

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA16-740

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: April 25, 2018

Decision Date: May 8, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Request to Vacate Dismissal of Appeal (1 page, received 2/27/18);
3. Prior Hearing Officer's Entry That Appellant Did Not Appear for Hearing (1 page, dated 2/22/18);
4. Duplicate of Exhibit 1.
5. Envelope Separator Sheet (1 page);
6. Appellant's Statement of Grounds for Appeal – 2016;
7. Appellant's Letter in Support of Appeal (1 page, dated 11/17/17);
8. Decision Denying Mortgage Modification (2 pages, dated 11/9/16);
9. Health Connector's Record Affidavit (1 page);
10. Health Connector's Notice of Hearing (3 pages, dated 1/26/18); and
11. Health Connector's Second Notice of Hearing (3 pages, dated 4/25/18).

FINDINGS OF FACT

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

1. The Appellant appealed from the Department of Revenue's assessment of a 12 month penalty for 2016. The basis for the penalty was that the Appellant was not insured at any time in 2016, which I find is accurate based on the Appellant's hearing testimony. Exhibits 1 and 2.
2. The Appellant filed a Massachusetts personal income tax return for 2016 as a head of household with 1 dependent. The Appellant's federal adjusted gross income (AGI) for 2016 was \$47,876. Exhibit 1.
3. The Appellant was 43 years old at the beginning of 2016 and resided in [name of city or town omitted] in Worcester County, Massachusetts. Exhibit 1.
4. The Appellant's AGI (\$47,876) was equivalent to 300% of the federal poverty level (\$47,790 for a 2 person household). DOR Table 2.
5. Based on DOR Table 3 the Appellant could afford to pay \$295 per month for health insurance coverage in 2016. (The calculation is 7.40% multiplied by \$47,876 AGI = \$3,542.82 per year divided by 12 months = \$295.23 per month.)
6. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage at his age and location for \$237 per month in 2016.
7. Foreclosure of the mortgage on the Appellant's residence was threatened on several occasions prior to 2016. In November 2016 the Appellant's application for a mortgage modification was denied. Exhibit 8. See also Exhibit 7 ("inability to pay my mortgage"), Exhibit 2 ("financial hardship I have been experiencing trying to keep my home out of foreclosure"), Exhibit 6 (foreclosure as basis for appeal), and Testimony.
8. In 2017 the Appellant's mortgage was modified, which reduced his monthly payments from \$1,600 per month to \$1,100 per month. Testimony.
9. The Appellant also has a federal income tax arrearage. Under a payment agreement with the IRS, the Appellant is paying \$200 per month toward a \$13,000 arrearage. Testimony.
10. The Appellant works in treatment programs for teenagers. The Appellant started a new job with a state agency three weeks before the hearing in this appeal that hopefully will provide employer-sponsored health insurance coverage in 2018 after a waiting period to enroll. Testimony.
11. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2016 Massachusetts income tax return.

12. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedule adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2016. See 956 Code Mass. Regs. 6.05. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2016. (The DOR instructions are published online at <http://www.mass.gov/dor/2016ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2016.)

ANALYSIS AND CONCLUSIONS OF LAW

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

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

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

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

In this case, the Appellant has presented evidence to justify a waiver of the penalty assessed for 2016 under the Health Connector's financial hardship regulation. The Appellant was facing foreclosure of his mortgage. Initially, his application for a mortgage modification was denied in November 2016. The following year the mortgage was modified, which reduced his mortgage payments by \$500 per

month. In addition, the Appellant owes \$13,000 balance in federal taxes and must pay \$200 per month under a tax payment agreement with the IRS. See, e.g., 956 Code Mass. Regs. 6.08 (1) (a) (mortgage foreclosure) and 6.08 (1) (3) (serious deprivation).

PENALTY ASSESSED

Number of Months Appealed: ____12____ Number of Months Assessed: ____0____

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA16677

Appeal Decision: The penalty is overturned in full.

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: February 22, 2018

Decision Date: May 10, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing, which was held by telephone on February 22, 2018. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified. At the end of the hearing, the record was kept open until March 22, 2018 to give Appellant time to submit additional evidence. Documents were received from the appellant on March 20, 2018. They have been 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 into evidence:

- Exhibit 1: Appeal Case Information from Schedule HC 2016
- Exhibit 2: Statement of Grounds for Appeal 2016 signed and dated by Appellant on July 19, 2017 with letter in support attached
- Exhibit 3: Notice of Hearing sent to Appellant dated December 27, 2017 for January 18, 2018 hearing
- Exhibit 4: Letter dated January 18, 2018 from Appellant to Connector requesting new hearing date
- Exhibit 5: Notice of Hearing sent to Appellant dated January 26, 2018 for February 22, 2018 hearing
- Exhibit 6: Appellant's 2016 Form 1040, first page
- Exhibit 7: Termination Notice for electricity dated May 8, 2017 addressed to Appellant's spouse
- Exhibit 8: Letter from United States Treasury to Appellant dated July 5, 2017 regarding payments for taxes owed
- Exhibit 9: Affidavit of Appeals Unit regarding creation and maintenance of appeals file
- Exhibit 10: Employer Information form regarding health insurance offered to appellant
- Exhibit 11: Letter from Appellant, undated regarding monthly expenses in 2016
- Exhibit 12: Tuition and health insurance bill for Appellant's spouse's graduate studies, 2016
- Exhibit 13: Appellant's 2016 Federal and Massachusetts tax returns
- Exhibit 14: Appellant's Final Penalty Appeal decision for 2015 tax year dated February 17, 2017

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2016 Massachusetts tax return as a married person filing separately with no dependents claimed, was 36 years old in 2016 (Exhibit 1, Testimony of Appellant).
2. Appellant and his spouse lived together in Suffolk County in 2016 (Exhibit 1, Testimony of Appellant).
3. Appellant and his spouse had a joint income for 2016 of \$66,995. The appellant had a Federal Adjusted Gross Income of \$32,782. The remainder was his spouse's income (Exhibits 1, 13, and Testimony of Appellant).
4. Appellant was employed all of 2016 as an independent contractor and as a part-time employee for a government agency (Testimony of Appellant, Exhibit 13).
5. Appellant had no health insurance in 2015, 2016, and 2017. He enrolled in a ConnectorCare plan as of March, 2018 (Testimony of Appellant, Exhibits 1 and 14).
6. Appellant was not offered health insurance through his part-time employment (Exhibit 10, Testimony of Appellant).
7. Appellant's spouse was insured all year through a graduate school plan (Testimony of Appellant, Exhibit 12).
8. Appellant has been assessed a tax penalty for all of 2016. The appellant has appealed this assessment (Exhibits 1, 2).
9. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
10. According to Table 3 of Schedule HC for 2016, the appellant and his spouse with no dependents claimed with an adjusted gross income of \$66,995, could afford to pay \$453 per month for health insurance. According to Table 4, Appellant, age 36 and living in Suffolk County, could have purchased insurance for \$221 per month for an individual plan. Appellant's spouse, who was insured all of 2016, paid \$2,384 for a health insurance plan through the university in which he was enrolled, or approximately \$200 a month. If we consider Appellant's Adjusted Gross Income of \$32,782 separately since he filed his tax return separately, then appellant could afford to pay \$136 a month and insurance on the individual market would not have been affordable to him (Schedule HC for 2016, Tables 3 and 4, Exhibits 1 and 13).
11. According to Table 2 of Schedule HC for 2016, Appellant earning less than \$35,310 per year, would have been eligible for the ConnectorCare program based upon income. Because the appellant and his spouse did not file a Federal joint tax return, the appellant would not have been eligible for ConnectorCare coverage or any Connector Health Plan with an advance premium tax credit (Table 2 of Schedule HC-2016, The Patient Protection and Affordable Care Act, Exhibit 13).
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 2016 (Testimony of Appellant).
13. Appellant did not fall more than thirty days behind in rent payments in 2016. Appellant's internet service was shut-off for non-payment during 2016 (Testimony of Appellant).

14. Appellant and his spouse had the following monthly expenses for basic necessities in 2016: rent- \$1,700; electricity and heat-\$90; telephone and internet-\$190; food-\$350; clothing-\$100; public transportation-\$300; payment to United States Internal Revenue Service for taxes owed- \$226. In addition, the spouse had tuition expense and other fees of close to \$3,000 for the fall semester. There is no information in the record about the 2016 spring semester costs. The spouse also made payment to the Internal Revenue Service for back taxes, but the amount is unknown (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 2016 should be waived, either in whole or in part.

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

Under 26 IRC § 36B and 45 CFR § 155.305(f), certain individuals are eligible for a premium tax credit if they meet qualifying income levels and other eligibility requirements. Individuals eligible for an advance premium tax credit who are at or below 300% of the Federal Poverty Level are also eligible to enroll in ConnectorCare, a Massachusetts-based program that provides additional subsidies to help make the cost of insurance more affordable. 956 CMR § 12.04.

One eligibility requirement for the advance premium tax credit, or subsidy, applies to married couples. In general, married applicants must attest that they will file a joint tax return in order to claim the subsidy (even if only one spouse is seeking coverage). 26 CFR § 1.36B-2T(b)(2)(i). There are exceptions to this if one of the spouses is the victim of domestic abuse or spousal abandonment. In either situation, taxpayer may attest to filing as married filing separately, and still receive the tax credit. 26 CFR § 1.36B-2T(b)(2)(ii).

To claim domestic abuse, the taxpayer must certify that he or she is living apart from the other spouse at the time of tax filing, and is unable to file a joint return because the taxpayer is a victim of “physical, psychological, sexual, or emotional abuse, including efforts to control, isolate, humiliate, and intimidate, or to undermine the victim's ability to reason independently.” 26 C.F.R. § 1.36B-2T(b)(2)(ii), (b)(2)(iii). Spousal abandonment similarly requires that the taxpayer certify that he or she is living apart from the other spouse at the time of tax filing, and that the taxpayer is unable to file a joint tax return because “the taxpayer is unable to locate his or her spouse after reasonable diligence.” 26 C.F.R. § 1.36B-2T(b)(2)(iv), (b)(2)(ii), (iv). Each exception may be claimed if only if it has not been claimed in each of the three preceding taxable years. 26 CFR § 1.36B-2T(b)(2)(v). Applicants looking to claim one of these exceptions must attest that they will file their 2016 taxes in accordance with the required certification, which appears on Form 8962.

Appellant had no health insurance in 2016. He has been assessed a twelve-month penalty. The appellant has appealed this 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. If

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

Appellant had no access to health insurance which met the Commonwealth's standards through his job. He worked part-time and did not work enough hours to be eligible for coverage. See Exhibit 10 and the testimony of the appellant which I find to be credible.

According to Table 3 of Schedule HC for 2016, the appellant and his spouse with no dependents claimed with an adjusted gross income of \$66,995, could afford to pay \$453 per month for health insurance. According to Table 4, Appellant, age 36 and living in Suffolk County, could have purchased insurance for \$221 per month for an individual plan. Appellant's spouse, who was insured all of 2016, paid \$2,384 for a health insurance plan through the university in which he was enrolled, or approximately \$200 a month. If we consider Appellant's Adjusted Gross Income of \$32,782 separately, then appellant could afford to pay \$136 a month and insurance on the individual market would not have been affordable to him (Schedule HC for 2016, Tables 3 and 4). Under the Affordable Care Act, when considering an individual's eligibility for an advance premium tax credit, the Connector determines an individual's Federal Adjusted Gross Income based upon the tax household. In this matter, since the appellant filed his Federal return separately, he has a tax household of one and we must consider his income only.

Appellant had no access to health insurance through the ConnectorCare program because he was married, filed separately, not jointly with his spouse, and resided with his spouse in 2016. In order to be eligible for ConnectorCare which is paid in part by an advance premium tax credit, if an individual is married he must file jointly with his spouse. See Exhibit 1, the testimony of the appellant and the cites above. There is no evidence in the record that Appellant is eligible for any other government-sponsored health insurance coverage.

Appellant had no access to affordable health insurance through employment, the individual market, or through a government-sponsored program. His penalty must, therefore, be waived. See Massachusetts General Laws Chapter 111M, Section 2.

I also note that the appellant's internet service was shut off in 2016. This constitutes a financial hardship pursuant to 956 CMR 6.08(1)(b) so that health insurance would not have been affordable for him.

Appellant should note that any waiver granted here is for 2016 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 2016.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA16690

Appeal Decision: The penalty is overturned in full.

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: February 22, 2018

Decision Date: April 30, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing, which was held by telephone on February 22, 2018. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified. At the end of the hearing, the record was kept open until March 22, 2018 to give Appellant time to submit additional evidence. A document was received from the appellant on March 14, 2018. It 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 into evidence:

Exhibit 1: Appeal Case Information from Schedule HC 2016

Exhibit 2: Connector letter to the appellant dated July 19, 2017 dismissing appeal

Exhibit 3: Letter from Appellant to Connector requesting hearing received by Connector on September 27, 2017

Exhibit 4: Notice of Hearing sent to Appellant dated December 27, 2017 for January 16, 2018 hearing

Exhibit 4a: Notice of Hearing sent to Appellant dated January 26, 2018 for February 22, 2018 hearing

Exhibit 5: Affidavit of Appeals Unit regarding creation and maintenance of appeals file

Exhibit 6: Employer Information form regarding health insurance offered to appellant

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2016 Massachusetts tax return as a single person with no dependents claimed, was 53 years old in 2016 (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Nantucket County in 2016 (Exhibit 1, Testimony of Appellant).
3. Appellant's Federal Adjusted Gross Income for 2016 was \$61,957 (Exhibit 1, Testimony of Appellant).
4. Appellant was employed all of 2016 at the same job (Testimony of Appellant).

5. Appellant had health insurance through his ex-wife's job. He had coverage from January through June, 2016. He had no advance notice that his coverage was ending. He was notified by letter that he had lost his coverage and that he could opt for COBRA coverage for about \$1,100 a month which he felt he could not afford. The appellant knew about the Connector, but he thought he would have to wait for the next open enrollment period to purchase a plan. Appellant was uninsured the rest of the year (Testimony of Appellant).
6. Appellant was offered health insurance through his employment. Coverage, which met the Commonwealth's minimum creditable coverage standards, was available to the appellant. Coverage would have cost the appellant \$1,200 a month. He could have enrolled any time during the year (Exhibit 6, Testimony of Appellant).
6. Appellant has been assessed a tax penalty for three months, October through December 2016. The appellant has appealed this assessment (Exhibits 1, 2, 3).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
8. According to Table 3 of Schedule HC for 2016, the appellant with no dependents claimed with an adjusted gross income of \$61,957 could afford to pay \$419 per month for health insurance. According to Table 4, Appellant, age 53 and living in Nantucket County, could have purchased insurance for \$373 per month.
10. Private insurance was affordable for the appellant in 2016 (Schedule HC for 2016).
11. According to Table 2 of Schedule HC for 2016, Appellant earning more than \$35,310 per year, would have been ineligible for the ConnectorCare program based upon income (Table 2 of Schedule HC-2016).
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 2016. Appellant did not receive any shut-off notices for basic utilities in 2016 (Testimony of Appellant).
13. Appellant did not fall more than thirty days behind in rent payments in 2016 (Testimony of Appellant).
14. Appellant had the following monthly expenses for basic necessities in 2016: rent- \$900; electricity and heat- \$100; telephone and internet-\$145; food-\$800; car insurance-\$85; gas-\$75; travel off of Nantucket-\$150; clothing-\$100; car repairs-\$85. The appellant also had to pay \$\$1,150 per month paying off old credit card and loan debt and about \$85 a month for an eye exam and eyeglasses (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 2016 should be waived, either in whole or in part.

G.L c. 111M, § 2, also called the "individual mandate," requires every adult resident of Massachusetts to obtain insurance coverage "[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.

Appellant had health insurance which met the Commonwealth’s minimum creditable coverage standards from January through June, 2016. Since he is allowed a three-month grace period after losing coverage, he has only been assessed a penalty for October through December. The appellant has appealed this assessment. Exhibits 1, 2, and 3.

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

Appellant had health insurance until June, 2016 through his ex-wife’s health insurance plan. He did not know he had lost his coverage until he received a letter informing him of the loss. He was offered COBRA coverage for over \$1,000 a month. He did not opt to take this coverage because of the cost. He knew about the Connector, but thought he had to wait until the next open enrollment period in order to obtain coverage. See the testimony of the appellant which I find to be credible.

According to Table 3 of Schedule HC for 2016, the appellant with no dependents claimed with an adjusted gross income of \$61,957 could afford to pay \$419 per month for health insurance. According to Table 4, Appellant, age 53 and living in Nantucket County, could have purchased insurance for \$373 per month. Appellant had access to affordable health insurance through the Connector. The appellant incorrectly believed that he had to wait to the next open enrollment period, but he actually had 60 days from the date he lost his coverage at the end of June to purchase insurance through the Connector. See 45 CFR 155.410 and 420 cited above which provide for open enrollment periods and special enrollment periods if an individual has a qualifying life event, such as the loss of coverage.

Appellant had access to health insurance which met the Commonwealth’s standards through his job, but the coverage was unaffordable for the appellant. Coverage would have cost him \$1,200 a month, far above the amount deemed affordable for him. See Table 3 of Schedule HC for 2016 and Exhibit 6. He also had access to COBRA, but this too was not affordable for the appellant. See the testimony of the appellant which I find to be credible and Table 3 of Schedule HC for 2016.

Appellant had no access to health insurance through the ConnectorCare program since his income was too high. See Table 2 of Schedule HC.

Since Appellant had access to affordable insurance through the Connector during a special enrollment period, we need to determine if he experienced a financial hardship such that the coverage would not have been affordable to him.

Appellant had income before taxes of about \$5,100 a month. He had the following monthly expenses for basic necessities: rent- \$900; electricity and heat-\$100; telephone and internet-\$145; food-\$800; car insurance-\$85; gas-

\$75; travel off of Nantucket-\$150; clothing-\$100; car repairs-\$85. The appellant also had to pay \$1,150 per month paying off old credit card and loan debt and about \$85 a month for an eye exam and eyeglasses. If we take into account Appellant's debt payments, he had expenses of approximately \$4,700 a month. If Appellant spent \$373 a month for health insurance (See Table 4 of Schedule HC for 2016), he would have had less than \$100 disposable income before paying state and federal taxes. See the testimony of the appellant which I find to be credible.

Based upon the facts summarized above, I determine that pursuant to 956 CMR 6.08(1)(e) and 6.08(3), the appellant experienced a financial hardship in 2016 such that the cost of purchasing health insurance would have caused him to suffer a serious deprivation of basic necessities. 956 CMR 6.08(3) allows the consideration of other financial issues raised by the appellant, such as paying off old debt.

I also note that if the appellant missed the special open enrollment period which ended 60 days after he lost his coverage, he would have been blocked from purchasing insurance during the last three months of 2016.

Appellant's penalty is waived. Appellant experienced a financial hardship such that insurance was unaffordable.

Appellant should note that any waiver granted here is for 2016 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 2016.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA16-709

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

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on February 21, 2018. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

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

FINDINGS OF FACT

The record shows, and I so find:

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

ANALYSIS AND CONCLUSIONS OF LAW

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

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

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit