

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA16-323

Appeal Decision: Appeal Approved -- 2016 tax penalty overturned.

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: February 21, 2018

Decision Date: March 10, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

1. DOR Appeal Case Information from Schedule HC (1 page);
 - 1A. Alternate copy of Exhibit 1 (1 page);
2. Appellant's Statement of Grounds for Appeal – 2016;
 - 2A. Mailing Envelope for Appeal (1 page);
3. Appellant's Request to Vacate Dismissal and Support for Appeal (1 page, dated 12/22/17);
4. Prior Hearing Officer's Entry - Appellant Failed to Appear for Hearing (1 page, date 12/20/17);
5. DOR Appeal Case Information – Duplicate of Exhibit 1 (1 page);
6. DOR Appeal Case Information – Duplicate of Exhibit 1 (1 page);
7. Appellant's Handwritten Request to Vacate Dismissal (2 pages; received 1/23/18);
8. Health Connector, 2011 Tax Penalty Appeal Final Decision (4 pages, dated 8/9/12);
9. Health Connector's Notice of Hearing (3 pages, dated 8/9/17);
10. Health Connector's Second Notice of Hearing (3 pages, dated 9/27/17);
11. Health Connector's Third Notice of Hearing (3 pages, dated 11/30/17);
12. Health Connector's Fourth Notice of Hearing (5 pages, dated 1/26/18);
13. Health Connector's Appeal Hearing Record Affidavit (1 page);
14. Hearing Officer's Open Record Order (1 page, dated 2/21/18);
15. Appellant's 2016 IRS Form W-2 (1 page); and
16. Appellant's 2016 IRS Form 1040 (2 pages).

At the conclusion of the hearing I held the appeal record open and requested that the Appellant file additional documents in support of her appeal. Exhibit 14. In response I received Exhibits 15 and 16.

FINDINGS OF FACT

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

1. Except as set forth 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 2016 Massachusetts income tax return. The information in Exhibit 1 is consistent with the testimony and other documentary evidence at the hearing, except to the extent set forth below.
2. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedule adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2016. See 956 Code Mass. Regs. 6.05. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2016. (The DOR instructions are published online at <http://www.mass.gov/dor/2016ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2016.)
3. The Appellant is married but she and her Husband filed separate state and federal personal income tax returns for 2016 (and other years). Testimony. See also Exhibits 1 and 16. On her 2016 Massachusetts tax return the Appellant reported a family size of two with no dependents. Exhibit 1. See also Exhibit 8, page 1 (in 2011 Appellant was married filing separately with a family size of 2 and no dependents [Finding of Fact, Nos. 1 – 3]).
4. In 2016 the Appellant and her Husband were living together in [name of city or town omitted] in Essex County, Massachusetts. Exhibit 1 and Testimony. In 2017 the Appellant and her Husband sold their Massachusetts house because they could no longer afford the mortgage and tax payments and repairs, and they relocated to New Hampshire. Testimony. Compare Exhibit 11 (Massachusetts mailing address on hearing notice) and Exhibit 12 (New Hampshire mailing address on hearing notice).
5. In 2016 the Appellant was employed as a cashier in New Hampshire earning \$15 per hour. She declined to enroll in the employer-sponsored health plan offered through her job. Testimony. See also Exhibit 15 (employer's New Hampshire address on 2016 IRS Form W-2).
6. For part of 2016 the Appellant had health insurance coverage through her Husband's employer-sponsored health plan. The Appellant had coverage for the months of January – July 2016 (7

months). The Appellant lost her coverage for the remainder of the year when her Husband lost his job. Testimony and Exhibit 1.

7. The DOR assessed a 2 month penalty against the Appellant because she did not have health insurance coverage for all of 2016. Exhibit 1. The penalty calculation is 12 months minus 7 months insured = 5 months uninsured minus the 3-month administrative grace period = 2 penalty months.)
8. No penalty assessment against the Husband appears on Exhibit 1 as he filed a separate state tax return. See Exhibit 1. I have no information concerning the Husband's status, apart from the Appellant's testimony that her Husband is a religious person.
9. The Husband was not employed for the remainder of 2016 after he was laid off. He collected unemployment insurance benefits in the amount of \$640 per month. Testimony.
10. On Exhibit 1 the DOR reported that the Appellant's federal adjusted gross income for 2016 was \$98,123. The reported AGI is inconsistent with the \$27,842.65 gross wages reported by the Appellant's employer on her 2016 IRS Form W-2. Exhibit 15, at line 1. It is also inconsistent with the \$27,843 reported by the Appellant on her 2016 federal income tax return (IRS Form 1040). Exhibit 16, page 1, at line 7 (wages) and at line 37 (federal adjusted gross income).

Faced with this conflict, I find that the Appellant's 2016 AGI is \$27,843 – the amount reported on her W-2 and federal tax return. This amount is also consistent with her testimony concerning her \$15 per hour wages and her \$25,745 federal adjusted gross income in her 2011 tax penalty appeal. Exhibit 8, page 1 [Finding of Fact, No. 4]. I infer that, more likely than not, the balance of the 2016 AGI reported on Exhibit 1 was earned by the Husband. The Appellant testified that she did not have any retirement fund income, and there is no evidence of an Individual Retirement Account withdrawal on her 2016 federal income tax return. See Exhibit 16, at lines 15b (IRA) and 16b (Pensions).

11. If I treat the Appellant as a single person (consistent with the election to file separately made on her tax return), individual health insurance would cost her \$323 per month at her age (60 years at the beginning of 2016) and location (Essex County). DOR Table 4 (Region 2) and Exhibit 1. Under DOR Table 3 she could afford to pay 4.20% of her income for health insurance – or \$97 per month. (The calculation is 4.20% multiplied by \$27,843 AGI = \$1,169.40 per year divided by 12 months = \$97.45 per month.)
12. The Appellant and her Husband are making payments as co-signers on their younger son's three private student loans that total approximately \$30,000. The parents also have unpaid credit card debt attributed to the son's education expenses. Testimony.
13. The Appellant represented that she was again covered by health insurance after she relocated to New Hampshire in 2017, but that her Husband was still unemployed. Testimony.

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's (Wife's) appeal from the state Department of Revenue's (DOR) assessment of a two month tax penalty because the Appellant was not insured for all of 2016. See Exhibits 1 and 2. The issue to be decided is whether the penalty should be waived, either in whole or in part.

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

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

The Health Connector's regulations also provide for a "hardship" appeal from the assessment of a penalty. 956 Code Mass. Regs. 6.07 and 6.08. The grounds for a hardship appeal are summarized in the Statement of Grounds for Appeal – 2016 that the Appellant signed and filed in this case. See Exhibit 2.

In this case, it is undisputed that the Appellant was insured for the months of January through July 2016, when she was covered under her Husband's employer-sponsored health plan. She lost her coverage for the remainder of 2016 after her Husband lost his job. The Department of Revenue has already applied the 3-month administrative grace period to reduce the penalty assessment, so the question on appeal is whether the remaining 2 month penalty should be waived.

At the outset, it is important to note that the Appellant was not insured for part of 2016 through no fault of her own. A fully satisfactory resolution of the appeal is complicated by the Appellant's atypical decision to file a separate income tax return even though she was married and living with her Husband and due to the uncertainty over the amount of the household income in 2016 due to the vastly different amounts reported by the DOR on Exhibit 1 and by the Appellant in her W-2 wage statement and her federal tax return (Exhibits 15 and 16). See Findings of Fact, No. 10, above.

What is reasonably evident is that the household was experiencing financial distress. The Husband lost his job in mid-2016 and was still unemployed a year later. The parents were covering their

younger son's student loans as co-signers. By 2017 the Appellant sold their Massachusetts house, which they could no longer afford, and relocated to another state. Although the objective affordability standards set forth in DOR Tables 3 and 4 are not easily applied in this situation, on her separate income the Appellant could afford to pay only \$97 per month for health insurance that would cost her \$323 per month. See, e.g., Findings of Fact, Nos. 11 – 13, above.

Under these circumstances I conclude that it is appropriate to waive the 2 month tax penalty that the DOR assessed for 2016 under the Health Connector's financial hardship regulation. See 956 Code Mass. Regs. 6.08 (1) (e) ("[The Appellant] experienced financial circumstances such that the expense of purchasing health insurance . . . would have caused [her] to experience a serious deprivation of food, shelter, clothing or other necessities.").

PENALTY ASSESSED

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

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

OR

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

Final Appeal Decision: PA16-603

Appeal Decision: Penalty Waived in full

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: December 4, 2017

Decision Date: March 2, 2018

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 December 4, 2017. The procedures to be followed during the hearing were reviewed with the appellant. The appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

Exhibit 1: Appeal Case Information from Schedule HC 2016

Exhibit 2: Statement of Grounds for Appeal 2016 signed and dated by Appellant on April 22, 2017 with letter in support attached

Exhibit 3: Notice of Hearing sent to Appellant dated November 13, 2017 for hearing on December 4, 2017

Exhibit 4: Appellant's social security work authorization card issued April 20, 2016 and permanent resident card issued June 28, 2016

FINDINGS OF FACT

The record shows, and I so find:

1. Appellants were 25 and 24 years old in 2016. They filed a 2016 tax return jointly, and claimed no dependents (Exhibit 1, Testimony of Appellant).
2. Appellants lived in Middlesex County, MA in 2016 with a relative (Exhibit 1).
3. Appellants had a Federal Adjusted Gross Income of \$53,030 in 2016 (Exhibit 1, Testimony of Appellant).

4. One of the appellants had health insurance which met the Commonwealth's minimum creditable coverage standards all year. She has not been assessed a penalty. The other had coverage from October through December. He has been assessed a penalty for six months, January through June (Exhibit 1, Testimony of Appellant).

4. The appellant who was insured all of 2016 and 2107 had her coverage through her job (Testimony of Appellant).

5. Appellant, who was insured only part of the year, came to the United States from his country of origin in order to marry the other appellant. He arrived in the United States on September 26, 2015 on a K1 visa . He and the other appellant were married on November 21, 2015 (Testimony of Appellant, Exhibit 2 attachment).

6. After the appellant arrived in the United States, he immediately began the process to obtain a social security number and a permanent resident card. Once he started the process, he was allowed to stay on a tourist visa. He was assigned a social security number and given a work authorization card on April 20, 2016. He obtained his permanent resident card on June 28, 2016. The entire time Appellant was in the United States, he was lawfully present (Testimony of Appellant, Exhibit 2 attachment, Exhibit 4).

7. After the appellants were married, the insured appellant tried to add her spouse to her plan, but because the spouse did not have a social security number, he could not be added to the plan. Once he obtained a number, he could not be added because too much time had elapsed since the marriage; he had to wait until the next open enrollment period (Testimony of Appellant).

8. After Appellant obtained a work authorization card, he got a temporary job in May. He was not offered health insurance. In October, the appellant obtained full-time employment. He was offered health insurance and obtained coverage as of October 1, 2016 (Testimony of Appellant, Exhibit 1 and 2 ,attachment).

9. When the appellant started work in May, he was paid \$12 an hour for 40 hours a week. When he got a permanent job in October, he had an increase in pay. His wife earned \$30,000 a year (Testimony of Appellant).

10. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.

11. According to Table 3 of Schedule HC for 2016, the appellants with no dependents claimed, and with an adjusted gross income of \$53,030 could afford to pay \$327 per month for health insurance. According to Table 4, Appellants, ages 24 and 25 and living in Middlesex County, could have purchased insurance for \$286 per month. The cost of an individual plan would have been \$143. The spouse with insurance was already paying \$118 a month; the appellant without insurance could have afforded \$209 a month. Appellant and his spouse had a much lower income from January through the end of April. Appellant was unemployed during these months. The spouse was earning at a rate of \$30,000 a year. During these months, the appellant and his spouse could only afford to spend \$107 a month for health insurance. Since the spouse was already spending \$118 a month for coverage, coverage through the individual market was unaffordable for the appellant from January through April.

12. According to Table 2 of Schedule HC for 2016, Appellant and his spouse who earned more than \$47,790 per year would have been ineligible for the ConnectorCare program. During the months when he appellant was unemployed and the household income was \$30,000, Appellant would have been income-eligible for ConnectorCare coverage (Table 2 of Schedule HC-2016, Exhibit 1).

13. Appellant and his spouse 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 2016 (Testimony of Appellant).

14. Appellant and his spouse did not fall more than thirty days behind in rent payments in 2016 (Testimony of Appellant).

15. Appellant and his spouse did not receive shut-off notices for any utility during 2016 (Testimony of Appellant).

16. Appellant and his spouse had the following monthly expenses for basic necessities in 2016: rent-\$0.00; electricity and heat-\$80; telephone-\$100; food-\$800; gas for car-\$50; car insurance-\$120; clothing-\$150. The spouse spent \$118 for health insurance. In addition, the appellant had approximately \$9,000 in attorney's fees for his immigration case and the spouse spent \$500 for continuing education. During the year, they lived with a relative (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

One of the appellants had health insurance from October through December, 2016. He was uninsured the rest of the year. The appellant has been assessed a tax penalty for six months, January through June since he is entitled to a three-month grace period prior to his obtaining coverage. The other appellant had insurance all year and she has not been assessed a penalty. See Exhibit 1 and 2. The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2016 should be waived, either in whole or in part.

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

Under the Patient Protection and Affordable Care Act and the federal regulations promulgated pursuant to the act, to be eligible to obtain a qualified health plan through the Connector, an individual, among other things, must be lawfully present in the United States. See Section 1312 of the Affordable Care Act and Federal Regulation 45 CFR155.305(a)(1).

45 CFR 155.410 and 420 provide for open enrollment periods during which individuals may enroll in health care plans and for special open enrollment periods when individuals may enroll outside of the open enrollment period if they have a qualifying life event.

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

According to Table 3 of Schedule HC for 2016, the appellants with no dependents claimed, and with an adjusted gross income of \$53,030 could afford to pay \$327 per month for health insurance. According to Table 4, Appellants, ages 24 and 25 and living in Middlesex County, could have purchased insurance for \$286 per month. The cost of an individual plan would have been \$143. The spouse with insurance was already paying \$118 a month; the appellant without insurance could have afforded \$209 a month. Appellant and his spouse had a much lower income from January through the end of April. Appellant was unemployed during these months. The spouse was earning at a rate of \$30,000 a year. During these months, the appellant and his spouse could only afford to spend \$107 a month for health insurance. Since the spouse was already spending \$118 a month for coverage, coverage through the individual market was unaffordable for the appellant from January through April.

Coverage through the individual market was unavailable to the appellant in May and June because there was no open enrollment period during these months. The appellant was also not eligible for a special enrollment period because there is no evidence that he had a qualifying life event which would have allowed him to purchase coverage outside of the open enrollment period (mid-November through January). See 45 CFR 155.410 and 420.

The appellant was unemployed from January through April. In May, he obtained a temporary position. He was not offered health insurance through the position. His spouse had insurance through employment, but the appellant was unable to obtain coverage under her plan from January through June. At first, he was denied coverage because he did not have a social security number. Once he obtained a number, he had to wait for the next open enrollment period. See the testimony of the appellant which I find to be credible. No employer-sponsored insurance was available to the appellant.

According to Table 2 of Schedule HC for 2016, Appellant and his spouse who earned more than \$47,790 per year would have been ineligible for the ConnectorCare program. During the months when the appellant was unemployed and the household income was \$30,000, Appellant would have been income-eligible for ConnectorCare coverage. During this period, he had no access to health insurance through his spouse's coverage, so access to coverage through employment would not have been a bar to coverage. He was lawfully present in the United States, so his immigration status was also not a bar. Once he started working, the household income would have been over the income limit and he would no longer have been eligible for coverage (Table 2 of Schedule HC-2016, Exhibit 1, 956 CMR 12.05(1), and Section 1312 of the Affordable Care Act and Federal Regulation 45 CFR 155.305(a)(1)). The appellant could have had ConnectorCare coverage from January through April.

No affordable insurance was available for the appellant in May and June, 2016. Insurance through the individual market was unavailable. Appellant had no access to insurance through employment and no access to affordable insurance through the Connector. His penalty for these two months is waived.

From January through April, the appellant would have had access to ConnectorCare coverage. Since affordable coverage was available to the appellant during this period, we need to determine if the appellant and his spouse experienced a financial hardship during these months pursuant to 956 CMR 6.08.

Appellant and his spouse had the following expenses for basic necessities in 2016: rent- \$0.00; electricity and heat-\$80; telephone-\$100; food-\$800; gas for car-\$50; car insurance-\$120; clothing-\$150. The spouse spent \$118 for health insurance. In addition, the appellant had approximately \$9,000 in attorney's fees for his immigration case and the spouse spent \$500 for continuing education. rent- \$0.00; electricity and heat-\$80; telephone-\$100; food-\$800; gas for car-\$50; car insurance-\$120; clothing-\$150. The spouse spent \$118 for health insurance. In addition, the appellant had approximately \$9,000 in attorney's fees for his immigration case and the spouse spent \$500 for a continuing education. See the testimony of the appellant which I find to be credible.

Based upon the facts summarized above concerning the appellant's expenses, I determine that the appellant and his spouse would have experienced a serious deprivation of basic necessities had the appellant purchased health insurance from January through April, 2016. Their expenses amount to approximately \$1,500 a month at a time when the appellant was unemployed. They supported themselves on the spouse's income only. In addition, the appellant had to spend \$9,000 during the year to obtain his permanent resident card. The couple was unable to live on their own. They depended upon a relative for housing. Pursuant to 956 CMR 6.08(1)(e) and 6.08(3), I find that affordable insurance was not available to the appellant from January through June because they experienced a financial hardship. The penalty for January through April is waived.

I also note that the appellants had insurance for all of January, 2017.

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

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc. Connector Appeals Unit

Hearing Officer

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA16-605

Appeal Decision : Penalty waived in full

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: December 4, 2017

Decision Date: February 27, 2018

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 December 4, 2017. The procedures to be followed during the hearing were reviewed with the appellant. The appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

Exhibit 1: Appeal Case Information from Schedule HC 2016

Exhibit 2: Statement of Grounds for Appeal 2016 signed and dated by Appellant on April 13, 2017

Exhibit 3: Notice of Hearing sent to Appellant dated November 13, 2017 for hearing on December 4, 2017

Exhibit 4: Letter to Appellant dated October 6, 2016 regarding employer's open enrollment for 2017

Exhibit 5: E-mail to Appellant from employer dated April 11, 2017 regarding employees in Massachusetts

Exhibit 6: Summary of Benefits and Coverage for Appellant's health plan, 2016

FINDINGS OF FACT:

The record shows, and I so find:

1. Both appellants were 26 years old in 2016. They were married on August 20, 2016, and filed a 2016 tax return jointly. They claimed no dependents (Exhibit 1, Testimony of Appellant).
2. Appellants lived in Hampshire County, MA in 2016 (Exhibit 1).
3. Appellants had a Federal Adjusted Gross Income of \$90,010 in 2016. Of that amount, one of the appellants earned approximately \$70,000 and the other earned about \$21,000 (Testimony of Appellant, Exhibit 1).
4. One of the appellants worked for an out-of-state company. He was offered health insurance by his employer and he opted to enroll in the plan offered. The plan met the Minimum Value Standard established by the Affordable Care Act and provided Minimum Essential Coverage required by the same act. It did not meet the Commonwealth's minimum creditable coverage standards. Appellant had coverage through the same job in 2015. In 2015, the coverage offered met the Commonwealth's standards. As of January 1, 2016, the employer switched plans. The appellant did

not realize the new plan did not meet Massachusetts standards until 2017 when he received tax documents concerning his coverage. His coverage cost \$45 a week, or \$193 per month. His spouse had health insurance through her job all of 2016. Her coverage met the Commonwealth's standards. She paid \$80 biweekly or about \$173 a month. (Testimony of Appellant, Exhibit 5).

5. Appellant's health insurance plan had broad coverage. In 2016, it had no annual maximum for covered benefits. It included coverage for in-patient hospital services, physician in-patient services, in-patient rehabilitation services, maternity and newborn care, ambulatory and out-patient surgery services, emergency services, mental health care services, substance abuse treatments, routine and preventive care, diagnostic imaging and screening procedures, laboratory services, primary care office visits, and specialty care office visits. It also had an annual deductible for individuals using in-network services of \$6,000 and an out-of-pocket annual maximum of \$6,400 excluding premiums (Exhibit 5).

6. Since the appellant had insurance in 2016 that did not meet the Commonwealth's standards, the appellant has been assessed a penalty for twelve months. Appellant has appealed this assessment. As of the date of this hearing, Appellant had health insurance which met the Commonwealth's standards since January 1, 2017. The other appellant had coverage all year which met the Commonwealth's standards and, therefore, has not been assessed a penalty (Exhibits 1 and 2, Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

Appellant had health insurance during 2016. The insurance, however, did not meet the Commonwealth's minimum creditable coverage standards. The appellant has been assessed a penalty for the whole year. The appellant has appealed the penalty. See Exhibit 1 and 2. Appellant had coverage in 2015 which met the Commonwealth's standards. Since he had this coverage in December, 2015, he is entitled to a three-month grace period after losing this coverage. The penalty for January through March is, therefore, waived. See the testimony of the appellant which I find to be credible. The issue on appeal is whether the tax penalty assessed for April through December, 2016 should be waived, either in whole or in part.

G.L. c. 111M, § 2, also called the "individual mandate," requires every adult resident of Massachusetts to obtain insurance coverage which meets minimum creditable coverage standards' "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance 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. 956 CMR 6.08(2)(d) provides that the Connector may also consider the extent to which insurance obtained deviated from or substantially met minimum creditable coverage standards when determining if a penalty should be waived.

To determine if the penalty should be waived in whole or in part, we must consider whether the insurance the appellant had in 2016 substantially met the Commonwealth's minimum creditable coverage standards as set out in 956 CMR 5.00 et. seq.

Appellant's health insurance plan had broad coverage. In 2016, it had no annual maximum for covered benefits. It included coverage for in-patient hospital services, physician in-patient services, in-patient rehabilitation services, maternity and newborn care, ambulatory and out-patient surgery services, emergency services, mental health care services, substance abuse treatments, routine and preventive care, diagnostic imaging and screening procedures,

laboratory services, primary care office visits, and specialty care office visits. It also had an annual deductible for individuals using in-network services of \$6,000 and an out-of pocket annual maximum of \$6,400 excluding premiums. See Exhibit 5. While the deductible was much higher than allowable under the Commonwealth's standards, in other ways, the plan substantially met the Commonwealth's standards. See 956 6.08(2)(d).

Given that the appellant's plan substantially met the Commonwealth's standards, the appellant's penalty is waived in its entirety. I also note that even if the plan did not substantially meet the standards, Appellant was unaware that his plan did not meet the standards until the beginning of 2017 when he received his tax documents for 2016. Once he discovered the problem, he obtained insurance through the Connector. See the testimony of the appellant which I find to be credible.

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

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA16607

Appeal Decision : Penalty waived in full

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: December 4, 2017

Decision Date: February 21, 2018

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 4, 2017. The procedures to be followed during the hearing were reviewed with the appellant. The appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

Exhibit 1: Appeal Case Information from Schedule HC 2016

Exhibit 2: Statement of Grounds for Appeal 2016 signed and dated by Appellant on March 16, 2017 with letter of support attached

Exhibit 3: Notice of Hearing sent to Appellant dated November 13, 2017 for hearing on December 4, 2017

Exhibit 4: Connector Final Appeal Decision for Tax Year 2014 dated June 29, 2015

Exhibit 5: Connector Final Appeal Decision for Tax Year 2015 dated August 19, 2016

FINDINGS OF FACT:

The record shows, and I so find:

1. Appellant was 22 years old 2016. He filed a 2016 tax return as a single individual with no dependents (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Suffolk County, MA in 2016. He resided with his mother who is disabled (Testimony of Appellant, Exhibit 1).
3. Appellant had a Federal Adjusted Gross Income of \$28,399 in 2016 (Exhibit 1).
4. Appellant had the same job all year. He had this job for the past five years. He earned between \$13 and \$14 an hour. He generally worked 30 to 40 hours a week, but worked less, 20 to 30 hours a week, during the winter months (Testimony of Appellant).

5. Appellant was offered health insurance through his job. The coverage cost \$140 a month for the first eight months of the year. The cost then increased to \$160 a month. Appellant did not take the coverage because he felt he could not afford to pay the premium (Testimony of Appellant).
6. The appellant tried to obtain health insurance in 2016, but he had missed the open enrollment period. He was told that he had to wait until the next open enrollment period. As of January 1, 2017 the appellant had ConnectorCare coverage (Testimony of Appellant).
7. Appellant has been assessed a penalty for all of 2016. Appellant has appealed this assessment (Exhibits 1 and 2, Testimony of Appellant).
8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
9. According to Table 3 of Schedule HC for 2016, the appellant with no dependents claimed, and with an adjusted gross income of \$28,399 could afford to pay \$99 per month for health insurance. According to Table 4, Appellant, age 22 and living in Suffolk County, could have purchased insurance for \$143 per month.
10. According to Table 2 of Schedule HC for 2016, Appellant who earned less than \$35,310 per year would have been income-eligible for the Connector Care program (Table 2 of Schedule HC-2016, Exhibit 1).
11. Appellant had the following monthly expenses for basic necessities in 2016: rent including electricity-\$867; heat-\$50; food-\$240; public transportation-\$100; cell phone-\$160; clothing-\$15 to \$20. The appellant also gave his mother \$50 each month. His mother's sole source of income was a disability payment of \$600 a month (Testimony of Appellant).
12. 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 2016 (Testimony of Appellant).
13. Appellants did not fall more than thirty days behind in rent payments in 2016. In January and February, he did fall two weeks behind in paying his rent. During these months, he worked fewer hours than during the rest of the year (Testimony of Appellant).
14. Appellants did not receive shut-off notices for a basic utility in 2016 (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

The appellant has been assessed a tax penalty for all of 2016. The appellant has appealed the penalty. See Exhibits 1 and 2. The appellant obtained ConnectorCare coverage as of January 1, 2017. See the testimony of the appellant which I find to be credible. He is entitled to a three-month grace period prior to obtaining health insurance. The grace period for the appellant is October through December, 2016. The penalty should, therefore, only be for nine months, January through September. The issue on appeal is whether the tax penalty for these months 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 which meets minimum creditable coverage standards' "[s]o long as it is deemed affordable"

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

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

According to Table 3 of Schedule HC for 2016, the appellant filing as a single individual with no dependents claimed with a Federal adjusted gross income of \$28,399 could afford to pay \$99 per month for health insurance. According to Table 4, Appellant, 22 years old and living in Suffolk County, could have purchased insurance for \$143 per month. Insurance through the individual market was not affordable for the appellant. See Schedule HC for 2016, and Exhibit 1.

The appellant had no access to affordable insurance through employment. He was offered insurance by his employer. The cost would have been at least \$140 a month. According to Table 3 of Schedule HC for 2016, this insurance would have been unaffordable for the appellant. See above.

According to Table 2 of Schedule HC for 2016, Appellant, earning less than \$35,310 per year, would have been eligible for the Connector Care program based upon income. However, the ConnectorCare program offers coverage which is, in part, subsidized by advance premium tax credits pursuant to the Patient Protection and Affordable Care Act. In order to be eligible for ConnectorCare coverage an individual must be eligible for an advance premium tax credit. See Table 2 of Schedule HC-2016 and 956 Code of Massachusetts Regulations 12.00 et. seq. One of the eligibility requirements is a lack of access to other affordable insurance that meets the federal minimum essential coverage standards. See 45 CFR 155.305 (f)(1)(ii)(B).

Pursuant to 26 CFR Sec. 36B(c)(2)(C)(i), for the tax year 2016, an individual is deemed able to afford coverage which cost 9.66% or less of the individual’s Modified Adjustable Income (MAGI) which is generally the individual’s Federal Adjusted Gross Income. Appellant’s Federal Adjusted Gross Income was is \$28,399. See Exhibit 1. Appellant was deemed able to spend 9.66% of this amount, or \$2,734 per year, or about \$228 a month for health insurance. The insurance offered through Appellant’s job cost less than this amount, so was deemed affordable. The insurance offered also would have to meet the minimum value standards. There is no evidence in the record that the insurance offered did not meet these standards. Because the insurance offered through employment was deemed affordable pursuant to Federal standards, the appellant would not have been eligible for any tax credit and, therefore, would not have been eligible for the ConnectorCare program.

Appellant had no affordable insurance available to him in 2016. None was available through his job or through the individual market. The appellant was also ineligible for ConnectorCare, and there is no evidence in the record indicating that the appellant would have been eligible for any other government program. The penalty for January through September is, therefore, waived. See Massachusetts General Laws, Chapter 111M, Section 2.

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

PENALTY ASSESSED

Number of Months Appealed: __12__ Number of Months Assessed: __0__

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA 16-649

Appeal Decision: Appeal Denied

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: 12/07/2017

Decision Date: 2/21/2018

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 12/07/2017.

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

- Exhibit 1: Appeal Case Information
- Exhibit 2: Notice of Appeal
- Exhibit 3: Statement of Grounds for Appeal
- Exhibit 4: Form MA 1099-HC
- Exhibit 5: Nova Consulting Documents
- Exhibit 6: Medica 1095B
- Exhibit 7: Medica Choice Passport

FINDINGS OF FACT

The record shows, and I so find:

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 2016 Massachusetts income tax return. The information in Exhibit 2 is consistent with the testimony and other documentary evidence at the hearing.
2. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets (Schedule HC). Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the

Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2016. See, 956 Code Mass. Regs. 6.05. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program.

3. The Appellant is 35 years old, and resides in Plymouth County. The Appellant's adjusted gross income for 2016 was \$55,886. (Exhibit 1)
4. While the Appellant had employer-sponsored health insurance in 2016, it did not meet the Massachusetts minimum creditable coverage requirements. (Exhibits 4, and 5)
5. DOR assessed 12 month penalty on the Appellant's 2016 personal income tax return. The basis for the penalty assessment is that the Appellant did not have comprehensive health insurance coverage in 2016. (Exhibit 1)
6. The Appellant filed this appeal, stating that s/he purchased employer sponsored health insurance. (Exhibit 3)

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 for each of the months that the individual did not have health insurance as required by the individual mandate.

Any health insurance policy must also satisfy the Massachusetts "minimum creditable coverage standards" (MCC) to avoid the tax penalty. Mass. Gen. Laws c. 111M, sec. 2(b). In this case, the Appellant's coverage failed to comply with the MCC standards. (See, Exhibit 4.) The question becomes, then, whether or not the Appellant could have afforded to purchase insurance that met the MCC standards.

With an adjusted gross income of \$55,886, the Appellant could afford to pay 8.13% of that amount, or \$378 per month, toward a premium. (See, Schedule HC, Table 3) According to Table 4 of Schedule HC, the Appellant could have obtained health insurance in 2016 for \$263 per month.

I conclude that affordable health insurance was available to the Appellant, and the penalty was appropriately assessed.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA16-661

Appeal Decision: Appeal Approved--2016 tax penalty overturned.

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: January 10, 2018

Decision Date: February 22, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellants' Statement of Grounds for Appeal – 2016;
2A. Mailing Envelope for Appeal (1 page);
3. Landlady's Letter in Support of Appeal (1 page, dated 2/7/16);
4. Eversource Utility Shutoff Notice (1 page, dated 3/16/16);
5. Eversource Utility Overdue Notice (1 page, dated 7/15/16);
6. Health Connector's Notice of Hearing (3 pages, dated 11/22/17);
7. Health Connector's Second Notice of Hearing (3 pages, dated 1/10/18);
8. Hearing Officer's Open Record Order (1 page, dated 1/10/18);
9. Employer's Letter Concerning Health Insurance Coverage (1 page, dated 1/18/18); and
10. Summary of Health & Dental Insurance Benefits – 2018 (with Handwritten Comments) (1 page).

At the conclusion of the appeal hearing I held the hearing record open and requested that the Appellants file additional information concerning health insurance benefits and costs for coverage available through employers. Exhibit 8. I received Exhibits 9 and 10 from the Appellants in response to my request.

FINDINGS OF FACT

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

1. 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 Appellants on Schedule HC as part of the Appellants' 2016 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 of the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedule adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2016. See 956 Code Mass. Regs. 6.05. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2016. (The DOR instructions are published online at <http://www.mass.gov/dor/2016ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2016.)
3. DOR assessed a 12 month penalty against the Husband and a 12 month penalty against the Wife on the Appellants' 2016 Massachusetts personal income tax return. Exhibit 1 (total penalty = 24 months). The basis for the penalty assessment is that the Appellants did not have health insurance at any time in 2016. Exhibit 1. I find that the DOR's assessment is factually correct based on both Exhibit 1 and on the Husband's hearing testimony.
4. At the beginning of 2016 the Husband was 43 years old (the Wife is younger), and the Appellants resided in [name of city or town omitted] in Bristol County, Massachusetts. Exhibit 1.
5. The Appellant's 2016 tax return was filed as a married couple filing jointly and reports \$60,833 in federal adjusted gross income (AGI). Exhibit 1. Although no dependents were claimed on the tax return the Appellants' young adult son lives with them. The son was 23 years old at the time of the appeal hearing in January 2018. Testimony.
6. The Appellants' 2016 AGI (\$60,833) is more than 300% of the federal poverty level for a two-person household (\$47,790 per year) and slightly less than the federal poverty level for a three-person household (\$60,270). DOR Table 2.
7. Under DOR Table 3, the Appellants could afford to pay 7.60% of their income for health insurance in 2016, which is \$385 per month. (The calculation is 7.60% multiplied by \$60,833 AGI

= \$4,623.30 per year divided by 12 months = \$385.27 per month. The calculation is based on the portion of DOR Table 3 for married filing jointly with no dependents. With one dependent the Appellants could afford to pay 5.90% of their income, or \$299 per month.)

8. Under DOR Table 4 (Region 2), health insurance was available that would cost the Appellants \$473 per month for coverage for a married couple with no dependents at the Husband's age (40-44 age bracket) and location in Massachusetts. The monthly cost increases to \$593 for family coverage (the Appellants' son in under 26 years of age and could be covered under their health plan).
9. In 2016 the Husband was employed full-time as a truck driver. The Husband did not enroll in the health plan offered by his employer based on his belief that Appellants could not afford the coverage.
10. The additional information provided by the Appellants in response to the open record order (Exhibit 8) establishes that the Husband could have enrolled himself and his Wife in an employee + spouse plan with HMO Blue New England with a \$3,000 deductible through his employer at a cost of \$102.01 per week, or \$442 per month. Exhibit 9. (The calculation is \$102.01 per week multiplied by 52 weeks = \$5,304.52 per year divided by 12 months = \$442.04 per month.)
11. In 2016 the Wife was employed part-time as a nurse's aide at \$16 per hour. The Wife did not enroll in the health plan offered through her employer, based on the Appellants' belief that they could not afford the coverage. Testimony.
12. For the Wife the additional information provided by the Appellants in response to the open record order establishes that she could have enrolled in her employer-sponsored health insurance plan with Seacoast Health Plan that provided medical coverage, prescription drug coverage, and dental coverage. Exhibit 10. Based on the handwritten notes on the summary of benefits I find that the Wife would pay \$660 per month for coverage for the employee + spouse or \$322 per month for individual ("single") coverage for the Wife alone. Exhibit 10. There would be additional premium charges for prescription drug coverage and for dental coverage. Exhibit 10.
13. The Appellants checked utility shut off notices as a ground for their appeal (Exhibit 2, page 2) and provided two Eversource gas utility notices as supporting documents. Exhibits 4 and 5. Based on these documents and the landlady's handwritten letter that the Appellants were responsible for the utility service (Exhibit 3) I find that the Appellants received a shutoff notice dated March 16, 2016, for a \$346.96 payment due (Exhibit 4) and an Overdue Notice dated July 15, 2016, in the amount of \$174.00 (Exhibit 5).
14. Based on the hearing testimony I find that the Appellants have overdue credit card bills in the total amount of approximately \$10,000 and that at least a portion of their credit card indebtedness had been reduced to court orders against the Appellants.

15. The Appellants lost their home approximately 10 years ago due to a mortgage foreclosure after the Husband lost a job. Much of the Appellants' credit card indebtedness is attributable to their efforts to save their home. Testimony.
16. The Appellants rent the residence where they now live for \$850 per month. The rent does not cover gas, electric or water service for which the Appellants are responsible. Testimony.

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellants' (Husband and Wife) appeal from the state Department of Revenue's (DOR) assessment of a tax penalty because neither the Husband nor the Wife had health insurance coverage in 2016. See Exhibits 1 and 2. The issue to be decided is whether the penalty should be waived, either in whole or in part.

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

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

The Health Connector's regulations also provide for a "hardship" appeal from the assessment of a penalty. 956 Code Mass. Regs. 6.07 and 6.08. The grounds for a hardship appeal are summarized in the Statement of Grounds for Appeal – 2016 that the Appellant signed and filed in this case. See Exhibit 2.

In this case, it is undisputed that neither Husband nor Wife had health insurance coverage at any time in 2016. The Appellants appealed from the 24 month penalty that the DOR assessed against them due to their lack of health insurance coverage.

The decision in this appeal turns on the requirement in Massachusetts law that health insurance coverage must be affordable to subject the Appellants to a penalty assessment. See Mass. Gen. Laws, c. 111M, sec. 2(a), above. To assess the affordability issue I compare the objective standards set forth in the DOR tables to the cost of health insurance under the health plans offered by both the Husband's and the Wife's employers. Under DOR Table 3 the Appellants could afford to pay \$385 per month for health insurance for the two of them based on their 2016 income. Under DOR Table 4, health insurance coverage would be available through the Health Connector for Husband and Wife for \$473 per month. See Findings of Fact, Nos. 5 – 8, above.

Using the DOR table figures as a baseline, obtaining health insurance coverage through the Husband's employer would not be affordable. The monthly premium that the Husband would pay by payroll deduction for spouse + one coverage would be \$442 per month. While the \$442 premium is somewhat less than the cost of coverage through the Health Connector, it is still more than the \$385 per month that the Appellants could afford to pay under DOR Table 3, above. See Findings of Fact, No. 10, above. Accordingly, I conclude that the Appellants' belief that they could not afford coverage through the Husband's employer is supported.

Likewise, I conclude that the Appellants could not afford the spouse + 1 coverage available through the Wife's employer. The evidence shows that the premium would be \$660 per month, which is substantially more than the \$385 per month that the Appellants could afford to pay under DOR Table 3, above. See Findings of Fact, No. 12. In addition, I note that I am assuming that, as a part-time employee the Wife is eligible to participate in her employer's health plan. The conclusions I have reached have also assumed that coverage for the Appellant's young adult son should not be included, which would increase the premium cost.

Given the foregoing analysis, the Appellants other current financial circumstances pale by comparison. They have, however, established that they received at least one utility shutoff notice in 2016 and that they had credit card debt that was subject to court order (that were not verified by supporting documents).

After considering all the circumstances I conclude that that it is appropriate to waive the entire penalty assessed against the Appellants for 2016 under the Health Connector's financial hardship regulation. See 956 Code Mass. Regs. 6.08(1)(e) (The 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."). See also 956 Code Mass. Regs. 6.08 (1) (b) (utility shutoff notice). See my RECOMMENDATION below.

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 2016 for the amount equal to one half of the lowest cost health

insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

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

Hearing Officer

Cc: Connector Appeals Unit

RECOMMENDATION. Although you have prevailed in your appeal, I remain concerned that you lack health insurance coverage for yourselves and, perhaps, also for your son. Your position would be more persuasive in future years if you filed an application with the Health Connector for health insurance coverage and received an actual eligibility decision based on a more careful review of your current financial circumstances. This would also allow consideration of your son's situation.

You can file an application online at www.mahealthconnector.org or by calling Customer Service at 1-877-623-6765. Most local hospitals or community health centers will also provide help with the application process. You can also obtain advice outside the government from Health Care For All, a private, non-profit organization. You can call the free consumer helpline at 1-800-272-4232 or online at www.hcfama.org.

If you had an actual eligibility decision from the Health Connector you could also do a more careful comparison with the coverage available from your employers.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA16-666

Appeal Decision: Appeal Approved -- 2016 tax penalty overturned.

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: February 21, 2018

Decision Date: March 8, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

1. DOR Appeal Case Information from Schedule HC (1 page);
- 1A. Alternative Copy of Exhibit 1 (1 page);
2. Husband's Letter in Support of Appeal (1 page, undated);
3. Wife's 2016 Payroll Extract (1 page, January – July 2016);
4. Appellants' Apartment Lease (1 page, August 2016 – August 2017);
5. Health Connector Notice Dismissing Appeal (1 page, dated 7/19/17);
6. Appellants' Letter Request to Vacate Appeal Dismissal (1 page, received 9/5/17);
7. Prior Hearing Officer's Entry – Appellants Failed to Appear for Hearing (1 page, dated 12/13/17);
8. Health Connector Notice Dismissing Appeal (1 page, dated 12/18/17);
9. Appellants' Letter Request to Vacate Appeal Dismissal (3 pages, received 1/19/18);
10. Hearing Officer's 2013 Tax Penalty Appeal Decision (5 pages, dated 11/21/14) ;
11. Hearing Officer's 2015 Tax Penalty Appeal Decision (5 pages, dated 2/3/17);
12. Health Connector's Notice of Hearing (3 pages, dated 11/22/17);
13. Health Connector's Notice of Hearing (3 pages, dated 1/26/18); and
14. Health Connector's Appeals Record Affidavit (1 page).

FINDINGS OF FACT

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

1. 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 2016 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 of the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedule adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2016. See 956 Code Mass. Regs. 6.05. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2016. (The DOR instructions are published online at <http://www.mass.gov/dor/2016ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2016.)
3. For the 2013 and 2015 tax years the Appellants' prevailed on appeals and the entire penalties assessed against them by the DOR were waived by hearing officers after appeal hearings. Exhibits 10 and 11. There is no appeal decision for the 2014 tax year because the Appellants did not complete the appeals process. Exhibit 1. After reviewing the 2013 and the 2014 tax penalty appeals decisions and the evidence presented by the Appellants in this appeal, I conclude that the Appellants' circumstances were essentially unchanged.
4. For 2016 the DOR did not assess a penalty against the Wife, who was employed as a research assistant at a local university. The Wife had health insurance coverage through her employer for which she paid \$80 per month for individual coverage. Testimony and Exhibits 2 and 3.
5. The DOR assessed a 12 month penalty against the Husband because he was not insured in Massachusetts at any time in 2016. The Husband concedes that he was not insured in Massachusetts in 2016. Exhibit 1 and Testimony.
6. The Wife, who is not a United States citizen, resided and was employed in Massachusetts under a H1B visa. The Husband was a dependent on his Wife's visa. Testimony. See also Exhibits 2 and 3. In 2013 the Husband applied to the Health Connector for health insurance coverage. His application was denied due to his immigration status. Exhibit 10, page 2 (Finding of Fact, No. 5). Based on the 2013 tax penalty appeal decision and on the Husband's testimony in the appeal hearing before me, I infer that in 2016 the Husband also was not eligible for government-

subsidized health insurance. See also Exhibit 2. The Husband is eligible to obtain medical and hospitalization services in his native country. Testimony.

7. In 2016 the Husband was not employed in Massachusetts, and he was not eligible for unemployment insurance benefits. Testimony and Exhibit 2.
8. For 2016, the Appellants filed a joint income tax return in Massachusetts as a married couple with no dependents that reported \$49,866 in federal adjusted gross income (AGI). Exhibit 1.
9. The Appellants' 2016 AGI (\$49,866) was slightly above 300% of the federal poverty level (\$47,790 for a two-person household). DOR Table 2.
10. Under DOR Table 3 the Appellants could afford to pay 7.40% of their income – or \$307 per month – for health insurance in 2016. (The calculation is 7.40% multiplied by \$49,866 AGI = \$3,690.08 per year divided by 12 = \$307.50 per month.)
11. The Husband was eligible for coverage as a dependent on his Wife's university health plan. The premium increased from \$80 per month for individual coverage to \$260 per month for a married couple. Testimony.
12. For 2016 the Husband did not enroll in his Wife's health plan based on their belief that the coverage was not affordable. For 2017 the Husband did enroll in his Wife's health plan. Testimony and Exhibit 2.
13. The Appellants' principal fixed expense in 2016 was their \$2,253 per month rent payment. Exhibit 4. In January 2016 the Wife's net pay was \$2,964 per month, increasing to \$3,019 per month in June 2016. Exhibit 3.

ANALYSIS AND CONCLUSIONS OF LAW

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

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

standards (“MCC”) in order to avoid the penalty. Mass. Gen. Laws c. 111M, sec. 2(b). See also 956 Code Mass Regs. 501 and 5.03.

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

The Health Connector’s regulations also provide for a “hardship” appeal from the assessment of a penalty. 956 Code Mass. Regs. 6.07 and 6.08. The grounds for a hardship appeal are summarized in the Statement of Grounds for Appeal – 2016 that the Appellant signed and filed in this case. See Exhibit 2.

In this case, it is undisputed that the Wife was enrolled in her employer’s health plan but that the Husband was not insured in Massachusetts at any time in 2016. Thus, there is a factual basis for the 12 month penalty that the DOR assessed for 2016. The appeal is complicated somewhat by the Appellants’ visa status – making the Husband ineligible either to work in the United States or to qualify for government-subsidized health insurance. Before going further, I note that the Husband did not contend on appeal that he was not a Massachusetts resident in 2016, as required for the assessment of a tax penalty under Massachusetts law. See Mass. Gen. Laws c. 111M, sec. 2 (a), above.

I will resolve the appeal in the Appellants’ favor under the Health Connector’s financial hardship regulation. Though the Husband did not present extensive evidence of living expenses, he did present documentary evidence of his Wife’s employment income and their rent. See Exhibits 3 and 4. The \$711 per month difference between the Wife’s net pay (\$2,964 per month) and the rent payment (\$2,253 per month) is too slight to accommodate a monthly insurance premium in addition to other living expenses. See 956 Code Mass. Regs. 6.08 (1) (e) (“The Appellants’] experienced financial circumstances such that the expense of purchasing health insurance . . . would have caused [them] to experience a serious deprivation of food, shelter, clothing or other necessities.”). See Findings of Fact, No. 12, above.

Accordingly, I will waive the entire 12 month penalty that the DOR assessed for 2016. I believe that the outcome is closer than it was in prior years, in part due to increases in the Appellants’ AGI. Compare Exhibits 1, 9, and 10. However, I also recognize the desirability of reaching a result that is consistent with the 2013 and 2015 tax penalty appeal decisions, and I have also given consideration to the Husband’s representation in this appeal that he had enrolled in his Wife’s health plan for 2017.

PENALTY ASSESSED

Number of Months Appealed: (Husband) 12 Number of Months Assessed: -0-
Number of Months Appealed: (Wife) -0- Number of Months Assessed: -0-

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

insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA16-698

Appeal Decision: Appeal Approved -- 2016 tax penalty overturned.

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: January 17, 2018

Decision Date: March 3, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2016;
 - 2A. Mailing Envelope for Appeal (1 page);
 - 2B. DOR Statement of Grounds for Appeal (1 page, dated 8/22/17);
3. MassHealth Limited Eligibility Determination (2 pages, dated 10/5/16); and
4. Health Connector's Notice of Hearing (3 pages, dated 12/27/17).

FINDINGS OF FACT

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

1. Except to the extent 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 2016 Massachusetts income tax return. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability scheduled

adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2016. See 956 Code Mass. Regs. 6.05. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2016. (The DOR instructions are published online at <http://www.mass.gov/dor/2016ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2016.)

2. DOR assessed a 12 month penalty against the Wife and a 12 month penalty against the Husband (total penalty = 24 months) on the 2016 amended Massachusetts personal income tax return that they filed jointly as a married couple. Exhibit 1.
3. The Wife, who was 58 years old at the beginning of 2016, has an Individual Taxpayer Identification Number (ITIN – prefix beginning with “9”), not a standard Social Security Number (SSN). Exhibit 1.
4. The Husband, who was 41 years old at the beginning of 2016, has a Social Security number (prefix 589). Exhibit 1. The Husband was employed in 2016 but he was not offered health insurance coverage as a job-related benefit. Testimony and Exhibit 1.
5. In 2016 the Appellants lived in [name of city or town omitted] in Suffolk County. They have two children, one of who was claimed as a dependent on their 2016 state income tax return. Both children are insured by MassHealth. Exhibit 1 and Testimony.
6. By a letter dated October 5, 2016, the state Health Insurance Processing Center informed the Husband that, beginning on September 25, 2016, he was eligible for “MassHealth Limited” coverage. Exhibit 3, page 1. The letter informed the Husband that MassHealth Limited does “not satisfy either federal or state law that requires most people to have health insurance.” Exhibit 3, page 2. The letter also informed the Husband that the reason he did not qualify for “more MassHealth benefits” is either (a) because he did not meet “citizenship and immigration requirements” (citing 130 CMR 504.000), or (b) because he did not have “special circumstances such as pregnancy or disability” (citing 130 CMR 505.002 (A) and (E) and 130 CMR 505.004).
7. The MassHealth Limited eligibility letter also informed the Husband that he “may” qualify for health insurance coverage through the state Health Connector and that the Health Connector “will send you another notice to let you know if you qualify.” Exhibit 3, page 2. The hearing record does not contain any notice from the Health Connector. (I also note that pages 3 and 4 of Exhibit 3 are not in the hearing record.)

8. The 2016 tax return reports \$31,138 in federal adjusted gross income (AGI). Exhibit 1. The 2016 AGI is less than 300% of the federal poverty level for a three-person household (\$60,270 per year). DOR Table 2.
9. Under DOR Table 3, the Appellants could afford to pay 3.45% of their income for health insurance in 2016, which is \$90 per month. (The calculation is 3.45% multiplied by \$31,138 AGI = \$1,074.21 per year divided by 12 months = \$89.52 per month, using the portion of DOR Table 3 that applies to a married couple filing jointly with one or more dependents.)
10. Under DOR Table 4 (Region 2), health insurance was available that would cost \$473 per month (at the Husband's age) or \$646 per month (at the Wife's age) to insure a married couple with no children (the children are insured by MassHealth). Alternatively, individual coverage would cost \$237 per month for the Husband or \$323 per month for the Wife.
11. Comparing Findings of Fact, Nos. 9 and 10, above, I find that the cost of unsubsidized health insurance coverage through the Health Connector was substantially more than the Appellants could afford to pay in 2016.

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the appeal from the state Department of Revenue's (DOR) assessment of a tax penalty against Husband and Wife (12 months each) because the Appellants did not have health insurance coverage in 2016. See Exhibits 1 and 2. The issue to be decided is whether the penalty should be waived, either in whole or in part.

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

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

The Health Connector's regulations also provide for a "hardship" appeal from the assessment of a penalty. 956 Code Mass. Regs. 6.07 and 6.08. The grounds for a hardship appeal are summarized in

the Statement of Grounds for Appeal – 2016 that the Appellant signed and filed in this case. See Exhibit 2.

In this case, it is undisputed that the Husband and Wife did not have health insurance coverage at any time in 2016. Beyond that, however, there is some unsatisfying incompleteness in the hearing record that can only be resolved if – for years after 2016 penalty at issue in this appeal – the Husband and Wife submit an application for government-subsidized health insurance to the Health Connector and obtain an actual eligibility decision based on current and verified information about their income, household status, and (possibly) immigration status.

For now, however, the 2016 appeal must reach a conclusion based on the information in the hearing record. What we see is that the Husband did attempt to apply for government-subsidized health insurance and that he obtained a decision in the Fall of 2016 that he – but not other members of his household – was eligible for coverage under the “MassHealth Limited” program. The eligibility letter also informed the Husband that MassHealth Limited coverage does not satisfy the requirement under the “individual mandate” described above to “obtain and maintain” health insurance coverage. See Mass. Gen. Laws, c. 111M, sec. 2 (a), above. On this basis, therefore, the Husband would still be subject to a tax penalty in 2016.

The existing hearing record does contain sufficient financial information for me to make a determination that the Appellants could not afford unsubsidized health insurance in 2016. See Mass. Gen. Laws c. 111M, sec. 2 (a), above. Based on the federal adjusted gross income (\$31,138 per year) reported on their state tax return, the Appellants could afford to pay only \$90 per month for health insurance. However, insurance coverage would cost substantially more than that amount, as set forth in DOR Table 4. See Findings of Fact, Nos. 8 – 11, above.

Accordingly, I conclude that it is appropriate to waive the entire penalty assessed for 2016 under the Health Connector’s financial hardship regulation. See 956 Code Mass. Regs. 6.08 (1) (e) ([The 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.”).

See my RECOMMENDATION below.

PENALTY ASSESSED

Number of Months Appealed: (Husband) 12 _____ Number of Months Assessed: ___0___
Number of Months Appealed: (Wife) 12 _____ Number of Months Assessed: ___0___

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

OR

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

Hearing Officer

Cc: Connector Appeals Unit

RECOMMENDATION. During the appeal hearing on January 17, 2018, we discussed the fact that there was then one week remaining in the open enrollment period for Health Connector health insurance coverage in 2018. I reaffirm that you and your Wife should apply for coverage and get a final eligibility decision for 2018. Either you will obtain coverage that is affordable or you will have complete information on which to base a future tax penalty appeal, if that is necessary.

You can apply online at www.mahealthconnector.org or by calling Customer Service at 1-877-623-6765. Most local hospitals or neighborhood health centers can also help you with an application.

In your situation you might prefer to first obtain some advice from a source outside the government. You could contact Health Care For All, a private, non-profit organization, online at www.hcfama.org or by call the free consumer help line at 1-800-272-4232.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA16-700

Appeal Decision: Appeal Approved -- 2016 tax penalty overturned.

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: January 17, 2018

Decision Date: March 3, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2016 (2 pages, dated 6/29/17);
- 2A. Mailing Envelope for Appeal (1 page);
3. Health Connector's Notice of Hearing (5 pages, dated 12/27/17);
4. Hearing Officer's Open Record Order (1 page, dated 1/17/18); and
5. Appellant's 2016 Retirement Plan Withdrawal – IRS Form 1099-R (2 pages).

At the conclusion of the hearing I held the hearing record open so that the Appellant could submit documentation in support of his appeal. Exhibit 4. I received Exhibit 5 in response to my order.

FINDINGS OF FACT

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

1. 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 2016 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 of the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedule adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2016. See 956 Code Mass. Regs. 6.05. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2016. (The DOR instructions are published online at <http://www.mass.gov/dor/2016ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2016.)
3. DOR assessed a 12 month penalty on the Appellant's 2016 Massachusetts personal income tax return. Exhibit 1. The basis for the penalty assessment is that the Appellant did not have health insurance at any time in 2016. 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 2016 the Appellant was 59 years old and resided in [name of city or town omitted] in Essex County, Massachusetts. Exhibit 1.
5. The Appellant's 2016 tax return was filed as a single person with no dependents and reports \$54,593 in federal adjusted gross income (AGI). Exhibit 1.
6. I find, based on the Appellant's hearing testimony, that he lost his job in early 2016, that he did not collect unemployment insurance benefits in 2016, and that he moved to his mother's residence in Massachusetts due to his lack of income.
7. I find, based on the Appellant's testimony and the IRS Form 1099-R (Exhibit 5) that he submitted in response to my Open Record Order (Exhibit 4), that the source of virtually all of the Appellant's 2016 income that is reported on his 2016 Massachusetts personal income tax return resulted from the withdrawal of his individual retirement account (IRA). The gross amount of the withdrawal was \$51,400. Exhibit 5, at box 1.
8. Under DOR Table 4 (Region 2) individual health insurance coverage would cost the Appellant \$323 per month (\$3,876 per year) at his age (55+ age bracket) and location in Massachusetts. The annual premium cost is greater than the Appellant's 2016 net income (\$3,193 per year) after the IRA withdrawal is subtracted from his 2016 AGI.
9. The Appellant did not find another job until mid-2017 when he relocated from Massachusetts to Florida. Testimony. See also Exhibit 2 (Florida address on Appellant's appeal form dated June 29, 2017).

10. The Appellant had employer-sponsored health insurance benefits in 2015 through his former employer in Massachusetts and again in 2017 through his new employer in Florida. Testimony

ANALYSIS AND CONCLUSIONS OF LAW

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

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

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

The Health Connector’s regulations also provide for a “hardship” appeal from the assessment of a penalty. 956 Code Mass. Regs. 6.07 and 6.08. The grounds for a hardship appeal are summarized in the Statement of Grounds for Appeal – 2016 that the Appellant signed and filed in this case. See Exhibit 2.

In this case, it is undisputed that the Appellant did not have health insurance coverage at any time in 2016 when he lost his job. It is also clear that the Appellant could not afford health insurance coverage in 2016 since he was unemployed and virtually all of his income (\$51,400 gross out of \$54,593 AGI) came from the withdrawal of his individual retirement account (IRA). The Appellant has established a financial hardship under the Health Connector’s financial hardship regulation, and I will waive the entire penalty assessed for 2016. See 956 Code Mass. Regs. 6.01 (1) (e).

PENALTY ASSESSED

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

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

OR

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA16-702

Appeal Decision: Appeal Approved -- 2016 tax penalty overturned.

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: January 17, 2018

Decision Date: March 3, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2016;
2A. Mailing Envelope for Appeal (1 page);
3. Appellant's Letter in Support of Appeal (1 page, dated 9/6/17);
4. Employer's 2016 Benefit Selection Summary (1 page);
5. Health Connector's 2015 Final Appeal Decision PA15-717 (7 pages, dated 11/14/16);
and
6. Health Connector's Notice of Hearing (3 pages, dated 12/27/17).

FINDINGS OF FACT

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

1. Except to the extent 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 2016 Massachusetts income tax return.

2. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedule adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2016. See 956 Code Mass. Regs. 6.05. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2016. (The DOR instructions are published online at <http://www.mass.gov/dor/2016ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2016.)
3. DOR assessed a 12 month penalty on the Appellant's 2016 Massachusetts personal income tax return. Exhibit 1.
4. I find that the Appellant had employer-sponsored health insurance coverage for all of 2016. I base this finding on the Appellant's hearing testimony, on his letter in support of his 2016 appeal (Exhibit 3), and on his Employer's itemization of the Appellant's personal "benefit election" for 2016 (Exhibit 4). See also Exhibit 5 (findings of fact in Appellant's 2015 tax penalty appeal decision). (I was the hearing officer in the 2015 final appeal decision.)
5. In 2016, as in 2015, the Appellant was employed by a corporation located in Ohio, and he enrolled in the Cigna health plan offered by his employer. The Appellant, working from his residence in Massachusetts, covered the New England territory for his employer. Testimony and Exhibits 2, 3, and 5.
6. The employer's Cigna health plan met the federal minimum essential coverage standards, but it did not meet all of the Massachusetts minimum creditable coverage standards (MCC) because it covers only pregnancy complications and not full maternity benefits. Exhibit 3 and Testimony. See also Exhibit 5.
7. The Appellant was 58 years old and single at the beginning of 2016. Exhibit 1. He had a 33 year old daughter who lives in Florida with his three grandchildren. Testimony and Exhibit 3. See also Exhibit 5.
8. The Appellant receives regular treatment for COPD. All of his treatment is covered by his employer's Cigna health plan. Testimony. See also Exhibit 5.
9. In 2016 the Appellant paid \$7.75 per biweekly payroll deduction (\$201.50 per year or \$16.79 per month) for his medical, hospital and prescription drug coverage under his Employer's Cigna health plan. Exhibits 3 and 4. By comparison, under DOR Table 4 (Region 2), health insurance coverage that met MCC standards would cost the Appellant \$323 per month at his age (55+ age bracket) and location (Suffolk County).

10. The Appellant also purchases additional coverages under his employer's benefits plan, including health savings account, dental, vision, short and long-term disability, basic life insurance, and basic accidental AD&D. The Appellant's total benefits cost (both pre-tax and after-tax) is \$235.30 biweekly (\$6,117.80 per year or \$509.81 per month). Exhibit 4.

ANALYSIS AND CONCLUSIONS OF LAW

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

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

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

The Health Connector's regulations also provide for a "hardship" appeal from the assessment of a penalty. 956 Code Mass. Regs. 6.07 and 6.08. The grounds for a hardship appeal are summarized in the Statement of Grounds for Appeal – 2016 that the Appellant signed and filed in this case. See Exhibit 2.

In this case, it is undisputed that the Appellant had health insurance coverage through his employer for all of 2016. The issue on appeal is whether the Appellant should be penalized because his coverage did not satisfy all of the Massachusetts MCC standards, even though it did meet the federal minimum essential coverage standards under the Affordable Care Act and his employer was located in another state. The Appellant accurately asserts in support of his appeal that there is no difference between his situation in 2015, when he prevailed in his tax penalty appeal, and the current appeal for 2016. See Exhibit 3. I agree, and accordingly I waive the entire penalty assessed for 2016.

Briefly, the evidence shows that the Appellant had a “broad range of medical benefits” as required under the Massachusetts regulations. See 956 Code Mass. Regs. 5.03 (1) (a). His employer’s Cigna health plan “substantially met” the state MCC standards, except that it did not cover full maternity benefits. See 956 Code Mass. Regs. 6.08 (2) (d). In this context, the Appellant’s age (59 years) and the fact that his daughter (age 33) already has three children is pertinent. Finally, the significant factor is the “cost” of full MCC coverage. See 956 Code Mass. Regs. 6.08 (2) (b). In 2016 the Appellant paid \$201.50 per year for his medical, hospitalization, and prescription drug coverage. By comparison, it would have cost the Appellant \$323 per month to obtain MCC compliant health insurance under the objective standards set forth in DOR Table 4. See Findings of Fact, No. 9, above. In other words, the Appellant’s monthly cost for MCC coverage would be greater than the amount he paid annually for his employer’s Cigna health plan. Here, the evidence shows, the Appellant prudently invested additional amounts into other coverages that his employer offered, including a health savings account. See Findings of Fact, No. 10, above (\$509.81 total monthly expenditure).

In sum, I waive the entire penalty assessed for 2016.

PENALTY ASSESSED

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

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

OR

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA16-709

Appeal Decision: Appeal Approved
Hearing Issue: Appeal of the 2016 Tax Year Penalty
Hearing Date: 2/6/2018
Decision Date: 2/21/2018

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 21, 2018. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

Exhibit 1: Appeal Case Information from Schedule HC
Exhibit 2: Notice of Hearing
Exhibit 3: Statement of Grounds for Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant is 37 years old, had an adjusted gross income of \$51,553 in 2016 and was uninsured throughout 2016. (Exhibit 1)
2. The Appellant was employed as a seasonal employee in Nantucket from 4/8/2016 until 10/31/2016. The Appellant credibly testified under the pains and penalties of perjury to being a resident of Connecticut. (See, Exhibit 3)

ANALYSIS AND CONCLUSIONS OF LAW

G.L c. 111M, § 2, also called the "individual mandate", states 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 statement of grounds for this appeal, claiming that Connecticut residents are not subject to a Massachusetts penalty. The clear language of G.L c. 111M, § 2 applies in this case, and accordingly, no penalty will be assessed by the Commonwealth of Massachusetts.

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 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.

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA16-709

Appeal Decision: Appeal Approved
Hearing Issue: Appeal of the 2016 Tax Year Penalty
Hearing Date: 2/6/2018
Decision Date: 2/21/2018

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 21, 2018. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

Exhibit 1: Appeal Case Information from Schedule HC
Exhibit 2: Notice of Hearing
Exhibit 3: Statement of Grounds for Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant is 37 years old, had an adjusted gross income of \$51,553 in 2016 and was uninsured throughout 2016. (Exhibit 1)
2. The Appellant was employed as a seasonal employee in Nantucket from 4/8/2016 until 10/31/2016. The Appellant credibly testified under the pains and penalties of perjury to being a resident of Connecticut. (See, Exhibit 3)

ANALYSIS AND CONCLUSIONS OF LAW

G.L c. 111M, § 2, also called the "individual mandate", states 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 statement of grounds for this appeal, claiming that Connecticut residents are not subject to a Massachusetts penalty. G.L.c. 111M, § 2 applies in this case, and accordingly, no penalty may be assessed by the Commonwealth of Massachusetts.

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 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.

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA16-713

Appeal Decision: Appeal Approved -- 2016 tax penalty overturned.

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: March 20, 2018

Decision Date: March 21, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared for the hearing, which I conducted by telephone on March 20, 2018. A document was submitted on behalf of the Massachusetts Department of Revenue (DOR) prior to the hearing (Exhibit 1). The hearing record consists of the Appellant's testimony under oath and the following documents that were admitted into evidence as exhibits.

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2016;
 - 2A. Mailing Envelope for Appeal (1 page);
3. Appellant's Letter in Support of Appeal (1 page, undated);
4. Appellant's Insurance Confirmation by Educare-World (2 pages, dated 6/24/16);
 - 4A. Appellant's Renewal Insurance Confirmation by Educare-World (2 pages, dated 10/24/16);
5. Health Connector's Notice of Hearing (3 pages, dated 1/25/18);
6. Health Connector's Second Notice of Hearing (3 pages, dated 1/12/18);
7. Health Connector's Third Notice of Hearing (3 pages, dated 1/12/18);
 - 7A. Mailing Envelope Returned by U.S. Post Office;
8. Hearing Officer's Entry that Appellant Did Not Appear for Hearing (1 page, dated 2/7/18);
9. Mailing Enveloped Returned by U.S. Post Office;
10. Appellant's Request to Vacate Dismissal of Appeal and Letter in Support of Appeal with Two Attachments (marked as Exhibits 11 and 12) (2 pages, date stamped received on 2/15/18);
11. Appellant's Insurance Confirmation by Educare-World (5 pages, dated 6/24/16) [see Exhibit 4];
12. Appellant's Insurance Confirmation by Educare-World (5 pages, dated 10/24/16) [see Exhibit 4A]; and

13. Health Connector's Final Notice of Hearing (3 pages, dated 2/27/18).

FINDINGS OF FACT

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

1. The Appellant appealed from the Department of Revenue's assessment of a 12 month penalty for 2016, citing the final "Other" ground for his appeal. Exhibits 1 and 2. The DOR correctly determined that the Appellant was not insured by a Massachusetts insurer in 2016, as reported on his 2016 state income tax return that he filed as married, filing separately, with a residential address in [city or town omitted] in Middlesex County. Exhibit 1. However, the evidence on appeal shows that the Appellant had health insurance coverage from other sources for all of 2016. Testimony and Exhibits 3, 4, 4A, 10, 11 and 12.
2. For all of 2016 the Appellant was registered as a graduate student in a university in Germany. As required by German law, the Appellant had health insurance as a student until his graduation in February 2017. Testimony and Exhibits 3 and 10. (There is a typo in Exhibit 10 that erroneously reports that the graduation date was in February 2016. This was clarified and corrected in the Appellant's testimony at the appeal hearing.)
3. In April 2016 the Appellant came to the United States on a tourist visa to visit his girlfriend, who is a U.S. citizen. The Appellant extended his stay and got married in a neighboring state in mid-June 2016. Testimony and Exhibits 3 and 10.
4. Following their marriage, the Wife continued to be insured in 2016 as a dependent on her mother's health plan. The Appellant could not enroll on his mother-in-law's health plan. Testimony and Exhibit 10.
5. While he was staying in the United States, the Appellant purchased health insurance coverage from Educare-World to supplement his German coverage. Testimony and Exhibits 3 and 10. The initial policy covered the 4-month period June 24 through October 24, 2016. Exhibits 4 and 11. The Appellant then purchased renewal coverage for the 3-month period October 24, 2016, through January 24, 2017. Exhibits 4A and 12.
6. The Educare-World insurance policy included illness and accident coverage up to \$100,000 with a \$500 deductible. It also provided \$50,000 coverage for emergency medical evacuation for medical treatment, so the Appellant would have been able to return to Germany for treatment. Exhibits 4, 4A, 11 and 12.
7. In the Fall 2016 the Wife obtained a job with health insurance benefits. When she satisfied her employer's waiting period in January 2017 the Wife enrolled herself and her Husband (the Appellant) in the health plan. Testimony and Exhibits 3 and 10.

8. At the time of their marriage in June 2016 the Appellant was not eligible to work in the United States. In September 2017 the Appellant obtained a work authorization. In October 2017 the Appellant obtained employment in Massachusetts. Due to his employer's wait period the Appellant was not able to enroll in employer-sponsored health coverage in 2016. In April 2017 the Appellant enrolled in a health plan offered at his job and shifted his coverage away from his Wife's health plan. Testimony and Exhibit 10.
9. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2016 Massachusetts income tax return.
10. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedule adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2016. See 956 Code Mass. Regs. 6.05. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2016. (The DOR instructions are published online at <http://www.mass.gov/dor/2016ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2016.)

ANALYSIS AND CONCLUSIONS OF LAW

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

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

If these requirements are not met, a tax penalty is assessed for "each of the months" that the person did not have health insurance, as required by the individual mandate. Mass. Gen. Laws 111M, sec. 2(b). See Exhibit 1. There is, however, a three-month grace period for any lapse in coverage to

allow the taxpayer to make a transition between health insurance policies. Health Connector’s Administrative Bulletin 03-10, applying Mass. Gen. Laws 111M, sec. 2(b). See also DOR Instructions, at page HC-3. A tax penalty will not be assessed during the 3-month administrative grace period.

The Health Connector’s regulations also provide for a “hardship” appeal from the assessment of a penalty. 956 Code Mass. Regs. 6.07 and 6.08. The grounds for a hardship appeal are summarized in the Statement of Grounds for Appeal – 2016 that the Appellant signed and filed in this case. See Exhibit 2.

The starting point for this appeal is the state law requirement that Massachusetts residents must obtain health insurance coverage or be subject to a tax penalty. See Mass. Gen. Laws 111M, sec. 2 (a), above. Based on the evidence that was presented I conclude that the Appellant was not a Massachusetts resident until after his marriage in mid-June 2016 (although the Appellant apparently failed to inform the DOR that he was a part-year resident of Massachusetts on Exhibit 1). At the beginning of 2016 the Appellant, a German citizen, was residing in Germany where he was a university graduate student. In April 2016 he came to the United States as a visitor to see his girlfriend. Under the DOR policy that covers part-year residents, the Appellant would not have been subject to the individual mandate before September 1. See 2016 DOR Schedule HC Instructions, page HC-2. Accordingly, no penalty should be assessed for the period January through August 2016 (8 months).

Until sometime in September, however, the Appellant was not eligible to work in the United States. He could not obtain coverage through his Wife because in 2016 she was still insured through her mother’s health plan. When the Appellant obtained employment in October he was in a wait period and could not yet enroll in the health plan offered by his employer. In the end, the issue is resolved by January 2017 when both Wife and Appellant are enrolled in her employer’s health plan. See the 3-month administrative grace period described earlier.

The backdrop to the details of this unusual situation is important. Looking at 2016 as a whole, the Appellant always had health insurance coverage as a graduate student in Germany. In addition, promptly after his marriage the Appellant obtained coverage through Educare-World that supplemented his student health insurance coverage while he was present in the United States. This supplemental coverage was in effect from late June through the remainder of 2016 (ending after the Appellant and his Wife enrolled in her employer’s health plan in January 2017).

After considering all the circumstances, I conclude that it is appropriate to waive the entire penalty assessed against the Appellant for 2016. See, e.g., 956 Code Mass. Regs. 6.08 (3).

PENALTY ASSESSED

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

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

OR

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA16-724

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: February 20, 2018

Decision Date: February 25, 2018

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 20, 2018.

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, 2018

Exhibit 2: Appeal Case Information from form Schedule HC

Exhibit 3: Statement of Grounds for Appeal-2016 dated (September 24, 2017)

Exhibit 4: Written statement of appeal dated September 24, 2017

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is sixty one years old and is single. He lives in Essex County, Massachusetts.

2. He works full time in a medical firm.
3. His company was purchased in 2016. The prior company had medical insurance that met minimal creditable coverage standards. The new company offered health plans that did not meet minimal creditable coverage standards but did not inform it's employees about that fact.usband changed jobs in 2012. Once he changed jobs, his health insurance was through his new employer. Appellants were not informed that their new health insurance did not meet the minimum credible coverage standards of Massachusetts. Appellant was not informed about his health insurance coverage until 2017. He immediately changed coverage and is now covered by health insurance that meets the minimum credible coverage standards of Massachusetts.
4. Appellants now have health insurance that meets the minimum credible coverage standards of Massachusetts.
5. The appellant submitted a Statement of Grounds for Appeal-2016 dated September 24, 2017 "During 2016, you purchased health insurance that didn't meet minimum creditable coverage standards because that is what your employer offered and you felt that your circumstances prevented you from buying other insurance that met the requirements.

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 Statement of Grounds for Appeal-2016 dated September 24, 2017"During 2016, you purchased health insurance that didn't meet minimum creditable coverage standards because that is what your employer offered and you felt that your circumstances prevented you from buying other insurance that met the requirements.

Appellant was uninsured for only part of the year. Appellant did not have insurance in the months of March 2016 to December 2016, a total of ten months. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a penalty ; for Tax Year 2011, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Thus, the appellant is appealing the penalty of 7 months.

The appellant submitted a Statement of Grounds for Appeal-2013 dated April 21, 2014 "During 2013 because that is what your employer offered and were not informed by the insurer that the plan did not meet minimum credible coverage.

Appellant's company was purchased in 2016. Once his company was purchased, his health insurance was through his new employer. Appellants were not informed that their new health insurance did not meet the minimum credible coverage standards of Massachusetts. Appellant was not informed about their health insurance coverage until 2017. He immediately changed coverage and is now covered by health insurance that meets the minimum credible coverage standards of Massachusetts.

Looking at the totality of the circumstances, I conclude it is appropriate to waive the penalty in full.

PENALTY ASSESSED

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

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA16-726

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: February 20, 2018

Decision Date: February 27, 2018

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 20, 2018.

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, 2018

Exhibit 2: Appeal Case Information from form Schedule HC

Exhibit 3: Written statement of appeal with documents

Exhibit 4: Health Connector Affidavit

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is fifty seven years old and is single. He lives in Hamden County, Massachusetts.

2. Appellant works in social services.
3. Appellant started a new job in 2016. He was working part time, as he built up a client list. He eventually found out that he could apply for health insurance and did so as soon as he was able.
4. Appellant had health insurance in 2016 & has health insurance in 2017.
5. The Appellant's monthly expenses totaled \$1,715.00, consisting of Mortgage \$505.00, condo fee \$180.00, utilities \$75.00, condo insurance \$40.00, Internet & cable \$110.00, cell phone \$45.00, car insurance \$80.00, car gas \$100.00, food \$350.00, toiletries \$40.00, clother \$40.00, entertainment \$50.00, child support \$100.00.
6. The appellant did not submit a Statement of Grounds for Appeal-2016 but should have submitted under the grounds for Appeal, "During 2016, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities.
7. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2016. Table 1 sets forth the income eligibility standards for various family sizes at 150% of the federal poverty level and Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard for the government-subsidized health insurance program. See Mass. G.L. c. 118H, s.3(a)(1). Tables 5 and 6 set forth the tax penalties for 2016.
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 \$33,025.00 was less than \$35,310.00. The monthly premium for health insurance available on the private market in Hamden County for a 56 year old single person with zero dependents was \$323.00. The tables reflect that Appellant could afford \$137.60. This is more than what the appellant is deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions)

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant did not submit a Statement of Grounds for Appeal-2016 but should have submitted under the grounds for Appeal, “During 2016, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities.

The Health Care Reform Act of 2006 requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage “so long as it is deemed affordable” under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). However, individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”) are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 13-1, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2013-releases/tir-13-1.html>. For 2016, 150 percent of the FPL was \$17,655.00 for a single person with zero dependents. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf>; see also 830 Mass. Code Regs. 111M.2.1(5)(c) (2008). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months. *Id.*

Since Appellant’s 2016 income was more than 150 percent of the FPL, making 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 2016. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and second to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2016 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$33025.00 in 2016, and Appellant’s filing status was single with no dependents. EX 2. According to the Affordability Schedule established by the Connector’s board and included in the Instructions and Worksheets of the 2016 Massachusetts Schedule HC, Appellant could afford to pay \$137.60 monthly for health insurance. See 2016 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to him from the Premium Tables, at a cost of \$323.00 monthly for coverage with zero dependents *Id.* at Table 4.

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

Appellant is deemed to afford \$137.60 for health insurance coverage because of her income. Private insurance in the market place was \$323.00 per month. On these facts, I find that Appellant has shown that he was precluded from purchasing affordable health insurance during 2016. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that he is exempt from a tax penalty for his non-compliance with the individual mandate.

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

Looking at the totality of the circumstances, I conclude it is appropriate to waive the penalty in full.

PENALTY ASSESSED

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

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA16-727

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: February 20, 2018

Decision Date: February 27, 2018

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 20, 2018.

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, 2018

Exhibit 2: Appeal Case Information from form Schedule HC

Exhibit 3: Written statement of appeal with documents providing health insurance information

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is fifty eight years old and is married. They live in Norfolk County, Massachusetts.
2. His wife works full time in a retail food company.

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3. Appellant was covered for health insurance during 2016 and had health insurance in 2017 and has health insurance in 2018. Appellant provided proof of health insurance and testified that he had health insurance during 2016, which I credit. (Exhibit 3 and Appellant testimony
 4. Appellants now have health insurance that meets the minimum credible coverage standards of Massachusetts.
 5. The appellant did not submit a Statement of Grounds for Appeal-2016 but should have submitted under the grounds for Appeal, "Other, that you had health insurance that did meet minimum creditable coverage standards.

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant did not submit a Statement of Grounds for Appeal-2016 but should have submitted under the grounds for Appeal, "Other, that you had health insurance that did meet minimum creditable coverage standards.

Appellant was insured for the whole year of 2016. Appellant provided proof from his wife's employer that he had health insurance.

Looking at the totality of the circumstances, I conclude it is appropriate to waive the penalty in full.

PENALTY ASSESSED

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

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA16-728

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: February 20, 2018

Decision Date: March 13, 2018

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 20, 2018.

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, 2018
- Exhibit 2: Appeal Case Information from form Schedule HC
- Exhibit 3: Statement of Grounds for Appeal dated 8/21/17
- Exhibit 4: Written statement of appeal with documents
- Exhibit 5: Open record documents regarding residence

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is thirty six years old and is married. Her husband is thirty three years old and lives in Germany. Appellant lives in Middlesex County, Massachusetts.
2. Appellant's husband works full time as a professor in Germany. He lived and worked in Denmark from January 1, 2016 through September 2016 and then lived and worked in Germany from September 2016 through the present date. (Appellant's husband's testimony, Exhibit 4 & Exhibit 5)
3. Appellant's husband was covered for health insurance during 2016 and had health insurance in 2017 and has health insurance in 2018 through Denmark's & Germany's universal health program. Appellant testified that he had health insurance during 2016, which I credit. Appellant's husband did not live in Massachusetts in 2016. (Appellant testimony)
4. The appellant did submit a Statement of Grounds for Appeal-2016, dated August 21, 2017 under the grounds for Appeal, "Other, that you did not reside in Massachusetts during your period of uninsurance".

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant did submit a Statement of Grounds for Appeal-2016, dated August 21, 2017 under the grounds for Appeal, "Other, that you did not reside in Massachusetts during your period of uninsurance".

Appellant was insured for the whole year of 2016 in Denmark and Germany. In addition, Appellant did not live in Massachusetts during the year 2016.

Looking at the totality of the circumstances, I conclude it is appropriate to waive the penalty in full.

PENALTY ASSESSED

Number of Months Appealed: 9 Number of Months Assessed: 0

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA16-730

Appeal Decision: Penalty Overturned in Full

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: February 21, 2018

Decision Date: March 19, 2018

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's husband appeared at the hearing which was held by telephone on February 21, 2018, 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—Health Connector Notice of Dismissal of Appeal dated November 3, 2017

Ex. 2—Request to Reopen Appeal, undated

Ex. 3—Appeal Case Information from Schedule HC ¹

Ex. 4—Notice of Hearing

Ex. 5—Affidavit of Connector representative

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 manner and was marked as follows:

Ex. 6—Copy of the front and back of a U.S. Permanent Resident Card in the appellant's name

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is 31-years-old, is married, and has two minor children. She and her husband filed a joint tax return in 2016 and reported that they were married with two dependents. ² (Testimony, Ex. 3)

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

² The appellant's husband had full-year minimum creditable coverage health insurance in 2016 and is not the subject of this appeal.

2. The appellant is a citizen of Yemen where she had been living with her children prior to December, 2016. (Testimony)
3. The appellant was issued a U.S. Permanent Resident Card on December 7, 2016. She arrived in Massachusetts on that date and moved in with her husband. Her card expires on December 7, 2026. (Testimony, Ex. 6)

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 did not submit a statement of grounds for appeal when she filed her 2016 tax return and her appeal of the 2016 health insurance tax penalty was dismissed. (Ex. 1) She requested that the Health Connector reopen her case. (Ex. 2)

The appellant did not specify on her 2016 Schedule HC that she was not a resident of the state prior to December, 2016. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a tax penalty; for Tax Year 2016, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Since the appellant did not indicate that she was a new resident to the state, she was assessed and is appealing a penalty of twelve months.

The appellant’s husband testified credibly that she moved to Massachusetts from Yemen on December 7, 2016, after being issued a Permanent Resident Card. His testimony was corroborated by a copy of his wife’s card which was submitted as part of an Open Record Request. Accordingly, since she did not reside in the U.S. until then, she is not subject to the mandate and should not have been assessed a penalty for any part of the year.

Based upon the totality of the evidence, it is concluded that since the appellant was not a resident of the state until the beginning of December, 2016, her request for a waiver from the penalty for the months in question is **granted**. The determination that the appellant is eligible for a waiver is with respect to 2016, only and is based upon the extent of information submitted in this appeal.

PENALTY ASSESSED

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA16-731

Appeal Decision: Penalty Overturned in Full

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: February 21, 2018

Decision Date: March 21, 2018

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 21, 2018, 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—2016

Ex. 1A—Letter from the appellant, dated November 5, 2017

Ex. 1B—Bank mortgage statement dated October 2, 2017

Ex. 1C—Automobile and homeowners insurance statement dated November 8, 2016

Ex. 2—Appeal Case Information from Schedule HC ¹

Ex. 3—Notice of Hearing

Ex. 4—Affidavit of Connector representative

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 manner and was marked as follows:

Ex. 5—Final Appeal Decision in PA12-1040 dated January 31, 2014

Ex. 6—Final Appeal Decision in PA 15-988 dated February 24, 2017

FINDINGS OF FACT

The record shows, and I so find:

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

1. The appellant is 54-years-old, is single, and does not have children. He resided in Plymouth County, MA in 2016. He did not have health insurance in 2016. (Testimony, Ex. 2)
2. The appellant last had health insurance approximately ten years ago. He has been subject to a tax penalty almost every year since the Health Care Reform Act of 2006 was enacted, and has paid the penalty with two exceptions. He appealed the penalty for the 2012 and 2015 tax years, and in both cases, the penalty was waived. (Testimony, Exs. 5,6)
3. The appellant has been employed as a contractor for approximately 20 years. His income has fluctuated from year to year, but was significantly lower in 2016 because two of the people for whom he worked were "underemployed" in 2016. (Testimony)
4. The appellant rented out a barn on his property for \$6000.00 in 2016 to generate income. (Testimony)
5. The appellant has a long-standing history of migraine headaches and has received Botox treatments from a neurologist to mitigate the pain since 2006. In 2016, he paid approximately \$3500.00 for those treatments. (Testimony, Ex. 5)
6. The appellant was assessed a penalty of 12 months for the 2012 tax year for failure to obtain health insurance. He appealed the penalty and a hearing was conducted by the Health Connector Appeals Unit. The hearing officer overturned the penalty and concluded that the cost of the appellant's Botox treatments would have been equivalent to the cost of an insurance premium, and that the addition of a 12-month penalty would have resulted in a financial hardship. (Testimony, Ex. 5)
7. The appellant was assessed a penalty of 12 months for the 2015 tax year for failure to obtain health insurance. He appealed the penalty and a hearing was conducted by the Health Connector Appeals Unit. The hearing officer overturned the penalty and concluded that the expense of purchasing insurance would have caused a serious deprivation of basic necessities. (Testimony, Ex. 6)
8. The appellant reported an adjusted gross income of \$25,034.00 on his 2016 federal tax return, and reported that he was single with no dependents. (Ex. 2)
9. In 2016, the appellant had regular monthly expenses of approximately \$1915.00 for his mortgage (\$830.00), real estate taxes (\$377.00), homeowner's insurance (\$165.00), trash removal (\$4.00), electricity (\$30.00), heat (\$117.00), automobile insurance (\$109.00), excise tax (\$18.00), internet (\$5.00), gasoline (\$100.00), and food (\$160.00). (Testimony, Exs. 1A, 1C)
10. The appellant was frequently unable to pay his monthly expenses and borrowed approximately \$10,000.00-\$15,000.00 from his family. He also borrowed the maximum amount from his credit cards to cover some of his bills. (Testimony)

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

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant submitted a statement of grounds for appeal (Ex. 1), claiming that the individual mandate did not apply to him during 2016 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 (Ex. 1A) with his statement, in which he stated in part that his income was insufficient to cover his living expenses, and he had to borrow money from his family and charge things to his credit card to get by.

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

The appellant testified credibly that he has not had health insurance for at least ten years, and has not paid a penalty for being uninsured since the Health Care Reform Act of 2006 was enacted. He testified that his income was lower than usual in 2016 and he rented out a barn on his property to generate money, and borrowed money from his family to cover his expenses. He testified that he has suffered from migraine headaches for many years and has been treated with Botox to mitigate the pain. Finally, he testified that he appealed the penalty to the Health Connector Appeals Unit twice, and on both occasions, the penalty was waived after a hearing.

The evidence provided by the appellant established that his income for 2016, \$25,034.00, was less than 300% of the federal poverty level, which for 2016 was \$35,310.00 for a single person. Therefore, in 2016, assuming he met all other eligibility criteria, the appellant should have qualified for subsidized health insurance through the Health Connector, and for which he would have been subject to a subsidized premium of approximately \$87.62 per month (\$1051.43/12), based on his income. The premium is determined by calculating 4.20% of income pursuant to the Affordability Schedule in Table 3 referenced in the final paragraph of the Findings.

Even though subsidized 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 2016. Examples of hardships include being homeless or overdue in rent or mortgage payments, receiving a shut-off notice for utilities, or incurring unexpected increases in basic living expenses due to domestic violence, death of a family member, sudden responsibility for providing care for a family member or fire, flood or natural disaster. In addition, the appellant’s tax penalty for 2016 could be waived if he 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. 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 2016 he incurred basic monthly expenses of approximately \$1915.00. Those expenses were barely less than his regular monthly pre-tax income of approximately \$2086.00, thereby making a subsidized health insurance premium through the Health Connector of \$87.62/month unmanageable. (It is noted that the appellant’s monthly expenses do not include his credit card or Botox payments, amounts that would have made an insurance

premium even less affordable.) Hence, it is concluded that the totality of the evidence presented by the appellant 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**. The determination that the appellant is eligible for a hardship waiver is with respect to 2016 only and is based upon the extent of information submitted in this appeal.

PENALTY ASSESSED

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

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

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

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

If the appellant still does not have health insurance, and if his income and employment have not changed, he is advised to investigate his eligibility for subsidized health insurance through the Health Connector at www.mahealthconnector.org or by contacting customer service at 1-877-623-6765.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA16-732

Appeal Decision: Penalty Overturned in Full

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: February 21, 2018

Decision Date: February 26, 2018

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 21, 2018, and testified under oath. The hearing record consists of the appellant's testimony and the following documents which were admitted into evidence without her objection:

- Ex. 1—Statement of Grounds for Appeal—2017
- Ex. 1A—Letter from the appellant, dated December 2, 2017
- Ex. 1B—2016 IRS Form 1040
- Ex. 1C—2016 Massachusetts Resident Income Tax Return
- Ex. 1D—Computer printout of expenses and payments made in 2016
- Ex. 1E—Computer printout of additional payments made in 2016
- Ex. 1F—Computer printout of additional payments made in 2016
- Ex. 2—Appeal Case Information from Schedule HC ¹
- Ex. 3—Notice of Hearing

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is 46-years-old, is single, and does not have children. She resided in Middlesex County, MA in 2016. She did not have health insurance in 2016. (Testimony, Ex. 2)

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

2. The appellant had employer health insurance until mid-April, 2015, when she left her job due to her employer's relocation. She paid a tax penalty for the portion of 2015 that she did not have insurance. (Testimony)
3. The appellant continued to work for the same employer in 2017. Through the efforts of a manager, the employer decided to make an exception and add her to its group plan. She was insured for all of 2017 and enrolled in the same plan for 2018. (Testimony)
4. The appellant reported an adjusted gross income of \$47,468.00 on her 2016 federal tax return, and reported that she was single with no dependents. (Ex. 2)
5. In 2016, the appellant had regular monthly expenses of approximately \$1874.00 for rent (\$850.00), electricity averaged over 12 months (\$73.00), heat averaged over 12 months (\$35.00), trash removal fee (\$30.00), renter's insurance (\$12.00), automobile insurance (\$105.00), landline, internet and cell phone (\$207.00), repayment of two student loans (\$62.00), gasoline (\$100.00), and food (\$400.00). In addition, she paid approximately \$262.00/month for credit card debt, \$100.00/month for a judgment she was paying down, and \$90.00/month to her mother for repayment of a loan. (Testimony, Exs. 1D, 1E, 1F)

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

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant submitted a statement of grounds for appeal (Ex. 1), claiming that the individual mandate did not apply to her during 2016 because the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. She also submitted a letter (Ex. 1A) with her statement, in which she stated in part that she worked on a part-time basis in 2016, and was dismayed to find that health insurance through the Connector would have cost nearly \$300.00/month. She further stated that her employer made an exception for her in 2017, and she was able to enroll in a group plan despite her part-time status.

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

The appellant testified credibly that she was insured through her employer until mid-2015 when she left her job. She testified that she paid a tax penalty for the portion of the year that she was uninsured. She testified that she worked on a part-time basis in 2016 and was not eligible for employer insurance. She testified that she investigated her eligibility for health insurance through the Health Connector for 2016, and determined that a monthly premium would have cost significantly more than \$200.00 which she could not afford. She testified that

her employer made an exception for her in 2017 notwithstanding her part-time status, and she was able to enroll in a group plan. Finally, she testified that she continued her enrollment in her employer's plan in 2018.

The evidence provided by the appellant established that her income for 2016, \$47,468.00, was greater than 300% of the federal poverty level, which for 2016 was \$35,310.00 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 \$47,081.00 and higher is deemed to be able to afford a monthly premium of \$322.00 (8.13% of \$47,468.00). Table 4 of the Premium Schedule indicates that a 45-year-old individual (the appellant's age in 2016) in Middlesex County (where the appellant resided in 2016) could have purchased private health insurance for \$270.00 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 2016.

Even though employer 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 2016. Examples of hardships include being homeless or overdue in rent or mortgage payments, receiving a shut-off notice for utilities, or incurring unexpected increases in basic living expenses due to domestic violence, death of a family member, sudden responsibility for providing care for a family member or fire, flood or natural disaster. In addition, the appellant's tax penalty for 2016 could be waived if she experienced financial circumstances such that the expense of purchasing health insurance would have caused her to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08.

The evidence presented by the appellant in this case is insufficient to establish that she experienced a financial hardship as defined by law so as to waive her penalty for the months in question. The appellant testified that in 2016 she incurred basic monthly expenses of approximately \$2326.00. Those expenses were less than her regular monthly pre-tax income of approximately \$3956.00, thereby making a monthly health insurance premium of \$270.00/month seemingly manageable. While it is recognized that an approximate difference of \$1630.00/month between income and expenses is not a panacea, it does not appear on its face that the payment of \$270.00/month for health insurance would have caused an undue hardship.

Based on the totality of the evidence, it is concluded that the appellant could have afforded private health insurance and she failed to establish that she experienced a financial hardship that would entitle her to a waiver of the penalty. Notwithstanding this conclusion, the penalty will be waived because the appellant paid a penalty for the portion of 2015 during which she was not insured, and was able to enroll in employer insurance in 2017 and 2018, thereby demonstrating that the mandate to obtain insurance was not lost on her.

Therefore, based upon the foregoing, the appellant's request for a waiver from the penalty is **granted**. The determination that the appellant is eligible for a waiver is with respect to 2016 only and is based upon the extent of information submitted in this appeal.

PENALTY ASSESSED

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

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

insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

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 grant of leniency should she be assessed and appeal a penalty for not purchasing health insurance in the future.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA16-733

Appeal Decision: Penalty Overturned in Full

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: February 21, 2018

Decision Date: March 22, 2018

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 21, 2018, 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—2016
- Ex. 1A—List of expenses
- Ex. 2—Appeal Case Information from Schedule HC ¹
- Ex. 3—Notice of Hearing
- Ex. 4—Affidavit of Connector representative

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 manner and was marked as follows:

- Ex. 5—Employer health insurance form regarding terms and availability of health insurance in 2016

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is 57-years-old, is single, and does not have children. He resided in Essex County, MA in 2016. He did not have health insurance in 2016. (Testimony, Ex. 2)

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

2. The appellant does not know when he last had health insurance. Since the Health Care Reform Act of 2006 was enacted, he has been subject to, and has paid a penalty in some years for not obtaining insurance. (Testimony)
3. The appellant worked as an independent contractor for the first half of 2016, and worked as a full-time employee for the second half of the year. The employer offered health insurance but he was not eligible to enroll. (Testimony, Ex. 5)
4. The appellant researched health insurance options for 2016 on the Health Connector website and determined that a monthly premium would have cost approximately \$700.00-\$900.00 which he could not afford. He believed that the cost of employer health insurance was in the same range, even though he was not eligible to enroll. (Testimony)
5. If the appellant had been eligible to enroll in employer health insurance in 2016, his share of the premium for the lowest cost plan that met all applicable state standards would have been \$360.00 every two weeks. (Ex. 5)
6. The appellant lived with his mother in 2016 and did not pay for his housing. He provided her with “indirect support”. (Testimony)
7. The appellant did not enroll in employer health insurance in 2017, and at the time of the instant hearing, he did not have insurance. His employer advised him that it planned to increase his salary in 2018 in order to make health insurance more affordable (Testimony)
8. The appellant reported an adjusted gross income of \$23,543.00 on his 2016 federal tax return, and reported that he was single with no dependents. (Ex. 2)
9. In 2016, the appellant had regular monthly expenses of approximately \$1155.00 for electricity (\$65.00), telephone, cable and internet service (\$185.00), cell phone (\$130.00), automobile insurance (\$75.00), and food for himself and his mother (\$700.00). In addition, he paid approximately \$500.00/month for his balances on two credit cards, \$170.00/month for a contract dispute settled through arbitration, and \$125.00/month for car repairs. (Testimony, Ex. 1A)

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

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant submitted a statement of grounds for appeal (Ex. 1), claiming that the individual mandate did not apply to him during 2016 because the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities.

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

The appellant testified that he does not remember the last time he had health insurance. He testified that he has been subject to a penalty in some years since the Health Care Reform Act of 2006 was enacted. He testified that he worked as a contractor for the first half of the year and was employed during the second half, but was not eligible for employer health insurance. He testified that he researched health insurance options for 2016 on the Health Connector website and determined that a monthly premium would have cost approximately \$700.00-\$900.00 which he could not afford. He testified that he did not enroll in employer health insurance in 2017. Finally, he testified that his employer indicated that he may get a salary increase in 2018 in order to make health insurance more affordable.

The evidence provided by the appellant established that his income for 2016, \$23,543.00, was less than 300% of the federal poverty level, which for 2016 was \$35,310.00 for a single person. Therefore, in 2016, assuming he met all other eligibility criteria, the appellant should have qualified for subsidized health insurance through the Health Connector, and for which he would have been subject to a subsidized premium of approximately \$82.40 per month (\$988.81/12), based on his income. The premium is determined by calculating 4.20% of income pursuant to the Affordability Schedule in Table 3 referenced in the final paragraph of the Findings.²

Even though subsidized 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 2016. Examples of hardships include being homeless or overdue in rent or mortgage payments, receiving a shut-off notice for utilities, or incurring unexpected increases in basic living expenses due to domestic violence, death of a family member, sudden responsibility for providing care for a family member or fire, flood or natural disaster. In addition, the appellant's tax penalty for 2016 could be waived if he 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. 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 2016 he incurred basic monthly expenses of approximately \$1950.00 (including his credit card payments, settlement obligation and car repairs). Those expenses were barely less than his regular monthly pre-tax income of approximately \$1962.00, thereby making a subsidized health insurance premium through the Health Connector of \$82.40/month unmanageable. Hence, it is concluded that the totality of the evidence presented by the

² In light of this calculation regarding the appellant's potential eligibility for a subsidized premium of approximately \$82.40 through the Health Connector, his testimony that a monthly premium would have cost him \$700.00-\$900.00 strains credulity. A premium on the private market in 2016 for a 56-year old individual residing in Essex County would have cost \$323.00/month according to Table 4 of the aforementioned Premium Schedule, less than half of his projected estimate, a result which further weakens his credibility on this issue.

appellant 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**. The determination that the appellant is eligible for a hardship waiver is with respect to 2016 only and is based upon the extent of information submitted in this appeal.

PENALTY ASSESSED

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

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

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

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

If the appellant was eligible to enroll in employer health insurance in 2017 which met applicable state standards, and he did not (according to his testimony), he may be subject to a tax penalty if he is unable to demonstrate that his contribution for an individual plan was more than 9.69 percent of his projected household modified adjusted income. See 26 CFR section 1.36B-2(c)(3). If the appellant still does not have health insurance, and if he is unable to enroll in employer health insurance or if the cost is unaffordable pursuant to the foregoing regulation, he is advised to investigate his eligibility for subsidized health insurance through the Health Connector at www.mahealthconnector.org or by contacting customer service at 1-877-623-6765.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA16-734

Appeal Decision: Penalty Overturned in Part

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: February 21, 2018

Decision Date: February 28, 2018

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 21, 2018, 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—2016
- Ex. 1A—Letter from the appellant, dated November 4, 2017
- Ex. 1B—2016 Schedule HC
- Ex. 1C—2016 Schedule HC Worksheets and Tables
- Ex. 2—Appeal Case Information from Schedule HC ¹
- Ex. 3—Notice of Hearing
- Ex. 4—Affidavit of Connector representative

The appellant testified that from March through September, 2016, he did not receive any monthly statements or notices, including a notice of disenrollment, from the Health Connector.

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is 57-years-old, is single, and has two children, one of whom is a minor. In 2016, he had minimum creditable coverage health insurance for the months of January, February, October, November and December. (Testimony, Ex. 2)

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

2. The appellant has had subsidized health insurance through the Health Connector since approximately 2011. (Testimony)
3. The appellant enrolled in a subsidized plan for 2016 through the Health Connector for a monthly premium of \$44.00. He made online payments of the premium for the months of January and February, and received his health insurance card in February. (Testimony)
4. At some point after the appellant paid his February premium, he received a statement from the Health Connector showing that he had a \$0 balance due. Based on that statement, the appellant concluded that his premium had changed to \$0/month. He did not make any further payments to the Connector from March through September. (Testimony)
5. In September, the appellant had a medical issue and went to the doctor's office where he was advised that he did not have health insurance. (Testimony)
6. The appellant contacted the Health Connector about the interruption in his coverage and his insurance was reinstated on October 1st for the remainder of the year. He did not inquire why his insurance had been terminated. (Testimony)
7. The appellant's premium of \$44.00 resumed for the months of October-December and was automatically withdrawn from his bank account each month. (Testimony)
8. The appellant has been enrolled in insurance through the Health Connector without stoppage since October, 2016. (Testimony)
9. The appellant's address did not change in 2016. (Testimony)
10. The appellant reported an adjusted gross income of \$44,473.00 on his 2016 federal tax return, and reported that he was single with one dependent. (Ex. 2)

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 2016, but did not check off a specific ground for his appeal. He also submitted a letter (Ex. 1A) with his statement, in which he stated in part that he when he found out his insurance was not active in September, he called the Health Connector and "they were not sure why it was cancelled". He further stated that to the best of his knowledge, he "truly believed that he was covered during 2016 as I had been for the past five years."

The appellant did not have insurance from March 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 2016, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not

subject to penalty. Since the appellant was uninsured for seven months, he was assessed and is appealing a penalty of four months (i.e. the months of uninsurance less the gap period of three months).

The appellant testified that he has been insured with the Health Connector since 2011, and enrolled in subsidized insurance for 2016. He testified that he paid his monthly premium of \$44.00 for the months of January and February and received his health insurance card. He testified that he subsequently received a statement showing a \$0 balance due and concluded that his premium had changed to \$0. He testified that he did not make any further payments to the Connector. He testified that he did not receive any notices from the Connector about the change or a notice of disenrollment. He testified that he went to the doctor for a medical issue in September and was advised that he did not have insurance. He testified that he contacted the Health Connector and his insurance was reinstated on October 1st but he did not inquire why it had been cancelled. Finally, he testified that he has been enrolled in insurance without interruption since October, 2016.

The appellant contends that he should not be penalized for being uninsured for seven months because he believed that his coverage was free after February based on a statement showing a \$0 balance due. His argument is without merit. The appellant has had health insurance through the Health Connector since 2011, and should therefore be somewhat familiar with the process for addressing problems. His contention that he never received a single notice from the Connector after February strains credulity. It defies common sense that it did not occur to him to contact the Connector to inquire why and for what period of time his plan had changed to a zero premium plan, particularly given the length of time that he has been a member of the system. The appellant's credibility was weakened by the fact that when he did contact the Connector in September after his doctor's appointment, he never asked why his insurance had been cancelled, nor did he question why his premium went back to \$44.00/month.

Based on the totality of the evidence, it is concluded that the appellant had no reasonable basis to believe that he remained enrolled in insurance from February through September, and failed to establish that the gap in his coverage was attributable to error or fault on the part of the Connector. Although the penalty of four months should be upheld, it will be reduced to two months since the appellant has been enrolled in coverage without stoppage since October, 2016, thereby demonstrating that the mandate to obtain insurance has not been lost on him.

Based on the foregoing, the appellant's request for a waiver of the penalty is **granted** for two of the four months for which he was assessed. The determination that he is eligible for a partial waiver is with respect to 2016 only, and is based upon the extent of information submitted in this appeal.

PENALTY ASSESSED

Number of Months Appealed: 4 Number of Months Assessed: 2

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA16-738

Appeal Decision : Penalty Overturned in Full

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: February 26, 2018

Decision Date: March 14, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone, on February 26, 2018. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

- Exhibit 1: Correspondence from the Health Connector
- Exhibit 2: Appeal Case Information from Schedule HC 2016
- Exhibit 3: Notice of Appeal, dated September 30, 2017
- Exhibit 4: Statement of Appellant in support of the Appeal
- Exhibit 5: Affidavit of Health Connector
- Exhibit 6: Appeal Decisions for 2014 and 2015

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 62 years old in 2016. Appellant filed a Massachusetts 2016 tax return as married, filing jointly, with no dependents claimed (Exhibit 2).
2. Appellant resided in Bristol County, MA in 2016 (Exhibit 2).
3. Appellant had an Adjusted Gross Income for 2016 of \$86,934 (Exhibit 2).
4. Appellant was insured through employer sponsored health insurance during 2016 (Testimony of Appellant).

5. Appellant's spouse was covered by employer sponsored health insurance through Appellant spouse's job. Appellant spouse's employer did not permit Appellant spouse to add Appellant (Testimony of Appellant).
6. Appellant was a long term employee and had been covered by employer sponsored health insurance for many years (Testimony of Appellant).
7. Appellant's employer was located out of state (Testimony of Appellant).
8. Appellant's employer only offers one plan for all employees in all states (Testimony of Appellant).
9. Appellant's employer sponsored health insurance meets the requirements of the Affordable Care Act (Testimony of Appellant and Exhibit 4).
10. Appellant's employer sponsored health insurance coverage in 2016 offered a broad range of comprehensive medical benefits. There were no caps on total benefits for a particular illness or for a single year, and preventive care was covered without a deductible. The annual deductible was \$2,750 for a single plan. The plan does not provide maternity care for dependents, which also does not meet the Massachusetts standards (Exhibit 4 and Testimony of Appellant).
11. Appellant looked into other insurance but the coverage was very expensive (Testimony of Appellant).
12. Appellant has been assessed a penalty for twelve months for 2016 (Exhibit 2).
13. Appellant filed an Appeal on September 30, 2017 appealing the assessment of the penalty. Appellant claimed that Appellant purchased employer sponsored health insurance that did not meet Massachusetts minimum coverage standards as that is what was offered by the employer and that the insurance Appellant purchased was close to or substantially met the standards (Exhibit 3).

ANALYSIS AND CONCLUSIONS OF LAW

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

During 2016, Appellant was covered by employer sponsored health insurance from Appellant's employer. The issue to be decided is whether the policy met the Massachusetts minimum creditable coverage standards and whether Appellant should be assessed a penalty for the months that Appellant was covered by the employer sponsored plan.

Appellant worked for an out of state employer and was enrolled in the employer sponsored health insurance. Appellant's employer was located out of state and the employer only offered one plan for employees in all states. Appellant's insurance met the requirements of the Affordable Care Act but did not meet Massachusetts minimum creditable coverage standards. Appellant's insurance offered a broad range of comprehensive medical benefits. There were no caps on total benefits or for a particular illness or for a single year. Preventive care was covered without a deductible. The plan deviated from the Massachusetts standards because the deductible was \$2,750 and the plan did not provide maternity care for dependents. Appellant was unable to be covered under the plan of Appellant spouse. See Schedule HC and Exhibit 4 and Testimony of Appellant, which I find to be credible.

I find that Appellant did have comprehensive health insurance through the Appellant's employer. See 956 CMR 6.08 (2)(d)

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

PENALTY ASSESSED

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

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA16-742

Appeal Decision: Appeal Approved.

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: February 20, 2018

Decision Date: February 26, 2018

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 20, 2018. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector's Affidavit of Hearing Record.
- Exhibit 2: Health Connector Appeals Unit Notice of Hearing dated January 26, 2018.
- Exhibit 3: Appeal Case Information from Schedule HC 2016.
- Exhibit 4: Statement of Grounds for Appeal submitted by the Appellant on December 3, 2017.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant turned 62 years old in January 2016. The Appellant filed their Federal Income Tax return as an individual with no dependents claimed (Exhibit 3).
2. The Appellant lived in Middlesex County, MA in 2016 (Exhibit 3).
3. The Appellant's Federal Adjusted Gross Income for 2016 was \$50,131 (Exhibit 3, Appellant Testimony).
4. The Appellant had employer sponsored health insurance from January through April 2016. The Appellant did not have health insurance for the period of May through December 2016 (Exhibit 3, Appellant Testimony).

5. The Appellant has been assessed a five-month tax penalty for 2016. The Appellant filed an appeal of the assessment in December 2017 (Exhibits 3, 4).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
7. In accordance with Table 3 of Schedule HC for 2016, the Appellant filing the Federal tax return as an individual, with no dependents claimed, with an annual adjusted gross income of \$50,131 could afford to pay \$340 per month for health insurance. In accordance with Table 4, the Appellant, age 62, living in Middlesex County, could have purchased private insurance for \$323 per month for a plan (Schedule HC for 2016). Private insurance appeared affordable for the appellant in 2016 based on their annual income (Exhibit 3).
8. The Appellant would not have been eligible for ConnectorCare coverage in 2016 because the Appellant's income was greater than 300% of the federal poverty level, which was \$35,310 in 2016. The Appellant had no access to affordable insurance through employment for the months of May through December 2016 (See Table 2 of Schedule HC-2013 and 956 CMR 12.04) (Appellant Testimony).
9. The Appellant testified that the annual income of \$50,131 does not accurately reflect their financial circumstances for all of 2016. The Appellant explained that they were laid off from their job in April 2017. The Appellant collected unemployment compensation of \$700 per week, but this was less than half of what their salary had been. The Appellant said that they struggled to meet their living expenses with the substantially reduced income. The Appellant said that COBRA insurance was not affordable at \$700 per month and private insurance was not affordable given their age.
10. While employed, the Appellant's monthly income was approximately \$6,466. For the period of May through December 2016, the Appellant's monthly unemployment compensation income was \$3,033 (Appellant Testimony).
11. In 2016 the Appellant's monthly living expenses included: mortgage-\$1,200; home insurance-\$83.33; a car payment-\$385; car insurance-\$83.33; gasoline-\$173; telephone-\$60; and food-\$434. The Appellant said that they had additional expenses for heat, electricity and home repairs, but the Appellant was unable to estimate the monthly cost. I found the Appellant to be a credible witness.

ANALYSIS AND CONCLUSIONS OF LAW

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

CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector’s regulations provide for a waiver of the tax penalty in the case of financial hardship. See 956 CMR 6.08.

The Appellant had no health insurance for the last eight months of 2016. The Appellant has been assessed a five-month penalty. The Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply in this case because of financial hardship. To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met minimum creditable coverage standards was available to the Appellant through employment, through private insurance, or through a government sponsored program. If affordable insurance was available, it must be determined if such insurance was not affordable to the Appellant because the Appellant experienced a financial hardship as defined in 956 CMR 6.08.

In accordance with Table 3 of Schedule HC for 2016, the Appellant filing the Federal tax return with no dependents claimed with an adjusted gross income of \$50,131 could afford to pay \$340 per month for health insurance. According to Table 4, the Appellant, age 62, living in Middlesex County, could have purchased a private insurance plan for \$323 per month. See Schedule HC for 2013. Based on the Appellant’s annual adjusted gross income, private insurance appeared Affordable for the appellant in 2016. This was not the case for the last eight months of 2016 because the Appellant was unemployed and receiving only unemployment compensation income.

The Appellant had no access to affordable employer-sponsored health insurance for the last eight months of 2016. The Appellant would not have been eligible for ConnectorCare coverage based upon the Appellant’s income which was greater than \$35,310. See Table 2 of Schedule HC 2016 and 956 CMR 12.04 for eligibility criteria. Since affordable insurance was available to the Appellant in 2016, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1).

The Appellant testified credibly that the annual income figure does not accurately reflect their financial circumstances for the entire year. The Appellant was employed for the first four months of tax year 2016 earning approximately \$6,466 per month. The Appellant was laid off from her job. COBRA insurance would have cost \$700 per month and was therefore not affordable. For the period of May through December 2016 the Appellant’s monthly income was reduced to \$3,033. The Appellant’s monthly living expenses were substantial, and the Appellant testified credibly that they struggled to meet these expenses with the reduced income. The cost of purchasing health insurance would have caused the Appellant to experience a serious financial hardship. See 956 CMR 6.08(1)(e). The Appellant’s penalty for all five months is therefore waived.

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

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA16-743

Appeal Decision: Appeal Denied.

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: February 20, 2018

Decision Date: February 26, 2018

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 20, 2018. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector's Affidavit of Hearing Record.
- Exhibit 2: Health Connector Appeals Unit Notice of Hearing dated January 26, 2018.
- Exhibit 3: Appeal Case Information from Schedule HC 2016.
- Exhibit 4: Statement of Grounds for Appeal submitted by the Appellant on November 20, 2017.
- Exhibit 5: Appellant's Note in support of the Appeal with a Monthly Sales and Use Tax return document for the month of October 2017.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant turned 25 years old in December 2016. The Appellant filed their Federal Income Tax return as an individual with no dependents claimed (Exhibit 3).
2. The Appellant lived in Middlesex County, MA in 2016 (Exhibit 3).
3. The Appellant's Federal Adjusted Gross Income for 2016 was \$40,033 (Exhibit 3, Appellant Testimony).
4. The Appellant did not have health insurance for any months of tax year 2016 (Exhibit 3, Appellant Testimony).

5. The Appellant has been assessed a twelve-month tax penalty for 2016. The Appellant filed an appeal of the assessment in November 2017 (Exhibits 3, 4, 5).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
7. In accordance with Table 3 of Schedule HC for 2016, the Appellant filing the Federal tax return as an individual, with no dependents claimed, with an annual adjusted gross income of \$40,033 could afford to pay \$247 per month for health insurance. In accordance with Table 4, the Appellant, age 25, living in Middlesex County, could have purchased private insurance for \$143 per month for a plan (Schedule HC for 2016). Private insurance was affordable for the Appellant.
8. The Appellant would not have been eligible for ConnectorCare coverage in 2016 because the Appellant's income was greater than 300% of the federal poverty level, which was \$35,310 in 2016. The Appellant did not have access to employer-sponsored insurance (See Table 2 of Schedule HC-2013 and 956 CMR 12.04) (Appellant Testimony).
9. The Appellant testified that they were confused and concerned about the state of healthcare in Massachusetts and decided to opt out. The Appellant also stated they could not afford health insurance (Exhibit 5, Appellant Testimony).
10. The tax document for the month of October 2017 submitted by the Appellant is not relevant to the 2016 tax penalty at issue (Exhibit 5).
11. The Appellant's monthly living expenses of \$1,628 for 2016 included: rent and heat- \$1,000; electricity-\$50; trash removal-\$20; food \$200; telephone-\$50-\$100; car insurance-\$100; gasoline \$100; dental bills-\$25 and eyeglasses- \$33 (Appellant Testimony).
12. The Appellant did not fall behind in their rent or utility payments and did not experience any family emergencies or natural or human caused disasters that resulted in an unexpected increase in living expenses (Appellant Testimony).
13. Given the Appellant's monthly income of \$3,336 and their living expenses of \$1,628, the Appellant has failed to demonstrate that purchasing private insurance for \$143 per month would have caused the Appellant to experience a serious deprivation of food, shelter, clothing or other necessities (Exhibits 3, 4, 5; Appellant Testimony).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

The Appellant had no health insurance in tax year 2016. The Appellant has been assessed a twelve-month penalty. The Appellant submitted a statement of grounds for this appeal with a note attached stating that they could not afford insurance. To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met minimum creditable coverage standards was available to the Appellant through employment, through private insurance, or through a government sponsored program. If affordable insurance was available, it must be determined if such insurance was not affordable to the Appellant because the Appellant experienced a financial hardship as defined in 956 CMR 6.08.

In accordance with Table 3 of Schedule HC for 2016, the Appellant filing the Federal tax return as a single person with no dependents claimed, with an adjusted gross income of \$40,033 could afford to pay \$247 per month for health insurance. In accordance with Table 4, the Appellant, age 25, living in Middlesex County, could have purchased private insurance for \$143 per month for a plan (Schedule HC for 2016). Private insurance was affordable for the Appellant in 2016.

The Appellant would not have been eligible for ConnectorCare coverage in 2016 because the Appellant's income was greater than 300% of the federal poverty level, which was \$35,310 in 2016. The Appellant had no access to affordable insurance through employment (See Table 2 of Schedule HC-2013 and 956 CMR 12.04).

Since affordable insurance was available to the Appellant in 2016, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1). The Appellant testified that they were concerned and confused about the state of healthcare in Massachusetts. The Appellant had submitted a one sentence note with their appeal request stating that they could not afford to pay for health insurance.

The Appellant's monthly living expenses totaled \$1,628 in 2016. The Appellant did not fall behind in their rent or utility payments and did not experience any natural or human caused event that resulted in the Appellant incurring significant unexpected expenses. Given the Appellant's income of \$40,033 and the fact that private health insurance was available and affordable for the Appellant in 2016 at a cost of \$143 per month, the Appellant did not demonstrate that the cost of purchasing health insurance for 2016 would have caused the Appellant to experience a serious financial hardship. See 956 CMR 6.08(1)(e). The Appellant's penalty for all twelve months is upheld.

PENALTY ASSESSED

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

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

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: PA16-745

Appeal Decision: Appeal Approved.

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: February 20, 2018

Decision Date: March 15, 2018

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 20, 2018. A family member attended as a witness. The procedures to be followed during the hearing were reviewed with the parties who were then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The record was left open until March 7, 2017 to allow the Appellant to submit additional information. The hearing record consists of the Appellant's testimony, witness testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector's Affidavit of Hearing Record.
- Exhibit 2: Health Connector Appeals Unit Notice of Hearing dated January 26, 2018.
- Exhibit 3: Appeal Case Information from Schedule HC 2016.
- Exhibit 4: Statement of Grounds for Appeal submitted by the Appellant on November 14, 2017.
- Exhibit 5: The Appellant's letter in support of this appeal with attachments.
- Exhibit 6: Health Connector's Open Record form dated February 20, 2018.
- Exhibit 7: Additional information submitted by the Appellant on March 7, 2018.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant turned 36 years old in July 2016. The Appellant and their spouse filed their Federal Income Tax return as a married couple with no dependents claimed (Exhibit 3).
2. The Appellant lived in Suffolk County, MA in 2016 (Exhibit 3).
3. The Appellant and their spouse had Federal Adjusted Gross Income of \$59,390 for 2016 (Exhibit 3, Appellant Testimony).

4. The Appellant's spouse had employer sponsored health insurance for all of tax year 2016 and is not being assessed any tax penalty (Exhibit 3, Appellant Testimony).
5. The Appellant had health insurance through their spouse's employer for the months of November and December 2016. For the months of January through October 2016, the Appellant did not have health insurance (Exhibit 3; Appellant testimony).
6. The Appellant has been assessed a seven-month tax penalty for 2016. The Appellant filed an appeal of the assessment in November 2017 (Exhibits 3, 4, 5).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
8. In accordance with Table 3 of Schedule HC for 2016, the Appellant filing the Federal tax return as a married couple, with no dependents claimed, with an annual adjusted gross income of \$59,390 could afford to pay \$376.13 per month for health insurance. In accordance with Table 4, the Appellant, age 36, living in Suffolk County, could have purchased private insurance for \$221 per month for a plan (Schedule HC for 2016). Private insurance appeared affordable for the appellant in 2016 based on their annual income (Exhibit 3).
9. The Appellant testified that the annual income of \$59,390 does not accurately reflect their financial circumstances for all of 2016. The Appellant testified that they were living with their partner during 2016 but were not married until October 31, 2016. The Appellant explained that they were employed part time during 2016 and their income was approximately \$20,000. The Appellant struggled to contribute to the cost of the couple's living expenses, but the Appellant did not have sufficient funds to purchase health insurance. I found the Appellant to be a credible witness.
10. The record was left open until March 7, 2016 to allow the Appellant to submit additional information regarding their income and expenses for tax year 2016 (Exhibit 6).
11. For the period of January through October 2016 the Appellant was a single person with annual income of \$21,226. The Appellant's monthly income for this period was \$1,768 (Exhibit 7; Appellant Testimony).
12. For the period of January through October 2016 the Appellant's share of monthly living expenses included: mortgage-\$1,100; car expenses-\$100; utilities-\$100; food-\$100; dental insurance- \$60 and credit card payments -\$100. The Appellant also noted federal and state taxes of \$175 per month (Exhibit 7).
13. The Appellant was added to their spouse's employer sponsored health insurance plan effective November 1, 2016, the month following their marriage. The Appellant and their spouse contribute approximately \$316 per month for health insurance (Exhibit 7; Appellant testimony).

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellant had no health insurance for the first ten months of 2016. The Appellant has been assessed a seven-month penalty. The Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply in this case because of financial hardship. To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met minimum creditable coverage standards was available to the Appellant through employment, through private insurance, or through a government sponsored program. If affordable insurance was available, it must be determined if such insurance was not affordable to the Appellant because the Appellant experienced a financial hardship as defined in 956 CMR 6.08.

In accordance with Table 3 of Schedule HC for 2016, the Appellant filing the Federal tax return as a married couple with no dependents claimed with an adjusted gross income of \$59,390 could afford to pay \$376 per month for health insurance. According to Table 4, the Appellant, age 36, living in Suffolk County, could have purchased a private insurance plan for \$221 per month. See Schedule HC for 2016. Based on the Appellant’s annual adjusted gross income, private insurance appeared Affordable for the appellant in 2016.

The Appellant testified credibly that the annual income figure does not accurately reflect their financial circumstances for the entire year. The Appellant and their partner lived together for all of 2016 but were not married until October 31, 2016. The Appellant’s spouse was employed full time in 2016 and had employer sponsored health insurance for all of tax year 2016. The Appellant was employed part time and earned approximately \$21,226 for the year.

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

For the period of January through October 2016, the Appellant was a single person with monthly income of \$1,768. The Appellant’s monthly living expenses were substantially equal to their income and the Appellant testified credibly that they struggled to meet these expenses with income from part time employment. The cost of purchasing health insurance would have caused the Appellant to experience a serious financial hardship. See 956 CMR 6.08(1)(e). The Appellant’s penalty for all seven months is therefore waived.

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

PENALTY ASSESSED

Number of Months Appealed: ____7____ Number of Months Assessed: __0____

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA16-749

Appeal Decision: Appeal Approved -- 2016 tax penalty overturned.

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: February 21, 2018

Decision Date: March 14, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant (Husband) appeared for the hearing, which I conducted by telephone. His Wife, who did not join the appeal (see Exhibit 2), 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.

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's (Husband's) Statement of Grounds for Appeal – 2016 (with Handwritten Notes);
3. Husband's Letter in Support of Appeal (1 page, dated 12/14/17);
4. Husband's Chinese Medical Card (1 page);
5. Employer's Statement of Husband's 2016 Income (in U.S. Dollars + Chinese Yuan) (1 page)
6. Husband's Record of Chinese 2016 Medical Insurance Coverage (1 page); and
7. Health Connector's Notice of Hearing (3 pages, dated 1/26/18).

FINDINGS OF FACT

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

1. 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 2016 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 of the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedule adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2016. See 956 Code Mass. Regs. 6.05. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2016. (The DOR instructions are published online at <http://www.mass.gov/dor/2016ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2016.)
3. For 2016 the DOR did not assess a penalty against the Wife, and she did not sign the Statement of Grounds for Appeal that brings the 2016 tax penalty appeal before me. Exhibits 1 and 2. The Wife was insured in Massachusetts for January – November 2016. She was not insured for December 2016 when she was in the process of changing jobs. Testimony. No penalty was assessed for December 2016 due to the 3-month administrative grace period.
4. DOR assessed a 12 month penalty against the Husband on the 2016 Massachusetts personal income tax return that he filed jointly with his Wife, and the Husband filed an appeal. Exhibits 1 and 2. The basis for the penalty assessment is that the Husband did not have health insurance in Massachusetts at any time in 2016. Exhibit 1. During the appeal hearing the Husband conceded that he was not insured in Massachusetts in 2016.
5. I find that the Appellant (Husband) was not a Massachusetts resident in 2016. I base this finding on the Appellant's testimony that he was living and working in China for all of 2016 and that he was present in Massachusetts on four occasions to visit his Wife and child. The Appellant's testimony is supported by the letter that he filed in support of the appeal (Exhibit 3) and by the three documents that he attached to his letter that are marked as Exhibits 4, 5 and 6. Exhibit 5 is a report of the income that the Husband earned in China for 2016, showing a Chinese address and reporting the income in both Chinese Yuan and U.S. Dollars. Exhibit 5 is not a reporting form used by the federal Internal Revenue Service (IRS) for income earned in the United States. Exhibit 4 is the Chinese medical card issued to the Appellant, and Exhibit 6 is a month-by-month record of the Appellant's medical insurance in China for January through December 2016.
6. For 2017 the Appellant represented that he resided in Massachusetts with his Wife and Child and that he was insured under his Wife's employer-sponsored health plan. Testimony.

ANALYSIS AND CONCLUSIONS OF LAW

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

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

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

The Health Connector’s regulations also provide for a “hardship” appeal from the assessment of a penalty. 956 Code Mass. Regs. 6.07 and 6.08. The grounds for a hardship appeal are summarized in the Statement of Grounds for Appeal – 2016 that the Appellant signed and filed in this case. See Exhibit 2.

The decision of the appeal in this case turns on the provision in Massachusetts law that only Massachusetts residents are subject to the individual mandate and the tax penalty imposed on individuals because they are not insured. See Mass. Gen. Laws, c. 111M, sec. 2 (a), above. Here the Husband’s appeal hearing testimony and the three documents that the Husband filed in support of his appeal (Exhibits 3, 4 and 5) show that the Husband was not a Massachusetts resident in 2016. Instead, he was living and working in China, and he had medical insurance coverage in China. He did, however, file a joint Massachusetts personal income tax return for 2016 with his Wife, who was living and working in Massachusetts. See Exhibit 1.

For the foregoing reason, I waive the penalty that the DOR assessed for 2016 based on the Husband’s lack of health insurance coverage in Massachusetts.

PENALTY ASSESSED

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

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

OR

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA15-1109 and PA16-747

Appeal Decision: Appeal Approved -- 2015 and 2016 tax penalties overturned.

Hearing Issue: Appeal of the 2015 and 2016 Tax Year Penalties (consolidated appeal)

Hearing Date: February 21, 2018

Decision Date: March 14, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared for the consolidated hearing on the tax penalty appeals that he filed for 2015 (Docket No. PA15-1109) and 2016 (Docket No. PA16-747). I conducted the hearing by telephone conference call on February 21, 2018. 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.

2015 Tax Penalty Appeal (PA15-1109)

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2016;
- 2A. DOR Notice of Statement of Grounds for Appeal (1 page, dated 11/30/17);
3. Appellant's Letter in Support of Appeal (1 page, undated); and
4. Health Connector's Notice of Hearing (3 pages, dated 1/29/18).

2016 Tax Penalty Appeal (PA16-747)

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2016;
- 2A. DOR Notice of Statement of Grounds for Appeal (1 page, dated 12/7/17);
3. Appellant's Letter in Support of Appeal (1 page, undated); and
4. Health Connector's Notice of Hearing (3 pages, dated 1/26/18).

FINDINGS OF FACT

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

1. 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 2016 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 of the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedule adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2016. See 956 Code Mass. Regs. 6.05. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2016. (The DOR instructions are published online at <http://www.mass.gov/dor/2016ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2016.)
3. DOR assessed a 12 month penalty on the Appellant's 2015 Massachusetts personal income tax return and a 12 month penalty on his 2016 personal income tax return. Exhibit 1. The basis for the penalty assessment is that the Appellant did not have health insurance at any time in either 2015 or in 2016. 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 36 years old. In both 2015 and 2016 the Appellant resided in [name of city or town omitted] in Hampden County, Massachusetts. Exhibit 1.
5. The Appellant's 2015 and 2016 tax returns were filed as a single person with no dependents. Exhibit 1.
6. In 2015 the Appellant's federal adjusted gross income (AGI) was \$34,362. For 2016 his AGI increased to \$36,963. Exhibit 1.
7. The Appellant's 2015 AGI was less than 300% of the federal poverty level for a one-person household (\$35,010 per year). DOR Table 2 (2015). For 2016 the Appellant's AGI was more than 300% of the federal poverty level for a one-person household (\$35,310). DOR Table 2 (2016). For a two-person household the table amounts increase to \$47,190 in 2015 and \$47,790

in 2016. DOR Table 2. The Appellant's AGI was less than the two-person household amounts for both 2015 and 2016.

8. Although the Appellant's 2015 and 2016 state income tax returns claimed that he has no dependents (see Exhibit 1), in fact the Appellant has a daughter who is claimed as a dependent on her mother's income tax return. The daughter was 15 years old at the time of the appeal hearing in February 2018. Testimony.
9. The Appellant pays \$80 per week in child support (\$4,160 per year or \$346.66 per month). He also pays his daughter's clothing and for her other expenses on the weekends, school vacations, and summers that the daughter lives with the Appellant. Testimony. I accept the Appellant's calculation, set forth in Exhibit 3, as the approximate total amount that he contributed to his daughter's support: \$5,380 in both 2015 and 2016. The daughter obtains health insurance coverage through her mother. Testimony.
10. The Appellant has been employed full-time at a warehouse for approximately 5 years. In 2016 he earned \$16 per hour. Testimony.
11. The Appellant did not enroll in the employer-sponsored health insurance offered by his employer in 2015 and 2016 due to its cost. I accept the Appellant's statement, in Exhibit 3, that his share of the health insurance cost in 2015 was \$2,448.33 per year (\$204.02 per month) and \$2,877.37 per year in 2016 (\$239.78 per month).
12. The Appellant enrolled in a two-year college degree program in construction management (there is some lack of clarity in the Appellant's testimony as to precisely when the Appellant began his program of study and/or enrolled in a student health plan). In 2017 the Appellant represents that he was insured through the Health Connector. Testimony.
13. In 2015 and in 2016 the Appellant paid \$1,548 per year for car insurance. Exhibit 3. He also owed approximately \$5,000 for a credit card balance and approximately \$2,000 for a dental bill. Testimony.
14. In 2015 the Appellant could afford to pay 4.85% of his income for health insurance coverage – or \$139 per month – under DOR Table 3 (2015). The calculation – which does not include support for his daughter – is 4.85% multiplied by \$34,362 AGI = \$1,666.55 per year divided by 12 = \$138.87 per month. The amount that the Appellant could afford to pay (\$1,667 per year) is less than the cost of the health plan offered by his employer (\$2,448 per year). See Findings of Fact, No. 11, above. (The data is derived from the portion of DOR Table 3 that applies to a taxpayer filing an individual state income tax return with no dependents.)
15. In 2015 individual health insurance coverage would cost the Appellant \$209 per month at his age (35-39 age bracket) and location in Massachusetts (Hampden County). DOR Table 4 (Region 2) (2015).

16. In 2016 the Appellant could afford to pay 7.40% of his income for health insurance coverage – or \$228 per month – under DOR Table 3 (2016). The calculation – which does not include support for his daughter – is 7.40% multiplied by \$36,963 AGI = \$2,735.26 per year divided by 12 = \$227.93 per month. The amount that the Appellant could afford to pay (\$2,735 per year) is less than the cost of the health plan offered by his employer (\$2,877 per year). See Findings of Fact, No. 11, above. (The data is derived from the portion of DOR Table 3 that applies to a taxpayer filing an individual state income tax return with no dependents.)
17. In 2016 individual health insurance coverage would cost the Appellant \$221 per month at his age (35-39 age bracket) and location (Hampden County) in Massachusetts. DOR Table 4 (Region 2) (2016).

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the state Department of Revenue's (DOR) assessment of a 12 month tax penalty for 2015 and a 12 month tax penalty for 2016 because the Appellant did not have health insurance coverage at any time in 2015 or 2016. See Exhibits 1 and 2. The issue to be decided is whether the penalty should be waived, either in whole or in part.

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

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

The Health Connector's regulations also provide for a "hardship" appeal from the assessment of a penalty. 956 Code Mass. Regs. 6.07 and 6.08. The grounds for a hardship appeal are summarized in the Statement of Grounds for Appeal – 2016 that the Appellant signed and filed in this case. See Exhibit 2.

The decision in this appeal turns on the affordability of health insurance coverage in 2015 and 2016, as it is undisputed that the Appellant was not insured in either year. See Mass. Gen. Laws c.

111M, sec. 2 (a), above. A critical factor is the amounts that the Appellant paid in 2015 and 2016 for the support of his daughter, especially since that cost was not reflected in the state income tax return data available to the DOR. See, e.g., Findings of Fact, Nos. 5, 8 and 9, above, and Exhibit 1 (no dependents claimed on Appellant’s 2015 and 2016 tax returns).

Even without taking the daughter into account, the Appellant’s income was marginal: for 2015 his federal adjusted gross income was less than 300% of the federal poverty level for a one-person household. For 2016 his AGI was somewhat more than 300% of the FPL. The income amounts are so close in both years that I cannot infer with confidence that the Appellant would – or would not – have qualified for government-subsidized health insurance if he had filed an application. The fact that in both years the Appellant declined to enroll in the health plan offered by his employer suggests that an application for government-sponsored health insurance would have been denied. At the same time, however, the evidence supports the Appellant’s contention that the cost of his employer’s health plan was more than he could afford to pay. See, e.g., Findings of Fact, Nos. 6, 7, 11, and 14, above.

The objective standards set forth in the DOR Tables for both 2015 and for 2016 indicate that the Appellant could not afford health insurance. In the first place, the amount that the Appellant could afford to pay (\$1,667 in 2015 and \$2,735 in 2016) is less than the cost of the annual cost of the health plan offered by his employer (\$2,448 in 2015 and \$2,877 in 2016). Thus, it was not unreasonable for the Appellant to decline to enroll in the employer-sponsored health plan that was offered to him. See, e.g., Findings of Fact, Nos. 11 and 14-17, above.

The DOR tables also indicate that the Appellant could not afford unsubsidized health insurance in either year. In 2015 individual coverage would cost \$209 per month, while the Appellant could afford to pay only \$139 per month. In 2016 the cost of individual coverage increased to \$221 per month, but he Appellant’s income had also increased he could now afford to pay \$228 per month. However, the \$7 monthly difference is swallowed by the Appellant’s \$347 per month child support obligation. See, e.g., Findings of Fact, Nos. 9 and 14 – 17, above.

After considering all the circumstances I conclude that it is appropriate to waive the entire penalties assessed for 2015 and 2016 under the Health Connector’s financial hardship regulation. See 956 Code Mass. Regs. 6.08 (1) (e). The Appellant should not assume, however, that any penalties that may be assessed in future years will also be waived or reduced if he does not comply with his obligation under state law to “obtain and maintain” health insurance coverage. See Mass. Gen. Laws c. 111M, sec. 2 (a), above.

PENALTY ASSESSED

Number of Months Appealed (2015): 12 Number of Months Assessed: -0-
Number of Months Appealed (2016): 12 Number of Months Assessed: -0-

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

insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA16-309

Appeal Decision: Appeal Approved
Hearing Issue: Appeal of the 2016 Tax Year Penalty
Hearing Date: 2/6/2018
Decision Date: 2/21/2018

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 did not appear at the hearing, which was held by telephone on February 6, 2018. The Appellant's father appeared as Authorized Representative.

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

- Exhibit 1: Appeal Case Information from Schedule HC (1/12/2018)
- Exhibit 2: Appeal Case Information from Schedule HC (9/27/2017)
- Exhibit 3: Notice of Hearing (11/21/2017)
- Exhibit 4: Notice of Hearing (11/21/2017)
- Exhibit 5: Statement of Grounds for Appeal
- Exhibit 6: Notice of Hearing (7/19/2017)
- Exhibit 7: Connector Correspondence regarding Appeal Representative
- Exhibit 8: Authorized Representative Appeal Form
- Exhibit 9: Notice of Hearing (10/23/2017)
- Exhibit 10: Appointment of Authorized Representative
- Exhibit 11: Notice of Hearing (9/27/2017)
- Exhibit 12: Appeal Care Information (7/19/2017)
- Exhibit 13: Prior Appeal Office Cover Sheet

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant is 26 years old and resides in Barnstable County. During 2016, the Appellant had an adjusted gross income of \$27,493.00.
2. DOR assessed 7 month penalty on the Appellant's 2016 personal income tax return. The basis for the penalty assessment is that the Appellant did not have health insurance coverage for 10 months in 2016. (Exhibit 1)
3. The Authorized Representative stated that the Appellant had applied for health care and believes that the Appellant was quoted a high premium. The Appellant provided a statement indicating that she was a part time employee during most of 2016, and was ineligible for the health insurance offered through the employer. The Appellant further stated that she applied for health care through the Connector, and while she does not recall the amount of the premium she would have been required to pay, she recalls having determined that she could not afford it. (Exhibit 5).
4. The Authorized Representative stated that the Appellant's monthly expenses include rent (\$500) and student loans (\$220 per month).
5. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets (Schedule HC). Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2016. See, 956 Code Mass. Regs. 6.05. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program.
6. The Appellant's federal adjusted gross income does not exceed 300% of the federal poverty level (\$35,310 for a single person) and therefore the Appellant was eligible for subsidized health insurance. (Schedule HC, Table 2)
7. Based on an income of \$27,493, the Appellant could afford to pay a premium of 4.20%, or \$96 .22 per month. (Schedule HC, Table 3)
8. The monthly premium for health insurance available on the private market in Barnstable County for a 24 year old single person with zero dependents was \$232.00 in 2016. (Schedule HC, Table 4)

ANALYSIS AND CONCLUSIONS OF LAW

The Appellant was uninsured for only part of the year. Appellant did not have insurance in the months of January to October, a total of 10 months. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a penalty ; for Tax Year 2011, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Thus, the Appellant is appealing the penalty of 7 months.

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." Since the Appellant could only afford to pay a premium of less than \$97 per month, and the least costly premium in Barnstable County was \$232 in 2016, I find that she could not afford to purchase health insurance in 2016. Accordingly, no penalty will be assessed.

PENALTY ASSESSED

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

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

Hearing Officer

Cc: Connector Appeals Unit