECTOR APPEALS UNIT**

## **FINAL APPEAL DECISION**

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

**Hearing Issue:** Appeal of the 2015 Tax Year Penalty

**Hearing Date:** December 20, 2016

**Decision Date:** March 26, 2017

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### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The appellant appeared at the hearing which was held by telephone on December 20, 2016, and testified under oath. The appellant's accountant appeared as a witness and also testified under oath. The hearing record consists of their testimony and the following documents which were admitted into evidence without objection:

- Ex. 1—Statement of Grounds for Appeal—2015
- Ex. 2—Notice of Dismissal of Appeal dated August 24, 2016
- Ex. 3—Letter from the appellant dated September 13, 2016
- Ex. 4—Bill from Northern Westchester Hospital dated December 26, 2015
- Ex. 5—2015 Schedule HC
- Ex. 6—Appeal Case Information from Schedule HC <sup>1</sup>
- Ex. 7—Notice of Hearing

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<sup>1</sup> Ex. 2 is a computer printout that extracts information submitted by the appellant on Schedule HC as part of her 2015 Massachusetts income tax return. It also contains information about prior appeals, if any.

# **CONNECTOR APPEALS UNIT**

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

Ex. 8—2014 Form 1040 U.S. Individual Income Tax Return

Ex. 9—2015 Form 1040 U.S. Individual Income Tax Return

## **FINDINGS OF FACT**

The record shows, and I so find:

1. The appellant wife is 56-years-old and is a widow. She has four children that live in the Philippines. In 2015, she resided in Hamden County, MA. She did not have health insurance in 2015. (Testimony, Ex. 6)
2. The appellant moved to Massachusetts at the end of November, 2014, from New York where she had lived since 1999. (Testimony)
3. The appellant was employed as a housekeeper in Westchester, N.Y. in 2015. Her employer did not offer health insurance. She spent the week at her employer's house and then commuted to Massachusetts for the weekend on a bus. (Testimony)
4. In December, 2016, the appellant investigated health insurance options through the Health Connector and determined that a monthly premium would have cost approximately \$300.00 which she could not afford. (Testimony)
5. The appellant did not have health insurance in 2014. On her 2014 Form 1040 (line 61), she entered \$186.00 for her "shared responsibility payment". (Ex. 8) On her 2015 Form 1040, she entered \$735.00 for her "shared responsibility payment". (Ex. 9)
6. The appellant reported an adjusted gross income of \$47,064.00 on her 2015 federal tax return, and reported that she was single with no dependents. Of that amount, she reported \$8079.00 in gambling winnings and \$10,500.00 in IRA distributions. (Exs. 6, 9)
7. The appellant was hospitalized in December, 2015 in New York for treatment of vertigo. She incurred charges of \$5643.00 which she has been paying off since then. (Testimony, Ex. 4)

## **CONNECTOR APPEALS UNIT**

8. The appellant provides support for her children and grandchildren in the Philippines. In addition, she has been providing financial assistance to her daughter-in-law who has cancer. (Testimony)

In addition to the foregoing, I take administrative notice of the 2015 Schedule HC Instructions and Worksheets, available at the Department of Revenue website, <http://www.mass.gov.dor/docs/dor/health-care/2015>, and in particular, Tables 1-6 which, as discussed below, include the Affordability Schedule and other financial information used in making 2015 individual mandate tax penalty determinations.

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

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

The appellant submitted a statement of grounds for appeal (Ex. 1), claiming that the individual mandate did not apply to her during 2015 because 1) the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities; 2) she incurred a significant, unexpected increase in essential expenses resulting directly from the sudden responsibility of providing full care for an aging parent or other family member, including a major, extended illness of a child that required her to hire a full-time caretaker for the child; and 3) “other” circumstances prevented her from obtaining insurance. She also submitted a letter (Ex. 3) in response to the Connector’s Notice of Dismissal in which she stated in part that she incurred a hospital bill in excess of \$5000.00 in December, 2015, and is supporting four children and eight grandchildren who reside in the Philippines. She further stated that she was assessed a penalty on her federal return for not having insurance.

The appellant did not have insurance from January through December. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a tax penalty; for Tax Year 2015, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Since the appellant was uninsured for the entire year, she was assessed a penalty of twelve months.

## **CONNECTOR APPEALS UNIT**

The appellant testified credibly that she worked for an employer in New York in 2015 who did not offer health insurance. She testified that she lived in New York during the week and commuted to Massachusetts on the weekend. She testified that she investigated health insurance options through the Health Connector in December, 2016, and determined that a monthly premium would have cost approximately \$300.00. She testified that she supports her children and grandchildren in the Philippines, including a daughter-in-law who has cancer. Finally, she testified that she was assessed a penalty of \$186.00 on her 2014 federal tax return, and a penalty of \$735.00 on her 2015 return.

The evidence provided by the appellant established that her income for 2015, \$47,064.00, was greater than 300% of the federal poverty level, which for 2015 was \$35,010.00 for a single person. Pursuant to the Code of Massachusetts Regulations, 956 CMR 6.05(1), the Connector has established an affordability schedule that sets forth the percentage of an individual's adjusted gross income which s/he can be expected to contribute toward the cost of private health insurance that meets minimum creditable coverage standards. Table 3 of the Affordability Schedule indicates that an individual filing separately with no dependents with a federal adjusted gross income of \$46,481.00 and higher is deemed to be able to afford a monthly premium of \$316.00 (8.05% of \$47,064.00 ). Table 4 of the Premium Schedule indicates that a 55-year-old individual (the appellant's age in 2015) in Hampden County (where the appellant resided in 2015) could have purchased private health insurance for \$306.00 per month, less than the monthly amount deemed affordable from Table 3. Thus, according to the foregoing analysis, the appellant could have purchased affordable health insurance in 2015.

Even though private health insurance may have been affordable to the appellant under the law, she may nevertheless not be subject to a penalty for failing to get health insurance for the months in question if she can show that she experienced a hardship during 2015. Examples of hardships include being homeless or overdue in rent or mortgage payments, receiving a shut-off notice for utilities, or incurring unexpected increases in basic living expenses due to domestic violence, death of a family member, sudden responsibility for providing care for a family member or fire, flood or natural disaster. In addition, the appellant's tax penalty for 2015 could be waived if she experienced financial circumstances such that the expense of purchasing health insurance would have caused her to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08.

Before determining whether the appellant has provided sufficient evidence of a hardship, she established that she made a "shared responsibility payment" of \$735.00 on her 2015 federal return. She maintains that any penalty she is assessed by the state should be offset against what she has already paid on the federal return. Pursuant to Table 5 (Annual Income Standards) and Table 6 (Penalties for 2015), the

## **CONNECTOR APPEALS UNIT**

appellant is subject to a monthly penalty of \$91.00, or \$1092.00 for the twelve months she was not insured. In order to prevent a taxpayer from being assessed both a federal and state tax penalty, the amount of the federal “shared responsibility payment” is allowed to be taken as a reduction against the amount of the Massachusetts individual mandate penalty. In this case, that leaves the appellant with a total liability to the state of \$357.00.

With respect to hardship, the appellant made two primary arguments. The first concerns the financial support she provided to her family in the Philippines. While her commitment is admirable, she failed to establish that this assistance met the definition of a significant, unexpected increase in essential expenses resulting directly from the sudden responsibility of providing full care for a family member. The second argument involves the large medical expense she incurred at the end of 2015 and is still paying off. Since that expense only arose in December, she was not impacted for the previous eleven months during which the cost of insurance was arguably affordable. However, based on the totality of the evidence, it is concluded that the payment of \$357.00 should be waived. In reaching this conclusion, consideration was given to the amount she was assessed on her federal return, the support that she provided to her family (although no evidence of specific amounts was submitted) and the hospital bill which she is paying off in installments and which would be complicated by the imposition of a penalty. Taken together, these circumstances can be construed as a hardship pursuant to 956 CMR 6.08.

Therefore, based upon the foregoing, the appellant’s request for a waiver from the penalty is **granted** for the twelve months for which she was assessed. The determination that the appellant is eligible for a waiver is with respect to 2015, only and is based upon the extent of information submitted by her in this appeal.

### **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 2015.

# **CONNECTOR APPEALS UNIT**

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

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

Hearing Officer

Cc: Connector Appeals Unit

## **ADDENDUM**

The appellant is advised not to rely on a similar extension of leniency should she appeal the assessment of a penalty in any future tax year.

# **CONNECTOR APPEALS UNIT**

## **FINAL APPEAL DECISION**

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

**Hearing Issue:** Appeal of the 2015 Tax Year Penalty

**Hearing Date:** December 20, 2016

**Decision Date:** March 27, 2017

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### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The appellant appeared at the hearing which was held by telephone on December 20, 2016, and testified under oath. The hearing record consists of the appellant's testimony and the following documents which were admitted into evidence without his objection:

- Ex. 1—Statement of Grounds for Appeal—2015
- Ex. 1A—Letter from the appellant, undated
- Ex. 1B—Student Loan Account Detail
- Ex. 1C—Citi statement dated September 15, 2016
- Ex. 1D—Chase statement with payment due on October 21, 2016
- Ex. 1E—Barclaycard statement with payment due on October 8, 2016
- Ex. 1F—Capitol One statement for the period March 22, 2016-April 21, 2016
- Ex. 1G—Internal Revenue Service Installment Agreement Request based on 2015 Federal Tax Return
- Ex. 1H—2015 Schedule HC

# **CONNECTOR APPEALS UNIT**

Ex. 1I—Final Appeal Decision in PA14-904 dated March 17, 2016

Ex. 2—Appeal Case Information from Schedule HC <sup>1</sup>

Ex. 3—Notice of Hearing

## **FINDINGS OF FACT**

The record shows, and I so find:

1. The appellant is 36-years-old, is single, and does not have children. He resided in Bristol County, MA in 2015. He did not have health insurance in 2015. (Testimony, Ex. 2)
2. The appellant was self-employed in 2015 as an attorney providing coverage for attorneys and law firms unable to make court appearances. His assignments were sporadic and his income was unpredictable. (Testimony)
3. The appellant was in the same employment situation in 2014. He did not have health insurance that year and was assessed a penalty of twelve months. He appealed the penalty and a hearing was held by the Health Connector Appeals Unit. The hearing officer determined that most of the appellant's income was used for food, shelter, clothing and transportation, as well as significant student loans, and overturned the penalty. (Testimony, Ex. PA14-904)
4. The appellant investigated health insurance options for 2015 through the Health Connector and determined that a monthly premium would have cost between \$450.00 and \$650.00 which he could not afford. He re-applied for insurance through the Connector for 2016 and was determined eligible for subsidized insurance for which he paid \$131.00/month. At the time of the instant hearing, he had already re-enrolled for 2017. (Testimony)
5. In September, 2016, the total current balance of the appellant's student loans was \$140,908.95, which comprised debt from both undergraduate and graduate school. (Ex. 1B) In addition, he had outstanding credit card balances of approximately \$22,168.00. (Exs. 1C, 1D and 1E)
6. The appellant entered into an installment agreement with the Internal Revenue Service (IRS) based on his 2015 federal tax return for which he started to pay \$200.00/month in or around April/2016. (Testimony, Ex. 1G)

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<sup>1</sup> Ex. 2 is a computer printout that extracts information submitted by the appellant on Schedule HC as part of his 2015 Massachusetts income tax return. It also contains information about prior appeals, if any.

## **CONNECTOR APPEALS UNIT**

7. The appellant reported an adjusted gross income of \$42,278.00 on his 2015 federal tax return, and reported that he was single with no dependents. (Ex. 2)
8. In 2015, the appellant had regular monthly expenses of approximately \$2864.000 for his rent (\$1075.00), electricity averaged over 12 months (\$170.00), automobile insurance (\$160.00), automobile loan (\$515.00), cell phone (\$80.00), internet service (\$80.00), malpractice insurance (\$260.00), gasoline (\$224.00), and food (\$300.00). In addition, he paid approximately \$876.00/month for his student loan debt and \$750.00/month for credit card debt. <sup>2</sup> (Testimony, Exs. 1C, 1D and 1E))

In addition to the foregoing, I take administrative notice of the 2015 Schedule HC Instructions and Worksheets, available at the Department of Revenue website <http://www.mass.gov.dor/docs/dor/health-care/2015>, and in particular, Tables 1-6 which, as discussed below, include the Affordability Schedule and other financial information used in making 2015 individual mandate tax penalty determinations.

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

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

The appellant submitted a statement of grounds for appeal (Ex. 1), claiming that the individual mandate did not apply to him during 2015 because the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. He also submitted a letter with his statement (Ex. 1A) in which he stated in part that he struggles to stay current on his monthly expenses due to the astronomical debt he owes for his student loans and his credit card debt. He further stated that he investigated the purchase of health insurance, but the cost would have made him delinquent on his other obligations.

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<sup>2</sup> Since the appellant’s installment payments to the IRS did not begin until 2016, they are not included in his 2015 expenses. In addition, it is recognized that the figures he provided on his documentation with respect to his student loan debt and his credit card debt were from 2016. (Exs. 1C, 1D and 1E) However, he testified credibly that his monthly payments in 2015 were similar or identical to those he made in 2016. Accordingly, those numbers were used in the calculation of his monthly expenses for 2015.

## **CONNECTOR APPEALS UNIT**

The appellant did not have insurance from January through December. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a tax penalty; for Tax Year 2015, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Since the appellant was uninsured for the entire year, he was assessed a penalty of twelve months.

The appellant testified credibly that he was self-employed in 2015 and due to the nature of his work, his income was sporadic and unpredictable. He testified that he investigated health insurance options through the Connector and determined that a monthly premium would have cost between \$450.00 and \$650.00 which he could not afford. He testified that he was overwhelmed by student loan obligations and credit card debt, and that he struggled to meet his monthly expenses. Finally, he testified that he was determined eligible for subsidized insurance through the Connector effective January, 2016, and that he had re-enrolled for 2017 at the time of the instant hearing.

The evidence provided by the appellant established that his income for 2015, \$42,278.00, was greater than 300% of the federal poverty level, which for 2015 was \$35,010.00 for a single person. Pursuant to the Code of Massachusetts Regulations, 956 CMR 6.05(1), the Connector has established an affordability schedule that sets forth the percentage of an individual's adjusted gross income which s/he can be expected to contribute toward the cost of private health insurance that meets minimum creditable coverage standards. Table 3 of the Affordability Schedule indicates that an individual filing separately with no dependents with a federal adjusted gross income between \$40,846.00 and \$46,680.00 is deemed to be able to afford a monthly premium of \$261.00 (7.40% of \$42,278.00). Table 4 of the Premium Schedule indicates that a 35-year-old individual (the appellant's age in 2015) in Bristol County (where the appellant resided in 2015) could have purchased private health insurance for \$209.00 per month, less than the monthly amount deemed affordable from Table 3. Thus, according to the foregoing analysis, the appellant could have purchased affordable health insurance in 2015.

Even though employer health insurance may have been affordable to the appellant under the law, he may nevertheless not be subject to a penalty for failing to get health insurance for the months in question if he can show that he experienced a hardship during 2015. Examples of hardships include being homeless or overdue in rent or mortgage payments, receiving a shut-off notice for utilities, or incurring unexpected increases in basic living expenses due to domestic violence, death of a family member, sudden responsibility for providing care for a family member or fire, flood or natural disaster. In addition, the appellant's tax penalty for 2015 could be waived if he experienced financial circumstances such that the expense of purchasing health

## **CONNECTOR APPEALS UNIT**

insurance would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08.

The evidence presented by the appellant in this case is sufficient to establish that he experienced a financial hardship as defined by law so as to waive his penalty for the months in question. The appellant testified that in 2015 he incurred basic monthly expenses of approximately \$4490.00 (including his student loan and credit card debt). Those expenses were more than his regular monthly pre-tax income of approximately \$3523.00, thereby making a monthly health insurance premium of \$209.00/month unmanageable. Overall, the appellant's evidence presented a picture of significant financial distress which precluded the purchase of insurance. Hence, it is concluded that the totality of the evidence presented by him established that he 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 956 CMR 6.08 (1)(e).

Therefore, based upon the foregoing, the appellant's request for a waiver from the penalty is **granted** for the twelve months for which he was assessed. The determination that the appellant is eligible for a waiver is with respect to 2015, only and is based upon the extent of information submitted by the appellant in this appeal.

### **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 2015.

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

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

Hearing Officer

# **CONNECTOR APPEALS UNIT**

Cc: Connector Appeals Unit

## Massachusetts Health Connector Appeals Unit

### FINAL APPEAL DECISION

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

**Hearing Issue:** Appeal of the 2015 Tax Year Penalty

**Hearing Date:** February 6, 2017

**Decision Date:** March 4, 2017

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### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

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

## Massachusetts Health Connector Appeals Unit

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2015;
3. Health Connector's Notice of Hearing (3 pages; dated 1/19/17); and
4. Hearing Officer's Open Record Order (1 page, dated 2/6/17).

At the conclusion of the hearing I held the appeal record open and requested, orally and in writing, that the Appellant provide additional information in support of his appeal on or before February 24, 2017. Exhibit 4. The Appellant did not file a response to the Open Record Order.

### FINDINGS OF FACT

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

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

2. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2014 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2014. See 956 Code Mass. Regs. 6.05. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2015.<sup>1</sup>

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

## Massachusetts Health Connector Appeals Unit

3. DOR assessed a 12 month penalty on the Appellant's 2015 Massachusetts personal income tax return. Exhibit 1. The basis for the penalty assessment is that the Appellant did not have health insurance coverage at any time in 2015. Exhibit 1. I find that the DOR's assessment is factually correct, based on both Exhibit 1 and on the Appellant's hearing testimony

4. At the beginning of 2015 the Appellant was 29 years old and resided in [name of city or town omitted] in Bristol County, Massachusetts. Exhibit 1.

5. The Appellant's 2015 tax return was filed as a single person with no dependents and reports \$57,768 in federal adjusted gross income (AGI). Exhibit 1.

6. The Appellant's 2015 AGI is substantially more than 300% of the federal poverty level for a one-person household (\$35,010). DOR Table 2. On this basis I infer that the Appellant would not have satisfied the financial eligibility requirements if he had submitted an application to the Health Connector for government-subsidized health insurance for 2015.

7. Under DOR Table 3, the Appellant could afford to pay \$388 per month for health insurance in 2015. (The calculation is  $\$8.05\%$  multiplied by  $\$57,768$  AGI =  $\$4,650.32$  per year divided by 12 months =  $\$387.52$  per month.)<sup>2</sup>

8. Under DOR Table 4 (Region 2), health insurance coverage would have cost the Appellant \$144 per month for individual coverage at his age (0-30 age bracket) and location in Massachusetts.

9. The Appellant has a minor child who is insured by MassHealth. In 2015 the Appellant lived with his child and the child's Mother, who is also insured by MassHealth. The Mother was employed in 2015. The Mother claims the child as a dependent on her

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<sup>2</sup> The calculation is based on the portion of DOR Table 3 that applies to an "Individual or Married Filing Separately (no dependents)." DOR Table 3 does not directly address the Appellant's living situation. If I were to use the portion of DOR Table 3 that applies to "Head of Household/Married Filing Separately with one dependent" the Appellant would afford to pay \$356 per month for health insurance. (The calculation is  $7.40\%$  multiplied by  $\$57,768$  AGI =  $\$4,274.83$  per year divided by 12 months =  $\$356.23$  per month.) I do not have evidence of the Mother's income or expenses.

## **Massachusetts Health Connector Appeals Unit**

state income tax return. Testimony. See Exhibit 1 and Finding of Fact, No. 5, above (Appellant filed state tax return as a single person with no dependents).

10. The Appellant works on a construction job. If he is laid off due to the seasonal nature of the work, he collects unemployment insurance benefits. For 2015 the Appellant estimated that he collected unemployment benefits for three months. Testimony.

12. The Employer offered the Appellant health insurance benefits in 2015. The Appellant did not enroll in the Employer's health plan because he considered the premium too expensive. The Appellant did not provide testimony about the premium amount, and he did not respond to the request in the Open Record Order that he provide written evidence concerning the Employer's health plan, including the monthly premium that the Appellant would have to pay for individual coverage. Testimony and Exhibit 4.

13. The Appellant did not provide any documentation of living expenses in support of his appeal that he was unable to afford health insurance in 2015. Exhibit 2 ("provide proof"). During the appeal hearing the Appellant estimated the following living expenses: \$1,400 rent, \$200 utilities, \$100 car insurance, unspecified amounts for food and clothes. The Appellant's has a \$500 balance on his credit card that he is paying monthly. The Mother pays for the child's day care expenses.

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

The case is before me on the Appellant's appeal from the Department of Revenue's (DOR) assessment of a tax penalty because the Appellant did not have health insurance coverage in 2015. The issue to be decided is whether the penalty should be waived, either in whole or in part. See Exhibits 1 and 2.

I begin by summarizing the legal rules that underlie this appeal. The tax penalty was enacted by the Massachusetts Legislature to encourage compliance with what is known as the "individual mandate" under the Massachusetts Health Care Reform Act of 2006. The individual mandate requires that all Massachusetts residents, age 18 and older, "shall obtain and maintain" health insurance coverage, as long as it is "deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector). Mass. Gen. Laws

## Massachusetts Health Connector Appeals Unit

c. 111M, sec. 2 (a).<sup>3</sup> Any health insurance policy must also satisfy the Massachusetts minimum credible coverage standards (“MCC”) in order to avoid the penalty. Mass. Gen. Laws c. 111M, sec. 2 (b). See also 956 Code Mass. Regs. 5.01 and 5.03.

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

In this appeal it is undisputed that the Appellant was offered health insurance coverage by his Employer, that the Appellant did not enroll in the Employer’s health plan, and that the Appellant was not insured for any month in 2015. The objective standards set forth in DOR Tables 3 and 4 indicate that the Appellant was able to afford health insurance on his \$57,768 income: he could afford to pay \$388 per month for health insurance that was available for \$144 per month. Even under my alternate calculation that sought to take the Appellant’s child into account the Appellant could afford to pay \$356 per month. (Since the child and Mother were insured by MassHealth I based the insurance cost under DOR Table 4 on the \$144 monthly premium for individual coverage for the Appellant.) See, e.g., Findings of Fact, Nos. 4-9, 12 and 13, above.

The Appellant did not present evidence that he could not afford health insurance or that purchasing health insurance could cause a financial hardship. See Mass. Gen. Laws c. 111M, sec. 2 (a), and 956 Code Mass. Regs. 6.08 (1) (e) (Appellant “experienced financial circumstances such that the expense of purchasing health insurance . . . would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities.”). The Appellant’s monthly living expenses are ordinary. I would have considered the actual cost of his Employer’s health plan, but the Appellant did not provide any evidence concerning the monthly premium that he would have to pay,

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<sup>3</sup> The schedule is reprinted in DOR Tables 3 and 4 referred to in this Decision.

## **Massachusetts Health Connector Appeals Unit**

despite being offered an opportunity to do so. See, e.g., Findings of Fact, Nos. 12 and 13, above.

For the foregoing reasons I conclude that the penalty assessed by the DOR should be UPHELD.

### **PENALTY ASSESSED**

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

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

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

### **NOTIFICATION OF ASSESSMENT**

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

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

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

# **CONNECTOR APPEALS UNIT**

## **FINAL APPEAL DECISION**

**Appeal Decision:** \_\_\_**X**\_\_\_ Penalty Overturned in Full      \_\_\_ Penalty Upheld  
                                 \_\_\_ Penalty Overturned in Part

**Hearing Issue:** Appeal of the 2015 Tax Year Penalty

**Hearing Date:**  
February 17, 2017

**Decision Date:**  
March 23, 2017

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### **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 February 17, 2017

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

Exhibit 1: Notice of Hearing dated January 26, 2017

Exhibit 2: Appeal Case Information from form Schedule HC

Exhibit 3: Statement of Grounds for Appeal Dated November 27, 2016

Exhibit 4: Written Statement of Appeal dated November 27, 2016

Exhibit 4: Open Record document Tax Return 2015

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## **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant is 36 years old and is in a civil union but files a separate tax return. Appellant lives in Suffolk County.
2. Appellant works for a government agency. He was an independent contractor in 2015. Appellant's employer did offer health insurance in 2015 but it was unaffordable at a rate of \$250-\$300.00 a month.
3. Appellant testified that he applied for health insurance through the Health Connector but was stopped from completing his application due to a 'triangle error'. Appellant testified that he called several times but was unable to resolve the error. Appellant went to the Yawkey Medical Center and was informed that Appellant could not obtain retroactive coverage but would have to wait until November and open enrollment. (Exhibit 4)
4. Appellant does not have health insurance in 2017. Appellant did not have health insurance in 2016.
5. The Appellant's monthly expenses totaled \$1,895.00, consisting of rent \$800.00, heat and light \$30.00, internet and cable \$45.00, car gas \$150.00, food \$350.00, credit card \$100.00, clothing \$20.00, IRS \$200.00, entertainment \$100.00, toiletries \$100.00.
6. The Appellant submitted a written Statement of Appeal dated November 27, 2016, stating 'Other. During 2015 other circumstances, such as applying the Affordability Tables in Schedule HC to you is inequitable (for example, because of family size); that you were unable to obtain government-subsidized insurance even though your income qualified you; or that you did not reside in Massachusetts during your period of uninsurance but in addition should have stated that "During 2015, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. I will hear his appeal under both grounds.
7. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2015. Table 1 sets forth the income eligibility standards for various family sizes at 150% of the federal poverty level and Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard

## **CONNECTOR APPEALS UNIT**

for the government-subsidized health insurance program. See Mass. G.L. c. 118H, s.3(a)(1). Tables 5 and 6 set forth the tax penalties for 2015.

8. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant may have been eligible for subsidized health insurance, since Appellants income of 31,465.00 was less than \$35,010.00. The monthly premium for health insurance available on the private market in Suffolk County for a 35 year old married filing separately person with zero dependents was \$209.00. The tables reflect that Appellant could afford \$121.92. This is more than what the appellant is deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions)

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

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

The Appellant submitted a written Statement of Appeal dated November 27, 2016, stating 'Other. During 2015 other circumstances, such as applying the Affordability Tables in Schedule HC to you is inequitable (for example, because of family size); that you were unable to obtain government-subsidized insurance even though your income qualified you; or that you did not reside in Massachusetts during your period of uninsurance but in addition should have stated that "During 2015, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. I will hear his appeal under both grounds.

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

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help-and-resources/legal-library/tirs/tirs-by-years/2013-releases/tir-13-1.html. For 2015, 150 percent of the FPL was \$17,505.00 for a single person with zero dependents. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. *See* Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf>; *see also* 830 Mass. Code Regs. 111M.2.1(5)(c) (2008). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months. *Id.*

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

Appellant reported a federal AGI of \$31,465.00 in 2015, and Appellant's filing status was married, filing separately with no dependents. EX 2. According to the Affordability Schedule established by the Connector's board and included in the Instructions and Worksheets of the 2015 Massachusetts Schedule HC, Appellant could afford to pay \$121.92 monthly for health insurance. *See* 2014 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to him from the Premium Tables, at a cost of \$209.00 monthly for coverage with zero dependents and his employer did offer health insurance at a rate of \$250-\$300.00 per month *Id.* at Table 4.

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

Appellant is deemed to afford \$121.92 for health insurance coverage because of his income. Private insurance in the market place was \$209.00 per month. On these facts, I find that Appellant has not shown that he was precluded from purchasing affordable health insurance during 2015. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that he is not exempt from a tax penalty for his non-compliance with the individual mandate.

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However, Appellant is notified that this decision should not be utilized as evidence in any future decisions as to, as the Appellant's circumstances in problems in applying to the Health Connector because the problems were resolved by the end of 2015.

Accordingly, Appellant's appeal is **ALLOWED**, and the 2015 penalty assessed is **OVERTURNED**.

### **PENALTY ASSESSED**

Number of Months Appealed: \_\_\_12\_\_\_      Number of Months Assessed: \_\_\_0\_\_\_

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2011 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2011.

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

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

Cc: Connector Appeals Unit