

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-1012

Appeal Decision: The penalty is overturned in full.

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: December 19, 2019

Decision Date: December 30, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant Husband appeared at the hearing, which was held by telephone on December 19, 2019. The Appellant Spouse was not present. The procedures to be followed during the hearing were reviewed with the appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2018.1(1P)
- Exhibit 2: Statement of Grounds for Appeal 2018 signed by Appellant on July 11, 2019. (2PP).
- Exhibit 2(a) Appellant's correspondence to the Massachusetts Dept. of Revenue dated July 16, 2018. (9PP).
- Exhibit 3: Notice of Hearing dated November 1, 2019. (3PP).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellants, who filed a 2018 Massachusetts tax return reported they was married, were ages 49(Husband) and 47 (Spouse) respectively in 2018, lived in Essex County, and had one (1) dependent1. (Exhibit 1, Testimony of Appellant).
2. Appellant was employed full time as a Minister. (Testimony of Appellant, Exhibit. 2(a), P.9).
3. Appellants' permanently moved to Massachusetts from New Hampshire in February 2018.
4. Appellant testified that health insurance was not available through his through his employer because he was the only person receiving a payment. (Testimony of Appellant, Exhibit 2(a), P.9).

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

5. Appellant testified they had previously been insured in New Hampshire through a public insurer.
6. Appellant testified they incurred approximately \$20,000 in out of pocket uninsured medical expenses for treatment of Appellant Spouse and Daughter for Lyme Disease. (Testimony of Appellant, Exhibit. 2(a), P.1-9).
7. Appellants' Federal Adjusted Gross Income for 2018 was \$44,593 (Exhibit 1).
8. Appellants have been assessed a tax penalty for twelve (12) months in 2018. The Appellants have appealed this assessment (Exhibits 1, 2).
9. Appellant testified they investigated insurance through the Connector but when they weighed the costs of paying the premiums versus paying for the Appellant Spouse and Daughter's uninsured out of pocket medical treatment costs versus the premiums they could not afford same. (Testimony of Appellant, Exhibit. 2(a), P.9).
10. Appellants had the following monthly expenses for basic necessities in 2018: Rent \$2,100/month, Utilities \$400/month, Car Payments \$1,000/month, Car Insurance \$416/month, Gas: \$400/month, Food \$400.00, totaling \$4,716/month. They purchased one of the vehicles for approximately \$16,000 and were paying \$1,000 per month in payments. They also paid out portions of the uninsured medical treatment on their credit card and carried a balance of approximately \$6,000 to \$8,000 per month which they were attempting to pay down. These monthly expenses did not include the out of pocket uninsured medical expenses. (Testimony of Appellant, Exhibit 2(a), P.9).
11. According to Table 3 Appellant could have afforded \$183.95 per month for government-sponsored program health insurance in 2018. According to Table 4 Appellant could have purchased private market insurance insurance for \$865.00 per month.
12. In addition to the foregoing, I take administrative notice of the 2018 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov/dor/docs/dor/health-care/2018>, and in particular, Tables 1-6 which, as discussed below, include the Affordability Schedule and other financial information used in making 2018 individual mandate tax penalty determinations.

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived, either in whole or in part. Appellants have been assessed a tax penalty for twelve (12) months in 2018. Appellants have appealed the penalty. The Appellants have appealed this assessment claiming that the expense of purchasing health insurance would have caused her a serious deprivation of basic necessities. See Exhibits 1 and 2.

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

To determine if Appellants' penalty should be waived in whole or in part, we must consider whether affordable insurance which met minimum creditable coverage standards was available to the appellant through employment, through the private market, or through a government-sponsored program. If affordable insurance was available, we

must determine if such insurance was, in fact, not affordable to the Appellants because Appellants experienced a financial hardship as defined in 956 CMR 6.08. Appellant credibly testified that health insurance was not available through his employer as he was one of the only employees. (Testimony of Appellant).

According to Table 3 of Schedule HC for 2018, the Appellants had an adjusted gross income of \$44,593.00 in 2018 and could have afforded \$183.95 per month. According to Table 4, the Appellants, ages 49 and 47 with a family of three and living in Essex County during the time they were being penalized for not having insurance, could have purchased private market insurance for \$865.00 per month. Coverage was not affordable through the private market for the Appellants in 2018 (Schedule HC for 2018).

Appellants had access to health insurance through the ConnectorCare program See Table 2 of Schedule HC. Since Appellant had access to insurance through the ConnectorCare program, we need to determine if he experienced a financial hardship such the coverage would have been unaffordable for them. See 956 CMR 6.08. et. seq.

Appellants had the following monthly expenses for basic necessities in 2018 totaling \$4,716/month: Rent \$2,100/month, Utilities \$400/month, Car Payments \$1,000/month, Car Insurance \$416/month, Gas: 400/month, Food \$400.00. Those expenses were subsumed in their regular monthly pre-tax income, thereby making coverage under the Connectorcare program with premium of \$183.95/month unaffordable. (Exhibit 2, Testimony of Appellant).

Given that the Appellant’s moved permanently to Massachusetts in February 2018 and incurred significant essential expenses for out of pocket non covered medical treatment for the Appellant Spouse and Daughter, the cost of basic monthly expenses for necessities forced him to make choices to pay for living expenses rather than purchasing health insurance, I determine that pursuant to 956 CMR 6.08 (1)(a)(c), (e) the cost of purchasing health insurance would have caused the appellant to experience a serious deprivation of basic necessities.

The Appellant’s penalty is, therefore, waived.

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

PENALTY ASSESSED

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Hearing Officer

ADDENDUM

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

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-575

Appeal Decision: Appeal Approved.

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: February 28, 2020

Decision Date: March 6, 2020

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 28, 2020. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated January 7, 2020.
- Exhibit 2: Appeal Case Information from Schedule HC 2018.
- Exhibit 3: Statement of Grounds for Appeal, with attachments, dated May 2, 2019.
- Exhibit 4: The Appellant's letter requesting that Health Connector vacate a prior dismissal after the Appellant failed to appear for a hearing scheduled on September 25, 2019, with attachments.
- Exhibit 5: A copy of a Health Connector Appeals Unit Final Appeal Decision of the 2017 Tax Penalty dated December 17, 2018.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant turned 31 years old in October 2018. The Appellant filed their Federal Income Tax return as a single person with no dependents claimed (Exhibit 2).
2. The Appellant lived in Suffolk County, MA in 2018 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2018 was \$29,508 (Exhibit 2 and Appellant Testimony).
4. The Appellant did not have health insurance for any months in tax year 2018 (Exhibit 2 and Appellant Testimony).

5. The Appellant has been assessed a twelve-month tax penalty for 2018. The Appellant filed an appeal of the assessment in May 2019 (Exhibits 2, 3, 4 and Appellant Testimony).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
7. In accordance with Table 3 of Schedule HC for 2018, the Appellant filing the Federal tax return as a single person, with no dependents claimed, with an annual adjusted gross income of \$29,508 could afford to pay \$103 per month for health insurance. In accordance with Table 4, the Appellant, age 31, living in Suffolk County, could have purchased private insurance for \$282 per month for a plan (Schedule HC for 2018). Private insurance was not affordable for the Appellant in 2018.
8. The Appellant testified that the health insurance offered by their employer during the periods of January through June and September through December cost more than \$120 per month. This is more than the \$103 deemed affordable in accordance with Table 3 of Schedule HC for 2018. No insurance was offered by the Appellant's employer for the months of July and August (Schedule HC 2018 and Appellant Testimony).
9. The Appellant would have been eligible for ConnectorCare coverage in 2018 because the Appellant's income was less than 300% of the federal poverty level, which was \$36,180 in 2018. The Appellant had no access to affordable insurance through employment in tax year 2018 (See Table 2 of Schedule HC-2018 and 956 CMR 12.04) (Exhibit 4 and Appellant Testimony).
10. The Appellant testified that they were employed as a substitute teacher from January through June and September through December. They worked at a summer camp and Uber during the months of July and August in tax year 2018. The Appellant said that they were not paid for holidays, vacation periods or any other days school was not in session. The Appellant said that they were aware of the ConnectorCare program but could not afford to pay a monthly health insurance premium because of their fluctuating income. I found the Appellant to be credible (Appellant Testimony).
11. The Appellant's 2018 monthly living expenses of \$2,828 included: rent, heat and electricity-\$700; telephone-\$48; car payment-\$291; car insurance-\$300; gasoline-\$173; food- \$498; student loans-\$193.50; and credit cards-\$624. The Appellant also indicated that they had to pay back an overpayment of unemployment compensation in the amount of \$168. The Appellant testified that they struggled to meet these expenses with their limited income (Exhibit 4 and Appellant Testimony).
12. In tax year 2018 the Appellant was not facing eviction, did not receive any utility shut off notices and did not incur unexpected expenses as a result of a family emergency, natural or other human caused disaster (Appellant Testimony).
13. The Appellant is currently uninsured (Appellant Testimony).

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellant did not have health insurance during any months of tax year 2018. The Appellant has been assessed a twelve-month penalty. The Appellant asserts that the penalty should not apply in this case because of financial hardship. To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met minimum creditable coverage standards was available to the Appellant through employment, through private insurance, or through a government sponsored program. If affordable insurance was available, it must be determined if such insurance was not affordable to the Appellant because the Appellant experienced a financial hardship as defined in 956 CMR 6.08.

In accordance with Table 3 of Schedule HC for 2018, the Appellant filing the Federal tax return as a single person with no dependents claimed with an adjusted gross income of \$29,508 could afford to pay \$103 per month for health insurance. According to Table 4, the Appellant, age 31, living in Suffolk County, could have purchased a private insurance plan for \$282 per month. See Schedule HC for 2018. Private insurance was not affordable for the Appellant in tax year 2018.

The Appellant had no access to affordable employer-sponsored health insurance in 2018. The cost of the insurance offered through their employer from January through June and September through December was more than \$120 per month and therefore not affordable in accordance with Table 3 of Schedule HC for 2018. The Appellant’s employer for the months of July and August did not offer health insurance. The Appellant would have been eligible for ConnectorCare coverage based upon the Appellant’s income which was less than \$36,180. See Table 2 of Schedule HC 2018 and 956 CMR 12.04 for eligibility criteria. Since affordable insurance was available to the Appellant in 2018, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1).

The Appellant testified credibly that for the periods of January through June and September through December they were employed as a substitute teacher. In July and August, the Appellant worked for a summer camp and Uber. The Appellant’s income fluctuated because they were not paid for holidays, vacation periods or other times when school/camp were not in session. The Appellant verified monthly living expenses that exceeded their monthly income. The Appellant would not have been able to pay a monthly health care premium and meet these expenses.

Based on the evidence and testimony in this administrative record, the Appellant has demonstrated that the cost of purchasing health insurance would have caused the Appellant to experience a serious financial hardship. See 956 CMR 6.08(1)(e). The Appellant’s twelve-month penalty is therefore waived.

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2018. The Appellant should not assume that a similar determination will be made for subsequent tax years should they again be assessed a penalty for failure to have health insurance.

PENALTY ASSESSED

Number of Months Appealed: ____12____ Number of Months Assessed: __0____

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18653

Appeal Decision : Penalty waived in full
Hearing Issue: Appeal of the 2018 Tax Year Penalty
Hearing Date: January 13, 2020
Decision Date: March 16, 2020

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

One of the appellants appeared at the hearing, which was held by telephone on January 13, 2020. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. The appellant testified. At the end of the hearing, the record was left open until February 5, 2020 to give the appellants time to submit additional evidence. Documents were received by the Connector from the appellants on January 29th; these were forwarded to the hearing officer. They have been marked as exhibits and admitted in evidence. The record is now closed.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2018
- Exhibit 2: Statement of Grounds for Appeal 2018 signed and dated by Appellants on May 3, 2019 with letters of support attached
- Exhibit 3: Notice of Hearing sent to Appellant dated September 10, 2019 for hearing on October 15, 2019
- Exhibit 4: Letter from Appellant requesting vacating of dismissal to Connector dated October 24, 2019
- Exhibit 5: Notice of Hearing sent to Appellant dated December 4, 2019 for hearing on January 13, 2020
- Exhibit 6: Emails between Appellant and Human Resources department regarding Appellant's resignation
- Exhibit 7: Acceptance letter to Appellant date February 26, 2018 for graduate studies in California
- Exhibit 8: Appellant's earning statement, July 1-July 18, 2018, Massachusetts employment
- Exhibit 9: Appellant's earning statement, June 1 and June 16, 2018, California employment
- Exhibit 10: Appellant's lease for New York apartment, November 1, 2017-August 31, 2018
- Exhibit 11: Massachusetts Department of Revenue, Notice of Penalty Abatement Determination sent to Appellant, dated August 13, 2019
- Exhibit 12: Appellant's letter to Connector dated January 23, 2020
- Exhibit 13: Appellant's Form MA 1099-HC, 2018

FINDINGS OF FACT:

The record shows, and I so find:

1. Appellants were both 30 years old in 2018. They filed their 2018 Massachusetts tax return jointly with no dependents claimed. One lived in Massachusetts until July, 2018 when she moved to California. The other appellant did not live in Massachusetts in 2018. He lived in New York until the fall when he also moved to California where the appellants got married in November (Testimony of Appellant, Exhibits 1, 2, 10).

2. One of the appellants worked as a nurse in the Commonwealth until mid-July, 2018. When she filed her Massachusetts tax return, she indicated that she was a part-year resident. This appellant had health insurance which met the Commonwealth's minimum creditable coverage standards from January through July (Testimony of Appellant, Exhibit 13).

3. Appellants have both been assessed a penalty for three months. Appellants have appealed this assessment (Exhibits 1 and 2).

ANALYSIS AND CONCLUSIONS OF LAW

The appellants have both been assessed a tax penalty for three months in 2018. The appellants have appealed the penalty. See Exhibits 1 and 2. The issue on appeal is whether the tax penalty assessed 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.

One of the appellants resided in the Commonwealth until July, 2018. This appellant then moved to California. She indicated on her Massachusetts tax return that she was a part-year resident. Before she moved in July, 2018, she had health insurance which met the Commonwealth's minimum creditable coverage standards. See the testimony of the appellant which I find to be credible and Exhibits 1 and 13 which corroborate the testimony. This appellant's penalty is waived. She had coverage while in the Commonwealth and then became a resident of another state. See Massachusetts General Laws, Chapter 111M, Section 2.

The other appellant did not reside in the Commonwealth at any time in 2018. He lived in New York, and then California where he married the other appellant. See the testimony of the appellant which I find to be credible and Exhibits 2 and 10. Because he was not a resident of the Commonwealth, his penalty is waived. See Massachusetts General Laws, Chapter 111M, Section 2.

Appellants should note that this waiver of the penalty is based upon the facts that I have determined to be true for this 2018 appeal. Appellants should not assume that a similar determination will be made in the future should Appellants 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 2018.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

CC. Connector Appeals Unit

Hearing Officer

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18664

Appeal Decision: The penalty is overturned in full
Hearing Issue: Appeal of the 2018 Tax Year Penalty
Hearing Date: October 17, 2019
Decision Date: March 11, 2020

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 October 17, 2019. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified. After the hearing, the record was reopened to give the appellant time to submit additional evidence. Documents were received from the appellant on February 24, 2020 by the Connector. These were then forwarded to the hearing officer. The documents were marked as exhibits and admitted in evidence. The record is now closed.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2018
- Exhibit 2: Statement of Grounds for Appeal 2018 signed and dated by Appellant on May 2, 2019 with letter in support attached
- Exhibit 3: Notice of Hearing sent to Appellant dated September 10, 2019 for October 17, 2019 hearing
- Exhibit 4: Appellant's visa and passport documents, 2018, including U.S. Department of State Certificate of Eligibility for Exchange Visitor Status (J-nonimmigrant), dated December 14, 2017
- Exhibit 5: Appellant's travel insurance documents for J-1 visa, January 1, 2018-August 31, 2018
- Exhibit 6: Appellant's 2018 MA Form 1099-HC and 2018 1095-B
- Exhibit 7: Letter to Hearing Officer from Appellant dated February 16, 2020
- Exhibit 8: Appellant's 2018 W-2 form
- Exhibit 9: Invoice for travel insurance and program fees for internship program

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2018 Massachusetts tax return as a single individual with no dependents claimed, was 26 years old in 2018 (Exhibit 1, Testimony of Appellant).
2. Appellant had a Federal Adjusted Gross income of \$45,623 in 2018. Appellant received a salary and earned the same amount each month in 2018 (Exhibits 1, 7, and 8).

3. Appellant came to the United States from Canada on a visa which was valid from January 3, 2018 until January 2, 2019. He was admitted to the United States on a J-nonimmigrant visa which allows the recipient of the visa to remain in the United States as a visitor for one year in an internship program. As required by the State Department, under the J-1 visa, Appellant purchased a travel health insurance which covered him from January 1, 2018 through August 31, 2018 (Exhibits 4, and 5, Testimony of Appellant).
4. After the appellant arrived in the United States, he worked as an intern and lived in Suffolk County. In September, he moved to Middlesex County. His status in the United States was temporary. He was in the process of applying for and obtaining Canadian citizenship (Testimony of Appellant, Exhibit 2 attachment).
5. In August, 2018, Appellant returned to Canada and became a Canadian citizen. He then applied for and obtained a TN-nonimmigrant visa which allowed him to return and remain in the United States and work (Testimony of Appellant, Exhibit 4).
6. After Appellant obtained Canadian citizenship and a TN visa, the firm at which he had done his internship offered Appellant a permanent job which he accepted. The firm also offered him health insurance which met the Massachusetts minimum creditable coverage standards. The coverage became effective November 1, 2018, the earliest date possible (Testimony of Appellant, Exhibits 2, 5, and 6).
7. Appellant was not offered health insurance by his employer until he was hired as a permanent employee in November, 2019. Once Appellant was offered coverage, he enrolled. The coverage met the Commonwealth's minimum creditable coverage standards (Testimony of Appellant, Exhibit 1).
8. The appellant has been assessed a tax penalty for seven months, January through July, 2018. The appellant has appealed the assessment (Exhibits 1, 2).
9. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
10. According to Table 3 of Schedule HC for 2018, the appellant with no dependents claimed with an adjusted gross income of \$45,623 could afford to pay \$288 per month for health insurance. According to Table 4, Appellant, age 26 and living in Suffolk County, could have purchased insurance for \$249 per month for a plan for an individual. Insurance on the non-group market was affordable for the appellant (Schedule HC for 2018-Tables 3 and 4, Exhibit 1).
11. According to Table 2 of Schedule HC for 2018, Appellant earning more than \$36,180, the income limit for an individual, would have been ineligible for the ConnectorCare program (Exhibit 1, Table 2 of Schedule HC-2018).
12. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2018 (Testimony of Appellant).
13. Appellant did not receive any shut-off notices for a basic utilities in 2018 (Testimony of Appellant).
14. Appellant did not fall more than 30 days behind in his rent payments in 2018 (Testimony of Appellant).

15. Appellant had the following monthly expenses for basic necessities in 2018: rent and heat- \$1,500; electricity- \$20; telephone and internet- \$72; food and household and personal care items- \$1,000; clothing-\$125; public transportation-\$150. In addition, Appellant paid \$840 for his travel/.medical insurance which he had to have in order to enter the United States under his J-I visa. He also had transportation expenses to get to the United States, then to Canada, and back to Massachusetts. He had \$2,000 taken from his earnings to cover Massachusetts income tax and \$3,648 taken out to cover Federal taxes (Testimony of Appellant, Exhibits 8 and 9).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

The appellant had health insurance which met the Commonwealth’s minimum creditable coverage standards in November and December, 2018. He has been assessed a seven-month tax penalty only (January through July) since he is entitled to a three-month grace period before obtaining his insurance at the beginning of November. See Massachusetts General Laws, Chapter 111M, Section 2. We need to determine if the penalty should be waived or not. The appellant has appealed the assessment. See Exhibits 1, 2.

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

According to Table 3 of Schedule HC for 2018, the appellant who filed Massachusetts taxes as an individual with no dependents claimed with a Federal adjusted gross income of \$45,623 could afford to pay \$288 per month for health insurance. According to Table 4, Appellant, 26 years old and living in Suffolk County, could have purchased insurance for \$249 per month for a plan for an individual. Insurance on the individual market was affordable to the appellant. See Schedule HC for 2018, Tables 3 and 4, Exhibit 1.

Appellant was employed as an intern from January through August. He was not offered health insurance through his employment. As soon as his employer offered Appellant a permanent job, he was offered and enrolled in a health insurance plan which met the Commonwealth’s minimum creditable coverage standards. He had no access to employer-sponsored health insurance until November, 2018. See the testimony of the appellant which I find to be credible.

Appellant was not income-eligible for ConnectorCare coverage. He earned more than \$36,180, the income limit for an individual. See Table 2 of Schedule HC for 2018; 956 CMR 12.00 et.seq. and Exhibit 1.

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

The appellant had the following monthly expenses for basic necessities in 2018: rent and heat- \$1,500; electricity- \$20; telephone and internet- \$72; food and household and personal care items- \$1,000; clothing-\$125; public transportation-\$150. In addition, Appellant paid \$840 for his travel /medical insurance which he had to have in order to enter the United States under his J-I visa. He also had transportation expenses to get to the United States, then to Canada, and back to Massachusetts. He had \$2,000 taken from his earnings to cover Massachusetts income tax, and \$3,648 taken out for Federal taxes. See Exhibits 4, 8 and 9, and the testimony of the appellant which I find to be credible.

Appellant's income before taxes was about \$3,800 a month. His expenses for basic necessities, including the cost of the travel insurance he had to obtain in order to enter the United States, amounted to about \$3,000. In addition, Appellant had \$2,000 taken out of his earnings over the year to pay for state taxes, and \$3648 taken out for Federal taxes. Appellant also had to pay for travel to the United States, to Canada, and back to the United States. Health insurance through the Connector would have cost him at least \$249 a month. See Table 4, Schedule HC-2018.

Based upon these facts, I determine that the appellant had a financial hardship such that the cost of health insurance was unaffordable pursuant to 956 CMR 6.08(1)(e). The cost of purchasing insurance could have caused him to experience a serious deprivation of basic necessities. This is so even if he received some amount of the taxes he paid returned to him.

Appellant's penalty is, therefore, fully waived because of financial hardship.

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

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

CC. Connector Appeals Unit

Hearing Officer

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18745

Appeal Decision: The penalty is overturned in full.

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: January 13, 2020

Decision Date: March 8, 2020

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellants appeared at the hearing which was held by telephone on January 13, 2020. The procedures to be followed during the hearing were reviewed with Appellants who were then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellants. Appellants testified.

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

Exhibit 1: Appeal Case Information from Schedule HC 2018

Exhibit 2: Statement of Grounds for Appeal 2018 signed and dated by Appellants on May 13, 2019 with letter in support attached

Exhibit 3: Notice of Hearing sent to Appellant dated September 23, 2019 for October 31, 2019 hearing

Exhibit 4: Letter from Appellant to Connector received on November 25, 2019 requesting rescheduled hearing

Exhibit 5: Notice of Hearing sent to Appellant dated December 4, 2019 for January 13, 2020 hearing

FINDINGS OF FACT

The record shows, and I so find:

1. Appellants, who filed a 2018 Massachusetts tax return jointly as a married couple with no dependent claimed, were 24 and 27 years old in 2018. They were married at the end of September, 2018. They lived together all year (Exhibit 1, Testimony of Appellant).
2. Appellants who lived in Hampshire County in 2018 had a Federal adjusted gross income of \$79,365. One spouse earned about \$47,000. The other earned about \$32,000 (Exhibit 1, Testimony of Appellant).
3. One of the appellants was employed all year at the same job. He was paid \$12 an hour for forty hours a week. Some weeks, he earned overtime pay. He was not offered health insurance by his employer. He was uninsured all year. After he and the other appellant married, he became eligible to enroll in his spouse's plan with an effective start date of January 1, 2019. He did enroll and was insured all of 2019 (Testimony of Appellant).

4. The other appellant, who was employed all year, was insured all of 2018 through employment. She paid \$70 a month for her coverage. She was also insured all of 2019 (Testimony of Appellant, Exhibit 1).
5. Appellant who was uninsured has been assessed a tax penalty for all of 2018. The appellant has appealed this assessment (Exhibits 1, 2, and Testimony of Appellant).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
7. According to Table 3 of Schedule HC for 2018, the appellants who filed a Massachusetts taxes jointly with no dependents claimed with a Federal adjusted gross income of \$79,365 could afford to pay \$532 per month for health insurance. According to Table 4, Appellants, 24 and 27 years old and living in Hampshire County, could have purchased insurance for \$459 per month for a plan for a couple. If only the uninsured appellant wanted coverage, a plan was available for \$230. Insurance on the individual market was affordable to the appellants (Schedule HC for 2018, Tables 3 and 4, Exhibit 1; Testimony of Appellant).
8. Prior to his marriage, the uninsured Appellant would have been eligible for ConnectorCare coverage based upon his income, less than \$36,180, and based upon his lack of access to coverage through employment (Testimony of Appellant, Exhibit 1, Schedule HC-2018, Table 2).
9. Appellants did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2018 (Testimony of Appellant).
10. Appellants did not fall more than thirty days behind in rent payments in 2018 (Testimony of Appellant).
11. Appellants did not have any shut-off notices or terminations of utilities in 2018 (Testimony of Appellant).
12. Prior to his marriage, the uninsured appellant had the following monthly expenses for basic necessities: rent-\$350; heat and electricity-\$0.00; telephone-\$130; car payment-\$214; car insurance-\$197; gas-\$150; car repairs-\$30; food and household supplies-\$325; clothing-\$150. In addition, the appellant had expenses of about \$5,000 because of his marriage (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

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

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

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

One of the appellants had health insurance for all of 2018. She has not been assessed a penalty. The other was uninsured all year; he has been assessed a penalty for twelve months. The appellant who has been assessed a penalty obtained coverage which met the Commonwealth's minimum creditable coverage standards with an effective start date of January 1, 2019. Since Appellant is entitled to a three-month grace period prior to obtaining coverage, the appellant's penalty for October through December, 2018 is waived. See Massachusetts General Laws, Chapter 111M, Section 2. See Exhibits 1, 2 and the testimony of the appellant which I find to be credible.

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

One appellant had access to affordable health insurance which met the Commonwealth's standards through employment. This appellant was insured all year. The other appellant was also employed all year, but he was not offered health insurance by his employer. The appellants did not marry until the end of September. The uninsured appellant could not be added to the plan the other appellant had until after the marriage. After the marriage, the appellant did obtain coverage with an effective start date of January 1, 2019. See the testimony of the appellants which I find credible.

According to Table 3 of Schedule HC for 2018, the appellants who filed a Massachusetts taxes jointly with no dependents claimed with a Federal adjusted gross income of \$79,365 could afford to pay \$532 per month for health insurance. According to Table 4, Appellants, 24 and 27 years old and living in Hampshire County, could have purchased insurance for \$459 per month for a plan for a couple. One appellant had coverage which cost \$70 a month. If only the uninsured appellant wanted coverage, a plan was available for \$230. Coverage for both would have cost \$300 or considerably less than the amount deemed affordable for them as a couple. Insurance on the individual market was affordable to the appellants. See Schedule HC for 2018, Tables 3 and 4, Exhibit 1; and the testimony of Appellant which I find to be credible.

Since affordable coverage was available on the individual market, we need to determine if the uninsured appellant, prior to his marriage, had a financial hardship so that insurance would not have been affordable for him. See 956 CMR 6.08(1)(a, b, d, and e) and 6.08 (3).

Appellant earned \$12 an hour and worked forty hours a week. He earned \$480 a week before taxes (about \$2,000 a month). He did earn some overtime, but not consistently. If we take into account his expenses for basic necessities and the expenses he had because he was getting married, his expenses came to over \$2,000 a month. See the testimony of the appellant which I find to be credible. Insurance would have cost about \$230 a month. See Table 4, Schedule HC, 2018. Appellant would have been left with no disposable income and might have run a deficit some months (depending upon when he earned overtime) if he purchased insurance. Based upon this, I find that pursuant to 956 CMR 6.08(1)(e) and 6.08(3), the appellant experienced a financial hardship. I also note that as soon as health insurance under his spouse's plan became available to him, Appellant enrolled.

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

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18750

Appeal Decision: The penalty is overturned in full.

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: January 13, 2020

Decision Date: March 10, 2020

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

One of the appellants appeared at the hearing which was held by telephone on January 13, 2020. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellants. Appellant testified.

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

Exhibit 1: Appeal Case Information from Schedule HC 2018

Exhibit 2: Statement of Grounds for Appeal 2018 signed and dated by Appellant on May 15, 2019 with letter in support attached

Exhibit 3: Notice of Hearing sent to Appellant dated September 27, 2019 for November 5, 2019 hearing

Exhibit 4: Connector Appeals letter dated November 7, 2019 to Appellant dismissing appeal

Exhibit 5: Letter from Appellant to Connector received on November 24, 2019 requesting rescheduled hearing

Exhibit 5: Notice of Hearing sent to Appellant dated December 4, 2019 for January 13, 2020 hearing

FINDINGS OF FACT

The record shows, and I so find:

1. Appellants, who filed a 2018 Massachusetts tax return jointly as a married couple with no dependent claimed, were 31 and 21 years old in 2018 (Exhibit 1, Testimony of Appellant).
2. One of the appellants lived in Hampshire County in 2018. The other lived out of the United States until October when she moved in with her spouse. They had a Federal adjusted gross income of \$34,386 (Exhibit 1, Testimony of Appellant).
3. One of the appellants was employed the first six months of 2018. Appellant was a contract worker and was paid by the hour. Appellant was offered health insurance by his employer which cost \$231 a month. Appellant did not enroll in the offered plan. After he lost his job, he went out of the country for over a month to visit his wife. He was unemployed the rest of the year after he returned to the Commonwealth. His spouse, who lived out of the country until the fall, was unemployed all year (Testimony of Appellant).

4. One of the appellants had health insurance which met the Commonwealth's minimum creditable coverage standards in January, and from September through December, 2018. Appellant thought this coverage was either through the Connector or MassHealth. He has been assessed a four-month penalty, May through August. The other appellant, who did not live in the United States until October, had coverage in November and December. She has not been assessed a penalty (Testimony of Appellant, Exhibit 1).
5. Appellant has appealed this assessment (Exhibits 1, 2, and Testimony of Appellant).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
7. According to Table 3 of Schedule HC for 2018, the appellants who filed a Massachusetts taxes jointly with no dependents claimed with a Federal adjusted gross income of \$34,386 could afford to pay \$178 per month for health insurance. According to Table 4, Appellants, 21 and 31 years old and living in Middlesex County, could have purchased insurance for \$564 per month for a plan for a couple. If only the uninsured appellant wanted coverage, a plan was available for \$282. Insurance on the individual market was unaffordable to the appellants (Schedule HC for 2018, Tables 3 and 4, Exhibit 1; Testimony of Appellant).
8. Appellant would have been eligible for ConnectorCare coverage based upon his income, less than \$48,720 for a household of two (Testimony of Appellant, Exhibit 1, Schedule HC-2018, Table 2).
9. Appellants did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2018 (Testimony of Appellant).
10. Appellants did not fall more than thirty days behind in rent payments in 2018 (Testimony of Appellant).
11. Appellants did not have any shut-off notices or terminations of utilities in 2018 (Testimony of Appellant).
12. Appellants had the following monthly expenses for basic necessities: rent, including heat-\$1,010; electricity-\$11; telephone-\$100; car payment-\$325; car insurance-\$60; gas-\$120; food and household supplies-\$600; clothing-\$75; student loan payments-\$232. In addition, the appellant spent on average \$1,100 a month supporting his parents and sister (Testimony of Appellant, Exhibit 2 attachment).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

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

One of the appellants has not been assessed a penalty. The other was uninsured February through August; he has been assessed a penalty for four months, May through August. The appellant who has been assessed a penalty obtained had coverage which met the Commonwealth's minimum creditable coverage standards in January and has been given a grace period of three months after losing the coverage. See Massachusetts General Laws, Chapter 111M, Section 2. See Exhibits 1, 2 and the testimony of the appellant which I find to be credible.

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

According to Table 3 of Schedule HC for 2018, the appellants who filed a Massachusetts taxes jointly with no dependents claimed with a Federal adjusted gross income of \$34,386 could afford to pay \$178 per month for health insurance. According to Table 4, Appellants, 21 and 31 years old and living in Middlesex County, could have purchased insurance for \$564 per month for a plan for a couple. If only the uninsured appellant wanted coverage, a plan was available for \$282. Insurance on the individual market was unaffordable to the appellants. See Schedule HC for 2018, Tables 3 and 4, Exhibit 1; and the testimony of Appellant which I find to be credible.

One appellant did not arrive in the United States until October, 2018. Once she arrived, she was unemployed. Her spouse worked from January through June as a contracted employee. He was offered health insurance for \$231 a month by his employer. Appellant did not opt for this coverage because he felt he could not afford it. According to the guidelines in Schedule HC for 2018, the appellant was deemed unable to afford this amount. According to Table 3, he could afford only \$178. Affordable health insurance was, therefore, not available to the appellant through employment. See the testimony of the appellant which I find to be credible, and Exhibit 2, attachment.

Appellant was income-eligible for ConnectorCare coverage. He earned under the income limit for a two-person household (\$48,720) for 2018. See the testimony of the appellant which I find to be credible, Exhibit 1, Table 2 of Schedule HC for 2018 and 956 CMR 12.00 et.seq. However, the coverage, which is subsidized in part by an advance premium tax credit, is available to an individual who has access to insurance through employment only if the offered insurance is unaffordable. Pursuant to the Affordable Care Act, if employer-sponsored health insurance is offered and if the cost to the employee in 2018 is less than 9.56% of the employee's modified adjusted gross income, then the coverage is deemed affordable and the employee is not eligible for an advance premium tax credit. See 45 CFR Section 155.305(f). 9.56% of the appellant's modified adjusted gross income of \$34,386 equals \$3,287. This amount divided by twelve equals \$273, the amount the appellant is deemed able to afford according to the Affordable Care Act. Coverage through his job cost \$231 per month. The coverage was deemed affordable pursuant to the Affordable Care Act. The appellant was, therefore, ineligible for ConnectorCare coverage because he was ineligible for any advance premium tax credit. See Exhibit 1.

Appellant had no access to affordable coverage during 2018. No affordable coverage was available to him through employment, the non-group market, and through the Connector. There is no evidence in the record that the appellant had access to any other government-sponsored programs.

Since no affordable coverage through the ConnectorCare program was available, the appellant penalty is waived.

Even if the affordable coverage was available, the appellant's penalty would be waived because of financial hardship defined in 956 CMR 6.08(1-3). Appellant had the following monthly expenses for basic necessities: rent, including heat-\$1,010; electricity-\$11; telephone-\$100; car payment-\$325; car insurance-\$60; gas-\$120; food and household supplies-\$600; clothing-\$75; student loan payments-\$232. In addition, the appellant spent on average \$1,100 a month supporting his parents and sister. These expenses came to over \$2,500, not including the \$1,100 he spent to help support his parents and sister. His income came to about \$2,850 before taxes. He was also unemployed for half the year. See the testimony of the appellant which I find to be credible.

Based upon the facts summarized above, I find that pursuant to 956 CMR 6.08(1)(e) and 6.08(3), the appellant experienced a financial hardship; the cost of purchasing health insurance would have caused Appellant to experience a serious deprivation of basic necessities. 956 CMR 6.08(3) allows the consideration of other financial issues raised by the appellant.

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

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-835

Appeal Decision: Appeal Approved.

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: February 28, 2020

Decision Date: March 6, 2020

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 28, 2020. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated January 27, 2020.
- Exhibit 2: Appeal Case Information from Schedule HC 2018.
- Exhibit 3: Statement of Grounds for Appeal dated May 18, 2018.
- Exhibit 4: Travel documents submitted by the Appellant with their appeal request.
- Exhibit 5: The Appellant's December 12, 2019 request to reschedule the hearing missed on November 13, 2019, with attachments.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant turned 24 years old in July 2018. The Appellant filed their Federal Income Tax return as a single person with no dependents claimed (Exhibit 2).
2. The Appellant reported that they were a full-year resident of Massachusetts living in Middlesex county in tax year 2018 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2018 was \$47,500 (Exhibit 2, Appellant Testimony).
4. The Appellant had employer sponsored health insurance for the period of January through July but did not have health insurance for the period of August through December in tax year 2018 (Exhibit 2 and Appellant Testimony).

5. The Appellant has been assessed a two-month tax penalty for 2018. The Appellant filed an appeal of the assessment in May 2018 (Exhibits 2, 3, 4).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
7. In accordance with Table 3 of Schedule HC for 2018, the Appellant filing the Federal tax return as a single person with no dependents claimed, with an annual adjusted gross income of \$47,500 could afford to pay \$301 per month for health insurance. In accordance with Table 4, the Appellant, age 24, living in Middlesex County, could have purchased private insurance for \$249 per month for a plan (Schedule HC for 2018). Private insurance was affordable for the Appellant in tax year 2018.
8. The Appellant would not have been eligible for ConnectorCare coverage in 2018 because the Appellant's income was greater than 300% of the federal poverty level, which was \$36,180 in 2018. The Appellant did not have access to employer-sponsored insurance during the period of August through December in tax year 2018 (See Table 2 of Schedule HC-2018) (Appellant Testimony).
9. The Appellant testified that they were living with their parents in the first eight months of 2018. The Appellant said that they left Massachusetts on August 10, 2018 did not return until January 2019. The Appellant explained that they terminated their employment to volunteer for two overseas nonprofit organizations. The first assignment lasted two weeks and the Appellant paid for their living expenses using their savings. From September through December the Appellant said that they lived with relatives while working for a nonprofit. The Appellant testified that they had no income during the period of August through December in tax year 2018. The Appellant said that health insurance in the country in which they were volunteering is not available. The cost of maintaining health insurance in Massachusetts that they could not use overseas would have caused the Appellant to experience a significant financial hardship. The Appellant's credible testimony is supported by documents verifying dates of international travel (Exhibit 4 and Appellant Testimony).

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellant filed their income tax return as a single person with no dependents claimed. The Appellant claimed full year Massachusetts residency in Middlesex county during tax year 2018. The Appellant did not have health insurance that met Massachusetts minimum creditable coverage standards for the five-month period of August through December and has consequently been assessed a two-month tax penalty for tax year 2018.

The Appellant asserts that the penalty should not apply in this case because of their unique circumstances in tax year 2018. 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 2018, the Appellant filing the Federal tax return as a single person with no dependents claimed with an adjusted gross income of \$47,500 could afford to pay \$301 per month for health insurance. According to Table 4, the Appellant, age 24, living in Middlesex County, could have purchased a private insurance plan for \$249 per month. See Schedule HC for 2018. Private insurance was affordable for the Appellant in tax year 2018.

The Appellant had no access to affordable employer-sponsored health insurance during the period of August through December in tax year 2018. The Appellant would not have been eligible for ConnectorCare coverage based upon the Appellant's income which was greater than \$36,180. See Table 2 of Schedule HC 2018 and 956 CMR 12.04 for eligibility criteria. Since affordable insurance was available to the Appellant in 2018, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1).

The Appellant testified credibly that they left Massachusetts in July 2018 to perform volunteer work for two overseas nonprofit agencies. The Appellant spent time in two locations and primarily lived with relatives while doing volunteer work. The Appellant had no income during the period of June through December. The cost of maintaining health insurance in Massachusetts that could not be used where the Appellant was living would have caused the Appellant to experience a serious financial hardship. See 956 CMR 6.08(1)(e). The Appellant's two-month penalty is therefore waived.

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2018. The Appellant should not assume that a similar determination will be made for subsequent tax years should they again be assessed a penalty for failure to have health insurance.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18897

Appeal Decision: The penalty is overturned in full
Hearing Issue: Appeal of the 2018 Tax Year Penalty
Hearing Date: January 24, 2020
Decision Date: March 26, 2020

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on January 24, 2020. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2018
- Exhibit 2: Statement of Grounds for Appeal 2018 signed and dated by Appellant on May 30, 2019 with letter in support attached
- Exhibit 3: Notice of Hearing sent to Appellant dated October 25, 2019 for December 3, 2019 hearing
- Exhibit 4: Notice of Hearing sent to Appellant dated December 16, 2019 for January 24, 2020 hearing
- Exhibit 5: Connector Appeals Unit email to Appellant and Appellant's response dated January 24, 2020
- Exhibit 6: Appellant's mother's obituary
- Exhibit 7: Notice sent to Appellant from hospital regarding payment plan termination dated June 10, 2017
- Exhibit 8: Appellant's past due medical bills in collection dated March 20, 2018-April 24, 2018
- Exhibit 9: Appellant's Federal tax form 3903 for 2017 showing moving expenses
- Exhibit 10: Appellant's Federal tax forms 1099-G for 2016 and 2017 showing unemployment compensation benefits
- Exhibit 11: Bills for attorney services for probate of Appellant's mother's estate, October 1, 2017 and December 1, 2017
- Exhibit 12: Legal documents relating to Appellant's mother's estate

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2018 Massachusetts tax return as a single individual with no dependents claimed, was 41 years old in 2018 (Exhibit 1, Testimony of Appellant).

2. Appellant lived in Essex County in 2018 (Exhibit 1, Testimony of Appellant).
3. Appellant had a Federal adjusted gross income for 2018 of \$89,164 (Exhibit 1 and Testimony of Appellant).
4. In 2016, Appellant lost her job. After she lost her job, Appellant, who lived in another state, kept her health insurance, paying for the coverage herself during the rest of 2016 and all of 2017. Appellant was unemployed until mid-2017 when she obtained employment in the Commonwealth. As of the date of this hearing, Appellant had the same job. She was not offered health insurance through her job. In 2018 Appellant felt she could no longer afford to pay for her own coverage (Testimony of Appellant, Exhibit 2 attachment).
5. After she lost her job, the appellant received unemployment compensation for the rest of the year and for the first six months of 2017. She received \$1,300 a month received (Testimony of Appellant, Exhibits 2, and 10).
6. After arriving in the Commonwealth, Appellant did not have a permanent living arrangement. She traveled back to the state she had lived in before moving to the Commonwealth. During the first three months of 2018, she continued to travel back and forth. While in Massachusetts, she stayed with friends or in sublets, residing in at least three different places. She moved to permanent living quarters in July, 2018 (Testimony of Appellant).
7. Appellant had health insurance which met the Commonwealth's minimum creditable coverage standards from July through December, 2018. Appellant still had health insurance as of the date of this hearing (Testimony of Appellant, Exhibit 1).
8. The appellant has been assessed a tax penalty for three months, January through March, 2018. The appellant has appealed the assessment (Exhibits 1, 2).
9. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
10. According to Table 3 of Schedule HC for 2018, the appellant with no dependents claimed with an adjusted gross income of \$89,164 could afford to pay \$598 per month for health insurance. According to Table 4, Appellant, 41 years old and living in Essex County, could have purchased insurance for \$310 per month for a plan for an individual. Insurance on the individual market was affordable for her (Schedule HC for 2018, Tables 3 and 4, Exhibit 1).
11. According to Table 2 of Schedule HC for 2018, Appellant earning more than \$36,180 per year, would have been ineligible for the ConnectorCare program based upon income (Table 2 of Schedule HC-2018, and Exhibit 1).
12. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2018 (Testimony of Appellant).
13. Appellant did not fall more than thirty days behind in rent payments in 2018 (Testimony of Appellant).
14. Appellant did not receive any shut-off notices for basic utilities in 2018 (Testimony of Appellant).
15. Appellant had the following monthly expenses for basic necessities in January through March, 2018: rent including heat and electricity--\$1,200 (paid to the friends she stayed with); telephone-\$140; food, household

supplies, and personal care items-\$1,000; clothing-\$150; car payment-\$350; car insurance-\$120; gas-\$500 (driving back and forth to the state she lived in originally). Appellant owed at least \$10,000 in medical bills from previous years. She paid on average \$250 a month to the collection agencies for these bills. Appellant also paid \$500 for dental work and some amount for attorney's fees. Appellant was the executrix for her mother's estate. Relatives were contesting the probate of the estate. Appellant also had outstanding student loans. She was unable to make her payments during this period (Testimony of Appellant, Exhibits 6,7,8, 10, 11, 12).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

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

The appellant had health insurance which met the Commonwealth's minimum creditable coverage standards from July through December, 2018. She has been assessed a three-month tax penalty only (January through March) since she is entitled to a three-month grace period prior to her obtaining insurance at the beginning of July. See Massachusetts General Laws, Chapter 111M, Section 2. We need to determine if the penalty should be waived or not. The appellant has appealed the assessment. See Exhibits 1, 2.

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

According to Table 3 of Schedule HC for 2018, the appellant with no dependents claimed with an adjusted gross income of \$89,164 could afford to pay \$598 per month for health insurance. According to Table 4, Appellant, 41 years old and living in Essex County, could have purchased insurance for \$310 per month for a plan for an individual. Insurance on the individual market was affordable for her. See Schedule HC for 2018, Tables 3 and 4, Exhibit 1.

Appellant was ineligible for ConnectorCare coverage. The income limit for a household of one was \$36,180. The appellant earned more than the limit. See Exhibit 1, the testimony of the appellant, and Schedule HC. There is no evidence in the record that Appellant was eligible for any other government-sponsored program.

Appellant was employed all of 2018 at the same job, but she was not offered health insurance through employment. See the testimony of the appellant which I find to be credible.

The appellant could have obtained affordable health insurance through the individual market during the open enrollment period. See cites above. Because affordable health insurance was available, we next need to determine if Appellant had a financial hardship such that the cost of purchasing health insurance would have caused her to experience a serious deprivation of basic necessities or some other financial hardship as defined in 956 CMR 6.08 (a), (b), (d), and or (e), and 6.08(3).

Though Appellant's penalty is for months in 2018, we need to look at her financial situation starting in 2017. Appellant was unemployed half the year and received little in the way of unemployment compensation (about \$1,300 a month). She had considerable debt for medical expenses from 2016 and 2017 even though she had health insurance both years. At one point, she owed \$10,000 to providers. In addition, Appellant was in charge of her mother's estate. Relatives were contesting the probate of the estate and Appellant had to lay out money to pay attorney's fees. Finally, in order to find employment, Appellant moved to Massachusetts and had expenses for travel back and forth from the state she had lived in to the Commonwealth. All of these expenses, plus the cost of basic necessities, made the appellant feel she could not afford health insurance. In the past, Appellant had paid for her own insurance, but given the expenses she faced in early 2018, after being unemployed for half of 2017, the cost of purchasing health insurance became difficult for the appellant. In addition, Appellant's housing situation was insecure during the first three months of the year. Appellant lived in at least three different places during this period. See the testimony of the appellant which I find to be credible and Exhibits 6, 7,8, 10, 11, and 12.

Based upon the facts summarized above, I determine that pursuant to 956 CMR 6.08(3), which allows the consideration of financial issues raised by the appellant on appeal, the appellant had a financial hardship in 2018 such that the cost of health insurance was unaffordable for her. I also note that mid-2018, Appellant obtained coverage through the Connector; as of the date of this hearing, she still had coverage.

Appellant's penalty is waived in its entirety.

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

PENALTY ASSESSED

Number of Months Appealed: 3 Number of Months Assessed: 0

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA181108

Appeal Decision: The penalty is overturned in full
Hearing Issue: Appeal of the 2018 Tax Year Penalty
Hearing Date: January 28, 2020
Decision Date: March 20, 2020

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on January 28, 2020. The procedures to be followed during the hearing were reviewed with Appellant. The appellant was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified. At the end of the hearing, the record was left open until February 21, 2020 to give the appellant time to submit additional evidence. Documents were received from the appellant on February 21, 2020. These were then forwarded to the hearing officer. The documents have been marked as exhibits and admitted in evidence. The record is now closed.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2018
- Exhibit 2: Statement of Grounds for Appeal 2018 signed and dated by Appellant on September 4, 2019 with letter in support attached; received by the Connector on October 28, 2019
- Exhibit 3: Notice of Hearing sent to Appellant dated December 6, 2019 for January 28, 2020 hearing
- Exhibit 4: Appellant's earning statements: December 25, 2017-January 7, 2018, September 17, 2018-September 30, 2018, and October 1 through October 14, 2018
- Exhibit 5: Connector Appeals Unit Final Appeal Decision, Tax Year 2017, dated January 31, 2019
- Exhibit 6: Appellant's Form MA1099-HC, 2018
- Exhibit 7: Appellant's Form MA1095-B, 2018
- Exhibit 8: Appellant's letter dated February 19, 2020 to Appeals Unit regarding expenses, 2018

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2018 Massachusetts tax return as a single individual with no dependents claimed, was 40 years old in 2018 (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Suffolk County in 2018 (Exhibit 1, Testimony of Appellant).

3. Appellant had a Federal adjusted gross income for 2018 of \$55,067 (Exhibit 1 and Testimony of Appellant).
4. The appellant had a temporary job from the summer of 2017 through November, 2018. Appellant was unemployed in December. Appellant's hours varied from week to week. Appellant had no benefits; she was not paid for holidays or sick time. She was not offered health insurance (Testimony of Appellant).
5. Appellant had MassHealth insurance in January, February, and June through October, 2018 (Testimony of Appellant, Exhibit 6).
6. The appellant has been assessed a tax penalty for all of 2018. The appellant has appealed the assessment, claiming that the cost of purchasing health insurance would have caused him to experience a serious deprivation of basic necessities (Exhibits 1, 2).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
8. According to Table 3 of Schedule HC for 2018, the appellant with no dependents claimed with an adjusted gross income of \$55,067 could afford to pay \$369 per month for health insurance. According to Table 4, Appellant, 40 years old and living in Suffolk County, could have purchased insurance for \$310 per month for a plan for an individual. Insurance on the individual market was affordable for her (Schedule HC for 2018, Tables 3 and 4, Exhibit 1).
9. According to Table 2 of Schedule HC for 2018, Appellant earning more than \$36,180 per year, would have been ineligible for the ConnectorCare program based upon income (Table 2 of Schedule HC-2018, and Exhibit 1).
10. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2018 (Testimony of Appellant).
11. Appellant did not fall more than thirty days behind in mortgage payments in 2018 (Testimony of Appellant).
12. Appellant did not receive any shut-off notices for basic utilities in 2018 (Testimony of Appellant).
13. Appellant had the following expenses for basic necessities in 2018: mortgage including property taxes and condo fees-\$1,630; electricity and heat-\$300; internet and telephone-\$276; food, household supplies, and personal care items-\$720; car insurance and gas-\$479; old credit card debt-\$617; clothing-\$60. In addition, the appellant spent about \$400 on home repairs, \$450 for dental care, and \$600 for family support sent to Appellant's country of origin during 2018 (Testimony of Appellant, Exhibit 8).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

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 had a qualifying life event within the past 60 days. Examples of a qualifying event include the loss of health insurance from a job, moving to the Commonwealth, moving outside of a health insurer’s service area, loss of MassHealth, getting married, a change in household dependents, among other things. If an individual has a qualifying event, the individual may apply for coverage through the Connector within 60 days of the event, even outside of an open enrollment period. There is an exceptional circumstances exception. Examples of exceptional circumstances are given in the Centers for Medicare and Medicaid Services and for Consumer Information and Insurance Oversight Affordable Exchanges Guidance dated March 26, 2014. Examples listed are a natural disaster, or medical emergency.

Appellant has been assessed a twelve-month tax penalty. Appellant has appealed this assessment. See Exhibits 1 and 2. It is unclear why the appellant has been assessed this penalty since according to the appellant’s Form MA 1099-HC she had coverage for seven months, during January and February and from June through October, 2018. Her penalty for these months is, therefore waived. Since Appellant is entitled to a three-month grace period after losing coverage, the penalty for March through May is also waived. See Massachusetts General Laws, Chapter 111M, Section 2 and Exhibit 6.

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

According to Table 3 of Schedule HC for 2018, the appellant with no dependents claimed with an adjusted gross income of \$55,067 could afford to pay \$369 per month for health insurance. According to Table 4, Appellant, 40 years old and living in Suffolk County, could have purchased insurance for \$310 per month for a plan for an individual. Insurance on the individual market was affordable for her. See Schedule HC for 2018, Tables 3 and 4, Exhibit 1.

Appellant could have purchased health insurance through the Connector after she lost her MassHealth coverage at the end of October. See 45 CFR 155.410 and 420. This coverage was affordable and available. See above. Since the appellant could have obtained affordable health insurance through the individual market, we need to determine if Appellant had a financial hardship such that the cost of purchasing health insurance would have caused her to experience a serious deprivation of basic necessities or some other financial hardship as defined in 956 CMR 6.08 (a), (b), (d), and or (e), and 6.08(3).

Appellant had the following expenses for basic necessities in 2018: mortgage including property taxes and condo fees-\$1,630; electricity and heat-\$300; internet and telephone-\$276; food, household supplies, and personal care items-\$700; car insurance and gas-\$479; old credit card debt-\$617; clothing-\$60. In addition, the appellant spent

about \$400 on home repairs, \$450 for dental care, and \$600 for family support sent to Appellant's country of origin during 2018 (Testimony of Appellant, Exhibit 8).

Appellant's expenses amounted to a little over \$4,100 a month. Appellant's pay varied from week to week. She received no benefits and was not paid for holidays or sick time. Her expenses were greater than the amount of her take-home pay some months. See Exhibit 4. Appellant also testified that she lost her job at the end of November, 2018. She was unemployed all of December. Her expenses remained the same. See the testimony of Appellant which I find credible.

Based upon these facts summarized above, I determine that the appellant had a financial hardship such that health insurance was unaffordable for her. After paying for basic necessities, Appellant had little or no disposable income. In addition, she had no source of income for all of December. The cost of purchasing coverage would have caused Appellant to experience a serious deprivation of basic necessities. See 956 CMR 6.08(1)(e). See also 6.08(3) which allow the consideration of Appellant's loss of employment.

Appellant's penalty is waived in its entirety.

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

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA181111

Appeal Decision: The penalty is overturned in full
Hearing Issue: Appeal of the 2018 Tax Year Penalty
Hearing Date: January 28, 2020
Decision Date: March 24, 2020

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on January 28, 2020. The procedures to be followed during the hearing were reviewed with Appellant. The appellant was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified. At the end of the hearing, the record was left open until February 21, 2020 to give the appellant and the Connector time to submit additional evidence. A document was received from the Connector on January 31, 2020. This was then forwarded to the hearing officer. The document has been marked as an exhibit and admitted in evidence. No additional evidence was received from the appellant. The record is now closed.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2018
- Exhibit 2: Statement of Grounds for Appeal 2018 signed and dated by Appellant on November 5, 2019 with letter in support attached
- Exhibit 3: Notice of Hearing sent to Appellant dated December 6, 2019 for January 28, 2020 hearing
- Exhibit 4: Letter sent to the appellant from the Connector dated January 13, 2020 regarding Appellant's coverage in 2019

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2018 Massachusetts tax return as a single individual with no dependents claimed, was 41 years old in 2018 (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Suffolk County in 2018 (Exhibit 1, Testimony of Appellant).
3. Appellant had a Federal adjusted gross income for 2018 of \$53,495 (Exhibit 1 and Testimony of Appellant).

4. Appellant worked as a part-time teacher in 2018. She worked at four different schools during the year. She earned a different amount at each school, and a different amount each month. During the summer, she had only one job and earned less. None of the schools she worked for offered her health insurance. (Testimony of Appellant).

5. Appellant obtained coverage through the Connector in January, 2019. She had the coverage almost all of 2019 and as of the date of this hearing, Appellant still had coverage (Testimony of Appellant, Exhibit 4).

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

7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.

8. According to Table 3 of Schedule HC for 2018, the appellant with no dependents claimed with an adjusted gross income of \$53,495 could afford to pay \$358 per month for health insurance. According to Table 4, Appellant, 41 years old and living in Suffolk County, could have purchased insurance for \$310 per month for a plan for an individual. Insurance on the individual market was affordable for her (Schedule HC for 2018, Tables 3 and 4, Exhibit 1).

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

10. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2018 (Testimony of Appellant).

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

12. Appellant did not receive any shut-off notices for basic utilities in 2018 (Testimony of Appellant).

13. Appellant had the following expenses for basic necessities in 2018: rent-\$900 until August when rent increased to \$1,500; heat and electricity-on average \$200 to \$300 a month; food-\$850; clothing-\$100; car payment-\$250; car insurance-\$110; gas-\$70. Once during the year, Appellant had to travel to her country of origin to visit her father who was ill. The trip cost over \$2,000 (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

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

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 had a qualifying life event within the past 60 days. Examples of a qualifying event include the loss of health insurance from a job, moving to the Commonwealth, moving outside of a health insurer's service area, loss of MassHealth, getting married, a change in household dependents, among other things. If an individual has a qualifying event, the individual may apply for coverage through the Connector within 60 days of the event, even outside of an open enrollment period. There is an exceptional circumstances exception. Examples of exceptional circumstances are given in the Centers for Medicare and Medicaid Services and for Consumer Information and Insurance Oversight Affordable Exchanges Guidance dated March 26, 2014. Examples listed are a natural disaster, or medical emergency.

Appellant has been assessed a twelve-month tax penalty. Appellant has appealed this assessment. See Exhibits 1 and 2. Appellant obtained coverage as of January 1, 2019. Since Appellant is entitled to a three-month grace period prior to obtaining coverage, the penalty for October through December is waived. See Massachusetts General Laws, Chapter 111M, Section 2 and Exhibit 4.

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

According to Table 3 of Schedule HC for 2018, the appellant with no dependents claimed with an adjusted gross income of \$53,495 could afford to pay \$358 per month for health insurance. According to Table 4, Appellant, 41 years old and living in Suffolk County, could have purchased insurance for \$310 per month for a plan for an individual. Insurance on the individual market was affordable for her. See Schedule HC for 2018, Tables 3 and 4, Exhibit 1.

Appellant could have purchased health insurance through the Connector during the open enrollment period. See 45 CFR 155.410 and 420. This coverage was affordable and available. See above. Since the appellant could have obtained affordable health insurance through the individual market, we need to determine if Appellant had a financial hardship such that the cost of purchasing health insurance would have caused her to experience a serious deprivation of basic necessities or some other financial hardship as defined in 956 CMR 6.08 (a), (b), (d), and or (e), and 6.08(3).

Appellant had the following expenses for basic necessities in 2018: rent-\$900 until August when rent increased to \$1,500; heat and electricity-on average \$300 a month; food-\$850; clothing-\$100; car payment-\$250; car insurance-\$110; gas-\$70. Once during the year, Appellant had to travel to her country of origin to visit her father who was ill. The trip cost over \$2,000. Appellant's income was not consistent. She worked at four different schools during the year. Sometimes at one school only; other times at more than one. See the testimony of Appellant, which I find to be credible.

Based upon these facts summarized above, I determine that the appellant had a financial hardship such that health insurance was unaffordable for her. Her income varied while expenses stayed the same, or increased as the year went by. Her employment, all part-time jobs at different schools, was insecure. Considering expenses, job insecurity, and the need to travel to her country of origin to visit an ill parent, I determine that the cost of purchasing coverage would have caused Appellant to experience a serious deprivation of basic necessities. See 956

CMR 6.08(1)(e). See also 6.08(3) which allow the consideration of Appellant's inconsistent income and need to travel out-of-country to see an ill parent. I also note that the appellant obtained health insurance i 2019 and as of the date of this hearing still had coverage through the Connector.

Appellant's penalty is waived in its entirety.

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

PENALTY ASSESSED

Number of Months Appealed: ___12___ Number of Months Assessed: ___0___

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18677

Appeal Decision: The penalty is overturned in full.

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: January 24, 2020

Decision Date: March 18, 2020

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 in person on January 24, 2020. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified. At the end of the hearing, the record was kept open until February 24, 2020 to give the appellant time to submit additional evidence. As of the date of this writing, no additional evidence has been received from the appellant. The record is now closed.

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

Exhibit 1: Appeal Case Information from Schedule HC 2018

Exhibit 2: Statement of Grounds for Appeal 2018 signed and dated May 9, 2019 by the appellant

Exhibit 3: Notice of Hearing sent to Appellant dated September 13, 2019 for October 17, 2019 hearing

Exhibit 4: Notice of Hearing sent to Appellant dated December 16, 2019 for January 24, 2020 hearing

Exhibit 5: March 16, 2016 discontinued service notice sent to Appellant and shut-off notice dated 2015 for gas service

Exhibit 6: September 5, 2017 collection agency notice for debt owed by Appellant to utility

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2018 Massachusetts tax return as a single person with no dependents claimed, was 59 years old in 2018 (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Suffolk County in 2018 (Exhibit 1, Testimony of Appellant).
3. Appellant had a Federal adjusted gross income for 2018 of \$32,920 (Exhibit 1, and Testimony of Appellant).
4. Appellant had a job all year earning \$13 an hour. He worked about 40 hours a week; some weeks, he worked fewer hours (Testimony of Appellant).
5. Appellant had no health insurance all of 2018. He was offered health insurance through employment, but Appellant did not opt for the coverage. Some weeks, he worked fewer than the number of hours required in order

to be eligible for the benefit. Appellant did not remember the cost of the coverage. Appellant tried to obtain coverage through the Connector, but he felt he could not afford the cost (Testimony of Appellant, Exhibit 1).

6. Appellant has been assessed a penalty for all of 2018. Appellant has appealed the assessment (Testimony of Appellant, Exhibits 1, 2).

7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.

8. According to Table 3 of Schedule HC for 2018, the appellant who filed his Massachusetts taxes as an individual with no dependents claimed with a Federal adjusted gross income of \$32,920 could afford to pay \$137 per month for health insurance. According to Table 4, Appellant, 59 years old and living in Suffolk County, could have purchased insurance for \$423 per month for a plan for an individual. Insurance on the individual market was not affordable to the appellant (Schedule HC for 2018, Tables 3 and 4, Exhibit 1).

9. According to Table 2 of Schedule HC for 2018, Appellant earning less than \$36,180 per year, would have been eligible for the ConnectorCare program based upon income. Appellant would also have been eligible if the insurance offered him through his job had been unaffordable for him (Table 2 of Schedule HC-2018, Exhibit 1, 956 CMR 12.00et seq.).

10. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2018 (Testimony of Appellant).

11. Appellant fell more than thirty days behind in rent payments in 2018. He received eviction notices (Testimony of Appellant).

12. Appellant had his electricity and gas shut off in March, 2016. He owed \$4,700 for electricity and \$1,847 for gas. Appellant had no electricity or gas most of 2016, and all of 2017, and 2018. His gas was turned on again in October, 2019. As of the date of this hearing, Appellant's electricity was still off. Appellant has paid off the amount he owed, but he did not have the money for the reconnection charge (Testimony of Appellant, Exhibits 5 and 6).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

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

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

According to Table 3 of Schedule HC for 2018, the appellant who filed his Massachusetts taxes as an individual with no dependents claimed with a Federal adjusted gross income of \$32,920 could afford to pay \$137 per month for health insurance. According to Table 4, Appellant, 59 years old and living in Suffolk County, could have purchased insurance for \$423 per month for a plan for an individual. Insurance on the individual market was not affordable to the appellant. See Schedule HC for 2018, Tables 3 and 4, Exhibit 1.

Appellant had the same job all of 2018. He was offered health insurance through employment, but he felt he could not afford the coverage and because some weeks, Appellant did not work the number of hours required to be eligible for the benefit. Appellant did not remember the cost of the coverage. See the testimony of the appellant which I find to be credible.

Appellant was income-eligible for ConnectorCare coverage, earning less than \$36,180, the income limit for an individual. He may not have been eligible if the coverage he was offered through employment was affordable for him. There is no evidence in the record about the cost of the coverage offered. See the testimony of the appellant which I find to be credible, Table 2 of Schedule HC for 2018 and 956 CMR 12.00 et.seq.

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

Appellant testified that he had no gas or electricity for all of 2018. His utilities were turned off in March, 2016. He owed approximately \$6,000 at the time of the shut-offs. Appellant did not have gas until late 2019. As of the date of this hearing, Appellant still did not have electricity. He not only had to pay what he owed, but he also had to pay the cost of reconnecting the utilities. He has been able to pay off the amount he owed, but he still has not been able to pay the cost for turning his electricity back on. Appellant also fell more than 30 days behind in his rent payments in 2018. I find this testimony to be credible. See also Exhibits 5 and 6.

Based upon the facts, I determine that the appellant had a serious financial hardship such that the cost of coverage was unaffordable for him. See 956 CMR 6.08 (1)(a) and (b) which provide that falling more than 30 days behind in rent payments and the shut-off of basic utilities constitute financial hardships.

Appellant's penalty is fully waived because of financial hardship.

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

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

CC. Connector Appeals Unit

Hearing Officer

Addendum: If Appellant still does not have health insurance, he may wish to contact the Connector by telephone at 1-877-623-6765 or on line at MAhealthconnector.org to see if he might be eligible for ConnectorCare coverage.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA181109

Appeal Decision: The penalty is overturned in full.

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: January 28, 2020

Decision Date: March 25, 2020

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on January 28, 2020. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified. At the end of the hearing, the record was left open until February 21, 2020 to give the appellant time to submit additional evidence. A document was received by the Connector on February 19, 2020; it was forwarded to the hearing officer. The document has been marked as an exhibit and admitted in evidence. The record is now closed.

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

Exhibit 1: Appeal Case Information from Schedule HC 2018

Exhibit 2: Statement of Grounds for Appeal 2018 signed and dated by Appellant on November 4, 2019 with letter in support attached

Exhibit 3: Notice of Hearing sent to Appellant dated December 6, 2019 for January 28, 2020 hearing

Exhibit 4: MassHealth letter to Appellant dated February 5, 2018 terminating coverage as of February 19, 2018

Exhibit 5: Appellant's 2018 Form 1095-B

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2018 Massachusetts tax return as a single person with no dependents claimed, was 34 years old in 2018 (Exhibit 1, Testimony of Appellant).
2. On Appellant's 2018 tax return, Appellant indicated that he had no health insurance which met the Commonwealth's minimum creditable coverage standards from January through July (Exhibit 1, Exhibit 2).
3. Appellant had health insurance which met the Commonwealth's standards for seven months in 2018. Appellant had coverage through MassHealth in January and February and through employment from August through December, 2018. Appellant lost his MassHealth coverage because he did not send in requested information by the

deadline set. Appellant tried to find other insurance, but could not find anything he felt he could afford (Exhibits 1, 2, 4, 5; Testimony of Appellant).

4. Appellant was unemployed from July, 2017 through July, 2018. He had no income until he obtained employment the beginning of August, 2018 (Testimony of Appellant, Exhibit 2)

5. Appellant has been assessed a penalty for four months, January through April. Appellant has appealed this assessment, claiming that the cost of purchasing health insurance would have caused him a serious deprivation of basic necessities (Testimony of Appellant, Exhibits 1 and 2).

6. Appellant had the following expenses for basic necessities in 2018: rent-\$1,025; heat and electricity-\$200; telephone-\$60; food-\$660; transportation-\$180 (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

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

It appears that Appellant made an error when completing his 2018 Massachusetts tax return, and did not indicate correctly the months during which he had health insurance which met the Commonwealth’s standards. See Exhibit 1. In fact, Appellant had coverage which met minimum creditable coverage standards in January and February and from August through December. See Exhibits 4 and 5, and the testimony of the appellant which I find to be credible. Appellant had no coverage from March through July. Pursuant to Massachusetts General Laws, Chapter 111M, Section 2, the appellant is entitled to a three-month grace period (with no penalty assessed) after losing coverage at the end of February. His penalty for March through May is, therefore, waived. We need to determine if the penalty for June and July should be waived also.

Assuming that affordable health insurance was available to the appellant, the rest of his penalty (for June and July) should still be waived. Appellant was unemployed both months and had no source of income. His expenses for basic necessities remained constant, over \$2,000 a month. See the testimony of the appellant which I find credible. I determine that pursuant to 956 CMR 6.08(1)(e) the cost of purchasing health insurance would have caused Appellant to suffer a serious deprivation of basic necessities. Appellant’s penalty is waived because of financial hardship.

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

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

CC. Connector Appeals Unit

Hearing Officer