

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-4

Appeal Decision: Appeal Approved -- 2018 tax penalty overturned.

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: April 8, 2019

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2018;
3. [Exhibit 3 is a duplicate of Exhibit 4.]
4. Health Connector's Notice of Hearing (3 pages, dated 3/13/19);
5. Hearing Officer's Open Record Order (1 page, dated April 8, 2019);
6. Appellant's Cover Letter in Response to Open Record Order (1 page, dated 4/19/19);
7. Health Connector's Transmittal Letter to Appellant (1 page);
8. Hearing Officer's Open Record Order [duplicate of Exhibit 5];
9. Appellant's 2018 IRS Form 1095-A (1 page); and
10. Appellant's 2018 IRS Form 1095-B (1 page).

At the conclusion of the hearing I held the hearing record open and requested that the Appellant submit additional documents "showing that you had health insurance in 2018, including the months of January/February or August-December." In response, I received Exhibits 6 – 10 from the Appellant.

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 4 month penalty for 2018. The basis for the penalty was that the Appellant was not insured for the months of January – July 2018 (7 months) but was insured for the months of August – December 2018 (5 months). Exhibits 1 and 2. Based on Exhibit 1 and as set forth in more detail below, I find that the penalty assessment is accurate. (The calculation is 12 months minus 5 months insured = 7 months uninsured minus 3-month administrative grace period = 4 penalty months.)
2. The Appellant filed a Massachusetts personal income tax return for 2018 as a single person with no dependents. The Appellant's federal adjusted gross income (AGI) for 2018 was \$40,384. Exhibit 1. The Appellant does not live with her grandmother. Testimony.
3. Based on the Appellant's hearing testimony, I find that she has a four year old child. By private agreement, the Father claims the child as a dependent on his income tax return. The child was previously insured by MassHealth. As of August 2018, the child was insured under the Appellant's employer-sponsored health insurance. The testimony is consistent with the Appellant's IRS Form 1095-B that shows two covered individuals. Exhibit 10 (the names are redacted on the exhibit).
4. The Appellant was 25 years old at the beginning of 2018 and resided in [name of city or town omitted] in Worcester County, Massachusetts. Exhibit 1.
5. The Appellant's AGI was more than 150% of the federal poverty level. On this basis I conclude that the Appellant was not automatically exempt from the assessment of a tax penalty in 2018. DOR Table 1.
6. The Appellant's 2018 AGI (\$40,384) was more than 300% of the federal poverty level for a one person household (\$36,180) but less than 300% of the federal poverty level for a two person household (\$48,720). DOR Table 2. Testimony.
7. Based on DOR Table 3 the Appellant could afford to pay 7.45% of her income -- or \$251.71 per month -- for health insurance coverage in 2018. This finding is based on the portion of DOR Table 3 that applies to a single person. (The calculation is 7.45 % multiplied by \$40,384 AGI = \$3,008.60 per year divided by 12 months = \$250.71 per month.)
8. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage at her age and location for \$249 per month in 2018, but family coverage would cost \$697.
9. The Appellant was employed full-time for all of 2018 by the same company. Testimony. In years prior to 2018 the Appellant was insured by the Health Connector while she was employed by this

company. The Appellant's wage rate has increased from \$16 per hour to \$20 per hour.
Testimony.

10. Based on the Appellant's testimony I find that her employer had an open enrollment period in July for health insurance coverage that began in August 2018.
11. I find that the Appellant was insured under her employer's health plan for the months of August through December 2018 (5 months). I base this finding on the official IRS forms 1095-A and 1095-B provided to the Appellant by her employer that show she was insured for those months. Exhibits 9 and 10. Exhibits 9 and 10 are consistent with Exhibit 1 prepared by the DOR based on the 2018 person income tax return filed by the Appellant that shows the Appellant was insured for the months of August through December but not for any earlier months in 2018. Exhibits 1, 9 and 10 are also consistent with the Appellant's testimony about her employer's open enrollment in July 2018. See Findings of Fact, No. 9, above.
12. The Appellant's coverage under her employer-sponsored health plan continued into 2019.
Testimony.
13. The Appellant pays \$715 per month for rent. Her rent and utility payments were up-to-date in 2018. She does not have a car or credit cards or any student loans. The Appellant did not present evidence of any large debts or expenses. Testimony.
14. There is no evidence of when the Appellant's prior coverage under the Health Connector ended. In response to my open record order the Appellant reported that she must have lost or thrown away any letters from the Health Connector. Exhibit 6. I do not find that the Appellant was insured for the months of January and February 2018 (as the Appellant stated during the hearing) since that would be inconsistent with the information that the Appellant submitted in her state tax return (Exhibit 1). See also Findings of Fact, No. 11, above.
15. 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 2018 Massachusetts income tax return.
16. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2018. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2018. (The DOR instructions are published online at <http://www.mass.gov/dor/2018ScheduleHCInstructions> and are also available in the

state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2018.)

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 for the months of January through July 2018. 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 – 2017 that the Appellant signed and filed in this case. See Exhibit 2.

In this case, I find that the Appellant has presented sufficient evidence to establish that she could not afford health insurance during the months in 2018 when she was not insured. Accordingly, I will waive the entire 4 month penalty assessed by the DOR.

I begin with the objective affordability standards set forth in DOR Tables 3 and 4. The tables show that, based on her income, the amount that the Appellant could afford to pay for health insurance (\$251 per month) and the amount that she would have to pay for individual coverage for herself (\$249 per month) are substantially equivalent. See Findings of Fact, Nos. 7 and 8, above. That assessment of the Appellant's ability to afford health insurance is based, however, on the information provided in her state income tax return that the Appellant is a single person with no dependents. To the contrary, the evidence shows that Appellant has a child. At that point common sense tips the balance in the Appellant's favor. Moreover, the affordability measures set forth in DOR Table 2 shows that the

Appellant's 2018 income is less than 300% of the federal poverty level once the child is added to her household. See, e.g., Findings of Fact, No. 3 and 6, above.

The Appellant's effort to obtain health insurance coverage also weighs in her favor. It appears that, in prior years, the Appellant obtained coverage from the Health Connector. More importantly, in 2018 she enrolled in her employer's health plan during the July open enrollment period and had coverage for the remainder of the year. The Appellant also represents that she has continued that coverage in 2019. See, e.g., Findings of Fact, Nos. 10, 11 and 14, above.

For the foregoing reasons, I conclude that it is appropriate to waive the entire four month penalty that the DOR assessed against the Appellant for 2018. See Mass. Gen. Laws, c. 111M, sec. 2(a), above, and 956 Code Mass. Regs. 6.08 (1) (e).

PENALTY ASSESSED

Number of Months Appealed: 4 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 2018 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 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

Tax Penalty Appeal Decision—Docket No. PA18-6

Appeal Decision: Appeal Approved, in part -- 2018 tax penalty reduced from 12 months to 6 months.

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: April 8, 2019

Decision Date: May 18, 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 appeared for the hearing, which I conducted by telephone. A document was submitted on behalf of the Massachusetts Department of Revenue (DOR) prior to the hearing (Exhibit 1). The hearing record consists of the Appellant's testimony under oath and the following documents that were admitted into evidence as exhibits.

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2018;
3. Dental Bills (with Appellant's Handwritten Comment) (2 pages, unclear copy);
4. Skydiving Payment Receipt (with Appellant's Handwritten Comment) (1 page, dated 1/20/18);
5. Skydiving Equipment Payment Receipt (1 page, dated 2/16/18);
6. Eversource Utility Bill with Jan., Feb. and March 2019 Payments (2 pages, dated 11/15/18);
7. GEICO Insurance Account History (2 pages, May 2018 – Feb. 2019);
8. MAPFRE Car Insurance Coverage for Two Vehicles (1 page, Nov. 2018 – Nov. 2019);
9. Rental Account Record (8 pages, Jan. – Dec. 2018); and
10. Health Connector's Notice of Hearing (3 pages, dated 3/12/19).

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 2018. The basis for the penalty was that the Appellant was not insured at any time in 2018.

Exhibits 1 and 2. Based on Exhibit 1 and the Appellant's hearing testimony, I find that the penalty assessment is accurate.

2. The Appellant filed a Massachusetts personal income tax return for 2018 as a single person with 2 dependents. The Appellant's federal adjusted gross income (AGI) for 2018 was \$57,605. Exhibit 1.
3. The Appellant was 48 years old at the beginning of 2018 and resided in [name of city or town omitted] in Bristol County, Massachusetts. Exhibit 1.
4. The Appellant's AGI was more than 150% of the federal poverty level. On this basis I conclude that the Appellant was not automatically exempt from the assessment of a tax penalty in 2018. DOR Table 1.
5. The Appellant's 2018 AGI (\$57,605) was more than 300% of the federal poverty level (\$36,180 for a one person household or \$48,720 for a two person household). DOR Table 2. On this basis I infer that the Appellant would not meet the financial eligibility standards for government subsidized health insurance.
6. Based on the Appellant's hearing testimony, I find that the Appellant is divorced and has two children (one in high school and another in college). The Appellant pays \$120 per week child support for each of the children (\$12,480 per year), who have health insurance through their Mother. The high school aged child lives with the Mother. The Appellant also has an adult child who lives in another state and is engaged to be married. (I note that the Appellant did not provide any documentation to verify the child support obligation.)
7. In 2018 the Appellant rented an apartment with another person ("Girlfriend) who was listed on the rental account. The rent was \$1,320 per month plus a \$50 pet fee and \$30 garage parking fee. The rent, which was sometimes paid by the Appellant and sometimes paid by the Girlfriend, was not in arrears. Testimony and Exhibit 9.
8. In December 2018 the Appellant owed \$248.81 for electric utility service, which includes heat for the apartment. The electric service was not terminated for nonpayment. The Appellant did not submit any utility termination notices. Exhibit 6.
9. The Appellant was billed \$532 plus \$560 annually to insure two vehicles through MAPFRE Insurance for the policy period beginning November 30, 2018. There is no evidence that the MAPFRE insurance bill was not paid. Exhibit 8 and Testimony. There is a separate GEICO account for December 2018 – June 2019 for which the Appellant routinely received a cancellation notice for amounts less than \$200 before payment was made and the cancellation notice was voided. Exhibit 7. (It is unclear why there are exhibits from two insurers.)

10. In 2018 the Appellant and Girlfriend spent \$3,500 plus \$256 for skydiving expenses. Exhibits 4 and 5. The larger expense, which the Appellant labeled “career training” on Exhibit 4, was billed to the credit card of a third person. Exhibit 4.
11. In 2018 the Appellant paid \$1,300 plus \$200 for dental work that was performed in Mexico and was not insured. The Appellant incurred additional costs for travel expenses. Exhibits 3 and 4 and Testimony.
12. The Appellant was employed in 2018. His employer offered the Appellant health insurance as a job benefit, but the Appellant did not enroll. The Appellant did not offer evidence concerning the cost of the employer’s health plan. Testimony.
13. The Girlfriend has health insurance coverage. Testimony.
14. The last time that the Appellant had health insurance was approximately 8 years ago when he was insured through a prior employer. This is the first time that the Appellant has appealed from the DOR’s assessment of a tax penalty because he was not insured. The Appellant has not had health insurance coverage in any recent years: 2017, 2018, or 2019 (year-to-date). Testimony. See also Exhibit 1 (no record of prior appeals).
15. Based on DOR Table 3 the Appellant could afford to pay 5.95% of his income – or \$286 per month -- for health insurance coverage in 2018. (The calculation, which is based on the portion of DOR Table 3 that applies to “Married Filing Separately with two or more dependents,” is 5.95% multiplied by \$57,605 AGI = \$3,427.49 per year divided by 12 months = \$285.62 per month.) I note that the Appellant could afford to pay 8.05% of his income -- or \$386 per month -- under the portion of DOR Table 3 that applies to an “Individual or Married Filing Separately (no dependents).”
16. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage at his age and location for \$354 per month in 2018 (45-49 age bracket). The Appellant did not present evidence that would enable me to compare the cost of his employer’s health plan to DOR Table 4.
17. 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 2018 Massachusetts income tax return.
18. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2018. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility

standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2018. (The DOR instructions are published online at <http://www.mass.gov/dor/2018ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2018.)

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 2018. 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 – 2017 that the Appellant signed and filed in this case. See Exhibit 2.

Apart from the limited evidence that was presented concerning the Appellant's child support obligation, the Appellant has not presented evidence in this appeal that would justify relief under the financial hardship regulation. The Appellant was up-to-date in his essential living expenses, such as rent, car insurance, and utility payments. The skydiving expenses are not essential living expenses. It is likely that the dental cost would have been covered if the Appellant had been insured as required by law. The Appellant's federal adjusted gross income was more than 300% of the federal poverty level even without taking the Girlfriend's financial contribution into account.

All-in-all, this appeal presents a rather flagrant disregard over a span of years of the Appellant's legal obligation under Massachusetts law to obtain health insurance coverage. From that perspective, this is an appropriate case to impose the 12 month penalty that the DOR has assessed against the Appellant.

I am concerned, however, about the Appellant's child support obligation and the potential impact of imposing the full penalty amount this year. The Appellant's child support obligation for the two children (one in high school, one in college) is \$12,480 per year (the equivalent of 22% of his AGI). If I reduce the 2018 tax penalty from 12 months to 6 months that will also make funds available so that the Appellant can enroll in his employer's health plan for the second half of 2019. See, e.g., 956 Code Mass. Regs. 6.08 (1) (e) and Findings of Fact, Nos. 15 and 16, above.

For the foregoing reasons, I will reduce the 2018 penalty assessment to 6 months. The Appellant should not expect that any penalties that might be assessed for future years will also be reduced without documentation of more compelling reasons, including verified information concerning the cost of health insurance available through his employer.

PENALTY ASSESSED

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 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 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

Tax Penalty Appeal Decision—Docket No. PA18-07

Appeal Decision: Appeal Approved -- 2018 tax penalty overturned.

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: April 8, 2019

Decision Date: May 17, 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 appeared for the hearing, which I conducted by telephone. A document was submitted on behalf of the Massachusetts Department of Revenue (DOR) prior to the hearing (Exhibit 1). The hearing record consists of the Appellant's testimony under oath and the following documents that were admitted into evidence as exhibits.

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2018;
3. Appellant's 2017 Final Appeal Decision (3 pages, dated 12/4/18); and
4. Health Connector's Notice of Hearing (3 pages, dated 3/12/19).

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 3 month penalty for 2018. The basis for the penalty was that the Appellant not insured with coverage that satisfied the Massachusetts minimum credible coverage standards (MCC) for the months of January – June 2018 but did have MCC coverage for the months of July – December 2018. Exhibits 1 and 2. (The penalty calculation is 12 months minus 6 months insured = 6 months uninsured minus 3-month administrative grace period = 3 penalty months.)

2. In 2017 and at the beginning of 2018 the Appellant was employed by an out-of-state employer and was enrolled in that employer's health insurance plan. The deductible amount for the out-of-state employer's health plan was minimally different from the MCC standards required under Massachusetts law and regulations. Testimony and Exhibit 3.
3. The Appellant prevailed in his 2017 tax penalty appeal on the same ground presented in this 2018 appeal for the months of January through June. Compare Exhibits 2 and 3. I find that the Appellant was insured for the months of January – June 2018 by the same insurer that covered him for all of 2017. Testimony.
4. 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 2018 Massachusetts income tax return.
5. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2018. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2018. (The DOR instructions are published online at <http://www.mass.gov/dor/2018ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2018.)

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 for the months of January – June 2018 that satisfied the Massachusetts minimum creditable coverage standards (MCC). See Exhibits 1 and 2. The issue to be decided is whether the penalty should be waived, either in whole or in part.

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

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

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

The Health Connector’s regulations also provide for a “hardship” appeal from the assessment of a penalty. 956 Code Mass. Regs. 6.07 and 6.08. The grounds for a hardship appeal are summarized in the Statement of Grounds for Appeal – 2017 that the Appellant signed and filed in this case. See Exhibit 2.

In this appeal I reach the same result that a prior hearing officer reached in the Appellant’s 2017 tax penalty appeal (Exhibit 3, Docket No. PA17-485), and I adopt the reasoning and factual foundation set forth in the 2017 decision. The 2017 appeal was decided on December 4, 2018, when the Appellant was already enrolled in his out-of-state employer’s health plan for coverage that had begun in January 2018. The carefully reasoned 2017 appeal decision explains why no penalty should be imposed for January through June 2018. As for the remainder of 2018, the DOR did not impose a penalty because the Appellant changed jobs and enrolled in his new employer’s health plan that met the MCC standards.

PENALTY ASSESSED

Number of Months Appealed: 3 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 2018 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 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

Tax Penalty Appeal Decision—Docket No. PA18-8

Appeal Decision: Appeal Approved -- 2018 tax penalty overturned.

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: April 8, 2019

Decision Date: May 24, 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 appeared for the hearing, which I conducted by telephone. A document was submitted on behalf of the Massachusetts Department of Revenue (DOR) prior to the hearing (Exhibit 1). The hearing record consists of the Appellant's testimony under oath and the following documents that were admitted into evidence as exhibits.

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2018;
3. Health Connector's Notice of Hearing (3 pages, dated 3/12/19);
4. Hearing Officer's Open Record Order (1 page, dated 4/8/19);
5. Health Connector's Cover Letter to Appellant (1 page, dated 4/8/19); and
6. Appellant's MassHealth Eligibility Letter (8 pages, dated 3/23/19).

At the conclusion of the hearing I held the hearing record open and requested that the Appellant file documents concerning his appeal. Exhibit 4. In response, I received Exhibits 5 and 6 on April 24, 2019. The Appellant had not submitted any information in support of his appeal. See Exhibits 1 -3, above.

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 2018. The basis for the penalty was that the Appellant was not insured at any time in 2018.

Exhibits 1 and 2. Based on Exhibit 1, Exhibit 6, and the Appellant's hearing testimony, I find that the penalty assessment is factually accurate.

2. The Appellant filed a Massachusetts personal income tax return for 2018 as a single person with no dependents. The Appellant's federal adjusted gross income (AGI) for 2018 was \$26,159. Exhibit 1.
3. The Appellant was 32 years old at the beginning of 2018 and resided with his parents in [name of city or town omitted] in Norfolk County, Massachusetts. Exhibit 1 and Testimony.
4. The Appellant's AGI was more than 150% of the federal poverty level. On this basis I conclude that the Appellant was not automatically exempt from the assessment of a tax penalty in 2018. DOR Table 1.
5. The Appellant's 2018 AGI (\$26,159) was less than 300% of the federal poverty level (\$36,180 for a one person household). DOR Table 2. On this basis I infer that the Appellant satisfied the Health Connector's financial eligibility requirement in 2018. (I note, however, that the Appellant testified that he was living with his parents in 2018.)
6. Based on DOR Table 3 the Appellant could afford to pay 4.20% of his income – or \$92 per month -- for health insurance coverage in 2018. (The calculation is 4.20% multiplied by \$26,159 AGI = \$1,098.67 per year divided by 12 months = \$91.55 per month.)
7. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage at his age and location for \$282 per month in 2018.
8. In 2019 the Appellant applied for government-subsidized health insurance coverage. By a letter dated March 23, 2019, the Health Insurance Processing Center informed the Appellant that he was not eligible for MassHealth. Exhibit 6, page 1.
9. The letter that the Appellant received in 2019 (Exhibit 6) did not provide any information whether the Appellant was eligible for coverage through the Health Connector. It did, however, state that the Appellant's monthly household income was 190.72% of the federal poverty level. Exhibit 6, page 2. I take administrative notice that 190.72% of the federal poverty level is less than the Health Connector's financial eligibility standard. See Findings of Fact, No. 5, above.
10. The letter that the Appellant received in 2019 informed the Appellant that he was eligible for Health Safety Net benefits (HSN), but it stated that HSN is "not insurance." Exhibit 6, page 2.
11. Based on the Appellant's appeal hearing testimony, I find that his Grandmother died the year prior to this appeal. The Grandmother also lived with the Appellant's parents, and she helped pay the household bills. The Appellant stated that he increased the portion of the household expenses that he shared with his parents after his Grandmother died.

12. The Appellant pays \$290 per month for a car loan. He is up-to-date in his credit card payments and has no other loans. The Appellant pays \$500 toward the \$2,000 monthly mortgage payment. Testimony.
13. The Appellant was employed full-time in 2018, earning \$13 per hour. The Appellant stated that he was not offered health insurance coverage through his employer. Testimony.
14. 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 2018 Massachusetts income tax return.
15. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2018. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2018. (The DOR instructions are published online at <http://www.mass.gov/dor/2018ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2018.)

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 2018. 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 – 2017 that the Appellant signed and filed in this case. See Exhibit 2.

In this case it is undisputed that the Appellant did not have health insurance coverage in 2018, the year at issue in this appeal. On March 23, 2019, however, the Appellant was informed by letter that his application for MassHealth was denied. Exhibit 6, page 1. The MassHealth eligibility denial was based on a finding that the Appellant's income was 190.72% of the federal poverty level. Exhibit 6, page 2. The hearing record does not contain any determination whether the Appellant was eligible for government-subsidized health insurance through the Health Connector, but the evidence does show that the Appellant's income was less than 300% of the federal poverty level and would satisfy the financial eligibility standards for Health Connector coverage. See, e.g., Findings of Fact, Nos. 5, 8, and 9, above.

I conclude, based on the evidence in the hearing record, that in 2018 the Appellant could not afford health insurance. In addition to the evidence just described, under DOR Table 3 the Appellant could afford to pay \$92 per month for health insurance. Under DOR Table 4 the Appellant would have to pay \$282 per month for unsubsidized individual coverage in 2018. See Findings of Fact, Nos. 6 and 7, above. For this reason I will waive the entire penalty assessed for 2018. See Mass. Gen. Laws c. 111M, sec. 2 (a), above.

I emphasize, however, that the Appellant needs to take further steps to clarify his health insurance status for 2019 in order to avoid (or to limit) the assessment of another penalty for 2019. The first point is that Appellant misunderstood his status under the March 23, 2019, letter that he received. See Exhibit 6. The letter stated unequivocally that the Appellant is not eligible for MassHealth. The letter went on to state that the Appellant is eligible for Health Safety Net but that the Health Safety Net benefits are "not insurance" and therefore do not satisfy the Appellant's obligation under Massachusetts law to obtain health insurance coverage. See, e.g., Findings of Fact, No. 10, and the discussion of the "individual mandate" above.

The second – and most important -- point is that the Appellant needs to take further action to clarify his status with the Health Connector in 2019. I recommend that you promptly contact Customer Service at the Health Connector (**telephone 1-877-623-6765**) to find out what you must do to enroll in a health insurance plan. It is highly likely, I think, that you will be asked to verify whether your employer offers health insurance as a job benefit and how much you would have to pay for the insurance. (You could also get assistance outside the government by contacting Health Care for All, a private, nonprofit organization. The free consumer help line is 1-800-272-4232.).

In sum, I waive the 12 month penalty assessed by the DOR for 2018. The Appellant shall take further steps to clarify his health insurance status for 2019.

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 2018 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 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: PA17-69

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: December 5, 2018

Decision Date: April 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

One of the Appellants appeared at the hearing, which was held by telephone, on December 5, 2018. The procedures to be followed during the hearing were reviewed with Appellant, and the Appellant was sworn in. The exhibits were marked and admitted into evidence without objection from the Appellant. The Appellant testified, and did not seek to introduce any additional exhibits.

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

- Exhibit 1: Notice of Hearing sent to Appellants dated November 13, 2018 (2 pages).
- Exhibit 2: Massachusetts Health Connector Appeals Unit sheet, August 7, 2018 (1 page).
- Exhibit 3: Appeal Case Information from Schedule HC, for tax year 2017 (1 page).
- Exhibit 4: Statement of Grounds for Appeal (3 pages).
- Exhibit 5: National Grid bill, October 23, 2017 (1 page).
- Exhibit 6: Notice, Select Portfolio Servicing, May 9, 2017 (2 pages).
- Exhibit 7: Notice, Select Portfolio Servicing, December 12, 2017 (2 pages).
- Exhibit 8: Notice of Hearing sent to Appellants July 12, 2018 (8 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellants were 52 and 54 years old in 2017, and during 2017 resided in Bristol County. (Exhibit 3 and Testimony of Appellant).
2. The Appellants' adjusted gross income in 2017 was \$34,836. (Exhibit 2).
3. In 2017 the Appellants had one dependent, and the Appellants' filing status was "married filing jointly." (Exhibit 3 and Testimony of Appellant).
4. The Appellants' dependent was their grandchild, of whom they have guardianship. The grandchild is a minor, and in 2017 had separate insurance coverage. The grandchild has a medical condition that requires special care, and Appellant testified that some important therapies are not covered by the grandchild's insurance. (Testimony of Appellant).
5. In 2017, the Appellants did not have insurance for the months of January through September. The Appellants therefore each lacked insurance for a total of nine months. (Exhibit 3 and testimony of Appellant).
6. Appellants filed an appeal on or about May 10, 2018, appealing the assessment of the penalty. (Exhibit 4).
7. The Appellants stated in the claim of appeal, and the Appellant so testified, that during 2017, the family was more than 30 days in arrears on rent or mortgage payments, and received an eviction notice. (Exhibit 4 and Testimony).
8. The Appellants were notified in May 2017 that their request for home retention loss mitigation was not approved. (Exhibit 6 and testimony of Appellant).
9. The Appellants were notified in December 2017 that their property was being referred for foreclosure. (Exhibit 7 and testimony of Appellant).
10. The Appellant testified that the family was in the process of being evicted from their home. (Testimony of Appellant).
11. The Appellants were notified of an arrearage on their utility bills, and in 2017 had a repayment plan in effect. (Exhibit 5 and Testimony of Appellant).
12. The Appellant testified that they sought insurance coverage through the Connector in 2017, but were told that their application was outside of the open enrollment period. However, they later learned that they could in fact apply, and obtained coverage in October 2017. (Exhibit 3 and testimony of Appellant).
13. During 2017, no employment-based insurance was available to the Appellants. (Testimony of Appellant).
14. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 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 2017. Table 2 sets forth income at 300% of the Federal poverty level, and Tables 5 and 6 set forth tax penalties in effect for 2017.
15. According to Table 2d of Schedule HC for 2017, Appellants, with adjusted gross income of less than \$60,480 in 2017, had an income of less than 300% of the Federal poverty level, and would have been income-eligible for subsidized health insurance.

16. According to Table 3 of Schedule HC, for a household filing “Married filing jointly,” with one or more dependents, and with an income between \$30,241 and \$40,320, an affordable health insurance premium would be one that cost no more than 3.45 % of the household’s income.
17. Three point forty-five percent of Appellant’s annual income would have been \$1201.84, or, a monthly premium of \$100.15. According to Table 4 of Schedule HC, in 2017 a married couple with no dependents, aged 50 – 54 years, residing in Bristol County, should be able to obtain health insurance for \$726 per month. With one dependent, that same couple should be able to obtain health insurance for \$865 per month.

ANALYSIS AND CONCLUSIONS OF LAW

G.L c. 111M, § 2, also called the “individual mandate,” requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable.” Residents who do not obtain insurance are subject to a tax penalty. Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty should not apply to him/her because of hardship.

In 2017, Appellants were uninsured for nine months of the year. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a penalty; for Tax Year 2017, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Thus, the Appellants are appealing the penalty of **six** months.

To determine whether the balance of the penalty should be waived in whole or in part, the first question to consider is 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, the next determination is whether such insurance was not, in fact, affordable to the Appellant because Appellant experienced financial hardship as defined in 956 CMR 6.08.

With respect to the availability of private health insurance, according to Tables 2, 3 and 4 of Massachusetts Schedule HC 2017, and based on the facts as found above, private health insurance was not considered to be affordable for Appellants. Appellants did not have access to employer-sponsored insurance in 2017. Although subsidized health insurance might have been available to Appellant during the early months of 2017; Appellants’ initial efforts to obtain coverage were not successful. They did make an additional effort to obtain insurance in 2017, and were successful.

The Health Connector’s regulations also provide for a “hardship” appeal from the assessment of a penalty. 956 CMR 6.07 and 6.08. The grounds for a hardship appeal are summarized in the Statement of Grounds for Appeal – 2017 that the Appellants signed and filed in this Case. Exhibit 4. On this record, Appellants clearly qualify for a hardship exemption. They were under threat of foreclosure in 2017, and as of the date of the hearing, that foreclosure was in process and they were being evicted from their

home. They had fallen into arrears on their utility payments, and were on a repayment plan for that. Their income is not substantially above 150 percent of the Federal Poverty Level (see, Table 1, Schedule HC). Additionally, Appellants' financial resources are challenged by the cost of caring for a grandchild with special medical needs, and their commitment to prioritizing that care. Thus, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. Further, Appellants' circumstances in 2017 were such that it would be inequitable to apply the Affordability Tables in Schedule HC to Appellant.

Accordingly, for the reasons stated above, I find the penalty assessed against Appellant for 2017 should be waived in its entirety.

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 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.

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA18-73

Appeal Decision: Appeal Approved -- 2018 tax penalty overturned.

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: May 2, 2019

Decision Date: May 4, 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 appeared for the hearing, which I conducted by telephone. A document was submitted on behalf of the Massachusetts Department of Revenue (DOR) prior to the hearing (Exhibit 1). The hearing record consists of the Appellant's testimony under oath and the following documents that were admitted into evidence as exhibits.

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2018;
3. Appellant's Letter in Support of Appeal (1 page, undated);
4. Honda Repair Invoice (1 page, dated 11/3/18);
5. Community College Payment Acknowledgement (3 pages, 4/8, 11/8 and 11/9/2018); and
6. Health Connector's Notice of Hearing (3 pages, dated 4/10/19).

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 2018. The basis for the penalty was that the Appellant was not insured at any time in 2018. Exhibits 1 and 2. Based on Exhibit 1 and the Appellant's hearing testimony, I find that the penalty assessment is factually accurate.

2. The Appellant filed a Massachusetts personal income tax return for 2018 as a single person with no dependents. The Appellant's federal adjusted gross income (AGI) for 2018 was \$31,453. Exhibit 1.
3. The Appellant was 33 years old at the beginning of 2018 and resided in [name of city or town omitted] in Norfolk County, Massachusetts. Exhibit 1.
4. The Appellant's AGI was more than 150% of the federal poverty level. On this basis I conclude that the Appellant was not automatically exempt from the assessment of a tax penalty in 2018. DOR Table 1.
5. The Appellant's 2018 AGI (\$31,453) was less than 300% of the federal poverty level (\$36,180 for a one person household). DOR Table 2. On this basis I infer the Appellant would have satisfied the financial eligibility standards for government-assisted health insurance in 2018.
6. Based on DOR Table 3 the Appellant could afford to pay 5.00% -- or \$131 per month -- for health insurance coverage in 2018. (The calculation is 5.00% multiplied by \$31,453 AGI = \$1,572.65 per year divided by 12 months = \$131.05 per month.)
7. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage at his age and location for \$282 per month in 2018.
8. The Appellant is a half-time student at [name omitted] Community College located in Massachusetts, where he anticipates receiving an Associates Degree in a medical field in September 2020. Testimony and Exhibits 3 and 5.
9. In 2017 the Appellant was insured through the Health Connector paying a \$60 monthly premium. For 2018 the Health Connector premium increased to \$135 per month, an amount the Appellant felt he could not afford and so he did not continue his coverage (see Exhibit 1). The Appellant renewed his Health Connector application for 2019 and was informed that he was eligible with a \$85 monthly premium. The Appellant reenrolled in health insurance through the Health Connector for 2019. Testimony and Exhibit 3. (I note that there is no evidence from the Health Connector in the hearing record to explain the basis for the year-to-year variations in the premium that the Appellant would have to pay, though the variations are likely linked to variations in the Appellant's income.)
10. In 2018 the Appellant worked 36 hours per week in a warehouse where he earned \$12 per hour that increased to \$14 per hour. The Appellant did not enroll in the health plan offered by his employer at a premium of slightly under \$400 per month -- an amount that the Appellant characterized as almost one-half of his pay that he could not afford. Testimony.
11. The Community College offers a student health insurance plan for students who are enrolled in 12 credits. The Appellant was enrolled in 8 credits in 2018. Testimony.

12. In 2018 the Appellant had to replace the engine block on his 2008 Honda Civic, which cost \$6,000. The Appellant had to pay \$1,723.01 as set forth in the dealer's invoice (Exhibit 4) and the dealer covered the remaining portion of the cost. Testimony and Exhibits 3 and 4.
13. In 2018 the Appellant did not receive financial aid for college, and he paid tuition out-of-pocket. Exhibit 3 and Testimony. The three "payment acknowledgements" that the Appellant received from his college demonstrate that he paid a total of \$3,056 in 2018. Exhibit 5. The Appellant also incurred substantial expenses for science textbooks and commuting expenses to college. Testimony.
14. At the outset of the appeal hearing the Appellant raised a question whether he still had Health Connector coverage in January 2018. Compare Exhibit 1 (no coverage). The evidence for coverage is quite limited. It is not necessary to resolve this factual issue to decide this appeal.
15. 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 2018 Massachusetts income tax return.
16. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2018. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2018. (The DOR instructions are published online at <http://www.mass.gov/dor/2018ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2018.)

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 2018. 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 – 2017 that the Appellant signed and filed in this case. See Exhibit 2.

The evidence in this case presents an Appellant who sought to enroll in government-subsidized health insurance through the Health Connector while he worked full-time in a warehouse and sought to further his education as a half-time student at a local community college. To summarize: the Appellant was insured in 2017 (\$60 monthly premium), was not insured in 2018 (\$135 monthly premium), and was again insured in 2019 (\$85 monthly premium). See, e.g., Findings of Fact, No. 9, above. The Appellant was, in short, sensitive to the variations in the cost of the monthly premium that he would have to pay to determine whether he could afford to obtain health insurance in a given year.

The evidence lends support to the Appellant’s position that he could not afford to pay the \$135 per month Health Connector premium in 2018. Under the objective standards set forth in DOR Tables 3 and 4, the Appellant could afford to pay \$131 per month for health insurance that would cost him \$282 per month for individual coverage without a government subsidy. See, e.g., Findings of Fact, Nos. 6, 7, and 9, above. Since the two amounts are equivalent (\$131 vs. \$135 per month), I consider other aspects of the Appellant’s financial circumstances in 2018 to determine if he could afford health insurance coverage.

The Appellant had two substantial expenses beyond ordinary living expenses in 2018. The first was the cost of college tuition, for which he made 3 payments totaling \$3,056 in 2018. He also had other college expenses, including the substantial cost of science textbooks and his commuting expenses. The second expense was the \$1,723 that he had to pay to replace the engine block on his ten year old car. See Findings of Fact, Nos. 12 and 13, above.

After considering all the circumstances, I conclude that it is appropriate to waive the entire penalty assessed against the Appellant for 2018. See, e.g., 956 Code Mass. Regs. 6.08 (1) (e) (“[The Appellant] experienced financial circumstances such that the expense of purchasing health insurance that met minimum creditable coverage standards would have caused him experience a serious deprivation of food, shelter, clothing or other necessities.”).

PENALTY ASSESSED

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 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 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: PA17-76

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: December 5, 2018

Decision Date: May 22, 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 appeared at the hearing, which was held by telephone, on December 5, 2018. The procedures to be followed during the hearing were reviewed with Appellant, and the Appellant was sworn in. The exhibits were marked and admitted into evidence without objection from the Appellant. The Appellant testified, and did not seek to introduce any additional exhibits.

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

- Exhibit 1: Notice of Hearing sent to Appellant dated November 13, 2018 (3 pages).
- Exhibit 2: Notice of Hearing sent to Appellant dated August 8, 2018 (6 pages).
- Exhibit 3: Appeal Case Information from Schedule HC, for tax year 2017 (1 page).
- Exhibit 4: Statement of Grounds for Appeal (6 pages).
- Exhibit 5: Massachusetts Health Connector Appeals Unit, Decision issued October 23, 2017 (5 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant and Appellant's spouse were 34 and 35 years old in 2017, and during the first six months of 2017 they resided in Suffolk County. During the final six months of 2017, they resided in Maryland. (Exhibit 3, Exhibit 4 and Testimony of Appellant).
2. In 2017 the Appellant's filing status was "married filing jointly." (Exhibit 3).
3. The Appellant and Appellant's spouse had adjusted gross income in 2017 of \$145,382. (Exhibit 3).
4. In 2017 the Appellant was covered by employer-sponsored health insurance from Appellant's employer. (Exhibits 4 and 5).
5. The employer-sponsored health insurance policy that covered the Appellant in 2017 was the same policy that Appellant had had in 2016. Appellant had had the same employer-sponsored health insurance for six years, and had always received a 1099HC Form stating that it met the Minimum Creditable Coverage (MCC) standards. However, in April 2017 Appellant learned that that insurance did not meet the MCC standards, because the deductible had been increased to \$2,500. (Exhibit 4, Exhibit 5, and Testimony).
6. At the point that Appellant learned that the employer-sponsored health insurance did not meet the MCC standards, Appellant and Appellant's spouse had already made plans to move out of Massachusetts. (Exhibit 4 and Testimony).
7. Appellant filed an appeal of the penalty for the 2016 tax year on May 1, 2017. (Exhibit 5).
8. As found in the decision issued on the appeal of the penalty for 2016, the health insurance offered by the employer did offer a broad range of comprehensive benefits, there were no caps on the total benefits, and preventive care was covered without a deductible. The coverage was therefore found to substantially meet the Massachusetts MCC standards. 956 CMR 6.08 (2)(d). (Exhibit 5 and Testimony).
9. With respect to 2017, Appellant continued to be the only Massachusetts-based employee of the company, and during the first six months of 2017, no employment-based insurance that met the Massachusetts minimum coverage standards was available to the Appellant. (Exhibit 5, and Testimony).
10. Appellant and Appellant's spouse did move out of the Commonwealth in June 2017, and do not currently live in Massachusetts. (Exhibits 1 – 5 and Testimony).
11. The Appellant filed an appeal of the penalty for the 2017 tax year on or about May 7, 2017. (Exhibit 4 and Testimony).
12. In the statement of grounds for this appeal, Appellant stated that during 2017, Appellant had purchased health insurance that did not meet minimum creditable coverage standards because that was all that Appellant's employer offered, and Appellant had not realized the employer-sponsored coverage did not meet the standards. Appellant further stated that it was only in April 2017 that they became aware of the fact that the coverage did not technically meet the minimum credible coverage standards, and that since Appellant was moving out of state in June 2017, it made no sense to obtain different insurance for that two-month period. (Exhibit 4 and Testimony).
13. During 2017, the insurance coverage was unchanged from that at issue in the 2016 tax year, and continued to provide comprehensive benefits. (Testimony).

ANALYSIS AND CONCLUSIONS OF LAW

G.L c. 111M, § 2, also called the “individual mandate,” requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable.” Residents who do not obtain insurance are subject to a tax penalty. Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty should not apply to him/her because of hardship.

In 2017, Appellant was a resident of the Commonwealth for six months. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a penalty; for Tax Year 2017, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Thus, the Appellant is appealing the penalty of **three** months.

The Connector’s regulations provide that the Connector may also consider the extent to which insurance coverage deviated from or substantially met minimum creditable coverage standards when determining if a penalty should be waived. See 956 CMR 6.08(2)(d). During 2017, Appellant was covered by employer-sponsored health insurance from Appellant’s employer. The issues to be decided are whether the policy substantially met the Massachusetts minimum credible coverage standards, and whether the Appellant should be assessed a penalty for the months that Appellant was covered by the employer-sponsored plan.

This issue was precisely the issue considered in Appellant’s appeal of the penalty for tax year 2016. As found above as well as in the decision on the 2016 tax year, this employer-sponsored insurance had met the standards for minimum credible coverage for six years, and Appellant only learned in April 2017 that the increased deductible brought it below the MCC standard. Appellant was the only company employee based in Massachusetts. In the decision on the penalty for 2016, Appellant’s insurance was found to have offered a broad range of comprehensive medical benefits; with no caps on total benefits, and no deductible applicable to preventive care.

Based on the evidence presented here, and consistent with the decision for 2016, Appellant did have comprehensive health insurance through Appellant’s employer that substantially met the Massachusetts standards. 956 CMR 6.08 (2)(d). Accordingly, for the reasons stated above, I find the penalty assessed against Appellant for 2017 should be waived in its entirety.

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 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.

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-10

Appeal Decision: Appeal Approved In Part -- 2018 tax penalty reduced to six months.

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: April 8, 2019

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2018;
3. Appellant's Letter in Support of Appeal (1 page, dated 3/1/19); and
4. Health Connector's Notice of Hearing (3 pages, dated 3/12/19).

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 12month penalty for 2018. The basis for the penalty was that the Appellant was not insured at any time in 2018. Exhibits 1 and 2. Based on Exhibit 1 and the Appellant's hearing testimony, I find that the penalty assessment is accurate.
2. The Appellant filed a Massachusetts personal income tax return for 2018 as a single person with no dependents. The Appellant's federal adjusted gross income (AGI) for 2018 was \$47,395. Exhibit 1.

3. The Appellant was 30 years old at the beginning of 2018 and resided in [name of city or town omitted] in Berkshire County, Massachusetts. Exhibit 1.
4. The Appellant's AGI was more than 150% of the federal poverty level. On this basis I conclude that the Appellant was not automatically exempt from the assessment of a tax penalty in 2018. DOR Table 1.
5. The Appellant's 2018 AGI (\$47,395) was more than 300% of the federal poverty level (\$36,180 for a one person household). DOR Table 2. On this basis I infer that the Appellant would not have met the financial eligibility limits to qualify for government-subsidized health insurance.
6. Based on DOR Table 3 the Appellant could afford to pay 7.60% -- or \$300 per month -- for health insurance coverage in 2018. (The calculation is 7.60 % multiplied by \$47,395 AGI = \$3,602.02 per year divided by 12 months = \$300.16 per month.)
7. Based on DOR Table 4 (Region 1) the Appellant could obtain individual health insurance coverage at his age and location for \$230 per month in 2018. By comparison, the Appellant stated that the cheapest coverage available through the Health Connector cost \$375 per month with "over \$6,000 deductible." Exhibit 3. In his appeal hearing testimony, the Appellant stated that the deductible was \$350 per month, or \$4,200 per year. I find that the DOR Table amount is more credible and that the annual deduction would not exceed \$2,000 per year for in-network coverage for individual coverage plus \$250 for prescription drug coverage under the Health Connector's regulations. See 956 Code Mass. Regs. 5.03 (c) (par. 3).
8. The Appellant works full-time for a very small family-owned and operated business where he was paid \$18.50 per hour in 2018. There has recently been a succession in ownership of the business within the family. Testimony.
9. The Appellant had access to health insurance coverage through his job. He did not enroll in the offered health insurance plan because the cost was equivalent to one pay check per month. Testimony.
10. The Appellant owns his home. He pays \$700 per month for his mortgage and homeowner's insurance, plus \$38 per month for water and sewer charges and \$150 per month for electricity and natural gas. The Appellant is not behind in his mortgage payments. Exhibit 3 and Testimony.
11. The Appellant has an outstanding credit card balance of approximately \$6,000 (reduced from a \$10,000 balance). The Appellant incurred much of this debt to make essential repairs to his truck. The Appellant is also paying \$140 per month on a personal loan from his grandfather. Testimony.

12. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2018 Massachusetts income tax return.
13. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2018. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2018. (The DOR instructions are published online at <http://www.mass.gov/dor/2018ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2018.)

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 2018. 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 – 2017 that the Appellant signed and filed in this case. See Exhibit 2.

In this case, the Appellant asserts that it is not fair for the government to require him to obtain health insurance. The short response is that, despite the Appellant’s personal opinion, Massachusetts residents have a legal obligation to obtain health insurance, under the provisions of state law summarized above.

There is substantial evidence that the Appellant is able to afford health insurance. Although the Appellant listed income and expenses in his written statement (Exhibit 3) and in his appeal hearing testimony, the more compelling evidence is set forth in the objective standards in DOR Tables 3 and 4. On his income, the Appellant could afford to pay \$300 per month for health insurance, while individual coverage was available for \$230 per month. See Findings of Fact, Nos. 6 and 7, above.

I recognize, however, that the Appellant states, with some supporting evidence, that purchasing health insurance would be a “financial strain” (Exhibit 3) and, perhaps equally importantly, that there is currently discussion within the small, family-owned business about offering a less costly health insurance option to the Appellant.

After considering all the circumstances (including the cost of the tax penalty to the Appellant under DOR Tables 5 and 6), I conclude that it is appropriate to reduce the penalty that the DOR assessed against the Appellant for 2018 from 12 months to 3 months. See, e.g., 956 Code Mass. Regs. 6.08 (1) (e) ([The Appellant] experienced financial circumstances such that the expense of purchasing health insurance that met minimum creditable coverage standards would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities.”).

The Appellant should view the penalty reduction as an opportunity to become insured, as required by law. He should not assume that penalties will continue to be waived or reduced in future years.

PENALTY ASSESSED

Number of Months Appealed: 12 Number of Months Assessed: 3

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 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 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: PA18-30

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: April 18, 2019

Decision Date: May 28, 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 appeared at the hearing, which was held by telephone, on April 18, 2019. The record was left open for the Appellant to provide proof of insurance.

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

- Exhibit 1: Notice of Hearing dated March 19, 2019
- Exhibit 2: Appeal Case Information from form Schedule HC
- Exhibit 3: Statement of Grounds for Appeal dated February 26, 2019
- Exhibit 4: Written Statement of Appeal
- Exhibit 5: Open record Documents

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is twenty-three years old and is single. He lives in Essex County, Massachusetts.
2. Appellant works in the education industry. He thought he had insurance through his parents in 2018 as he was a graduate student in college.
3. Appellants parents were self- employed and could not afford health insurance in 2018.
4. Appellant does have health insurance in 2019.
5. The Appellant's monthly expenses totaled \$1,258.00, consisting of rent \$805.00, electricity \$50.00, cable \$50.00, car payment \$153.28, car gas \$50.00, food \$600.00, clothes \$25.00 entertainment \$125.00.
6. The Appellant did submit a Statement of Grounds for Appeal-2018 under the grounds for Appeal, "Other. During 2018 other circumstances, such as applying the affordability tables in Schedule HC to you is inequitable, (for example because of family size...." But should also should have appealed under " During 2018, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities." I will hear his appeal under both grounds.
7. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2018. Table 1 sets forth the income eligibility standards for various family sizes at 150% of the federal poverty level and Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard for the government-subsidized health insurance program. See Mass. G.L. c. 118H, s.3(a)(1). Tables 5 and 6 set forth the tax penalties for 2018.
8. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant may have been eligible for subsidized health insurance, since Appellant's income of \$19,442.00 was less than \$35,640.00. The monthly premium for health insurance available on the private market in Essex County for a 22 year old single person was \$150.00. The tables reflect that Appellant could afford \$46.98. This is more than what the appellant is deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions)

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellant did submit a Statement of Grounds for Appeal-2018 under the grounds for Appeal, “Other. During 2018 other circumstances, such as applying the affordability tables in Schedule HC to you is inequitable, (for example because of family size....” But should also should have appealed under “ During 2018, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities.” I will hear his appeal under both grounds.

The Health Care Reform Act of 2006 requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage “so long as it is deemed affordable” under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). However, individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”) are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 13-1, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2013-releases/tir-13-1.html>. For 2018, 150 percent of the FPL was \$17,820.00 for a single person with zero dependents. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf>; see also 830 Mass. Code Regs. 111M.2.1(5)(c) (2008). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months. *Id.*

Since Appellant’s 2018 income was more than 150 percent of the FPL, making him potentially subject to an individual mandate penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to him in 2018. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and second to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2017 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$19,442.00 in 2018, and Appellant’s filing status was single. EX 2. According to the Affordability Schedule established by the Connector’s board and included in the Instructions and Worksheets of the 2017 Massachusetts Schedule HC, Appellant could afford to pay \$46.98 monthly for health insurance. See 2017 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to him from the Premium Tables, at a cost of \$150.00 monthly for coverage with zero dependents *Id.* at Table 4.

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

Appellant is deemed to afford \$46.98 for health insurance coverage because of his income. Private insurance in the market place was \$150.00 per month, which is more than he could afford. On these facts, I find that Appellant has shown that he was precluded from purchasing affordable health insurance during 2018. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that he is exempt from a tax penalty for his non-compliance with the individual mandate.

Accordingly, Appellant’s appeal is **ALLOWED**, and the 2018 penalty assessed is **OVERTURNED**.

PENALTY ASSESSED

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 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 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: PA18-41

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: May 1, 2019

Decision Date: May 10, 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

Appellant appeared at the hearing, which was held by telephone, on May 1, 2019.

The hearing record consists of the Appellant's testimony, and the following documents which were admitted into evidence without objection by Appellant:

- Exhibit 1: Notice of Hearing (4-9-19) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2017 (1 page);
- Exhibit 3: Statement of Grounds for Appeal (2-19-19) (with letter and documents) (10 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, age 47 during 2018, from Berkshire County, filed head of household with a family size of 2.
2. Appellant did not have health insurance for 2018.
3. Appellant's father passed away during 2017, and Appellant had financial expenses that caused his finances to be affected during 2018 as well.
4. Appellant received shutoff notices during 2018.
5. Appellant could not afford health insurance based on the tables in Schedule HC. Based on the tables, it would cost \$317 per month for insurance and he was deemed to afford \$233 per month.
6. Appellant's expenses for food, shelter, clothing and transportation used all of the income.

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply. Appellant did not have health insurance for 2018. Appellant could not afford health insurance based on the tables in Schedule HC. Appellant’s expenses for food, shelter, clothing, school and transportation used all of the income. Paying for health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities. Based on this information, the penalty is waived.

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 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.

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-42

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: May 1, 2019

Decision Date: May 20, 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

Appellant appeared at the hearing, which was held by telephone, on May 1, 2019.

The hearing record consists of the Appellant's testimony, and the following documents which were admitted into evidence without objection by Appellant:

- Exhibit 1: Notice of Hearing (4-9-19) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2018 (1 page);
- Exhibit 3: Statement of Grounds for Appeal (2-24-19) (with letter) (4 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, age 62 during 2018, from Essex County, filed single with a family size of 1.
2. Appellant did not have health insurance for 2018.
3. Appellant's health insurance through the employer was not affordable for him.
4. Appellant could not afford health insurance based on the tables in Schedule HC. Based on the tables, it would cost \$423 per month for insurance and he was deemed to afford \$131 per month.
5. Appellant's expenses for food, shelter, clothing and transportation used most of the income.

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply. Appellant did not have health insurance for 2018. Appellant could not afford health insurance based on the tables in Schedule HC. Appellant’s expenses for food, shelter, clothing, school and transportation used most of the income. Paying for health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities. Based on this information, the penalty is waived.

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: PA18-43

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: May 1, 2019

Decision Date: May 20, 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

Appellant appeared at the hearing, which was held by telephone, on May 1, 2019.

The hearing record consists of the Appellant's testimony, and the following documents which were admitted into evidence without objection by Appellant:

- Exhibit 1: Notice of Hearing (4-9-19) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2018 (1 page);
- Exhibit 3: Statement of Grounds for Appeal (2-25-19) (with letter) (4 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, age 41 during 2018, from Essex County, filed single with a family size of 1.
2. Appellant did not have health insurance for 2018.
3. Appellant did not have health insurance through the employer.
4. Appellant and Appellant's spouse were separated, and Appellant provided support to her, in addition to paying for most expenses for their two children, including day care.
5. Appellant could afford health insurance based on the tables in Schedule HC. Based on the tables, it would cost \$278 per month for insurance and he was deemed to afford \$455 per month.
6. Appellant's expenses for food, shelter, clothing and transportation used most of the income.
7. Appellant is going to obtain health insurance through the employer.

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply. Appellant did not have health insurance for 2018. Appellant could afford health insurance based on the tables in Schedule HC. Appellant’s spouse and Appellant separated, and Appellant is paying most of the expenses for the two children, including day care, and is also providing income to his spouse. Appellant’s expenses for food, shelter, clothing, school and transportation used most of the income. Paying for health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities. Appellant’s employer had not provided health insurance, but is now going to be providing health insurance and Appellant will enroll. Based on this information, the penalty is waived.

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: PA18-44

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: May 1, 2019

Decision Date: May 20, 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

Appellant appeared at the hearing, which was held by telephone, on May 1, 2019.

The hearing record consists of the Appellant's testimony, and the following documents which were admitted into evidence without objection by Appellant:

- Exhibit 1: Notice of Hearing (4-9-19) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2018 (1 page);
- Exhibit 3: Statement of Grounds for Appeal (3-2-19) (with documents) (4 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, age 27 during 2018, from Suffolk County, filed single with a family size of 1.
2. Appellant did have health insurance for January through March, and for November and December of 2018, but did not have health insurance for April through October of 2018.
3. Appellant had health insurance through an employer, and when Appellant changed jobs, there was a miscommunication about signing up for health insurance, and Appellant missed the deadline.
4. Appellant attempted to get health insurance through other means but was not able to do so.
5. Appellant was able to sign up with the employer to have health insurance as of November 2018 and continues to have health insurance through the employer.
6. Appellant could afford health insurance based on the tables in Schedule HC. Based on the tables, it would cost \$249 per month for insurance and he was deemed to afford \$260 per month.

7. Appellant’s expenses for food, shelter, clothing and transportation and student loans used most of the income.

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply. Appellant did have health insurance for January through March and for November and December of 2018. When Appellant changed jobs in April 2018, there was a miscommunication and Appellant missed the deadline to sign up for health insurance through the employer. Appellant did obtain health insurance through the employer starting in November 2018 and continues to have health insurance through the employer. Appellant could afford health insurance based on the tables in Schedule HC. Appellant’s expenses for food, shelter, clothing, school and transportation used most of the income. Paying for health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities. Based on this information, the penalty is waived.

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: PA18-45

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: May 6, 2019

Decision Date: May 8, 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 appeared at the hearing, which was held by telephone, on May 6, 2019.

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

- Exhibit 1: Notice of Hearing dated April 9, 2019
- Exhibit 2: Appeal Case Information from form Schedule HC
- Exhibit 3: Statement of Grounds for Appeal, date March 1, 2019

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is sixty-one years old and is single with one dependent. She lives in Worcester County, Massachusetts.

2. Appellant works in the financial services system.
3. Appellant did not have health insurance in 2018. She does not have health insurance in 2019.
4. Two of her adult children moved back with the Appellant.
5. The Appellant's monthly expenses totaled \$3,485.00, consisting of rent \$1,000.00, heat & light \$600.00, internet & cable \$180.00, cell phone \$100.00, car payment \$310.00, car insurance \$110.00, car gas \$100.00, food \$800.00, credit card \$150.00, clothing \$100.00, toiletries \$35.00.
6. The Appellant did submit a Statement of Grounds for Appeal-2018 under the grounds for Appeal, "During 2018, you incurred a significant, unexpected increase in essential expenses resulting directly from the consequences of domestic violence, the death of a spouse, family member or partner with primary responsibility for child care where household expenses were shared..." but should also have appealed under " During 2018, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities." I will hear her appeal under both grounds.
7. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2018. Table 1 sets forth the income eligibility standards for various family sizes at 150% of the federal poverty level and Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard for the government-subsidized health insurance program. See Mass. G.L. c. 118H, s.3(a)(1). Tables 5 and 6 set forth the tax penalties for 2018.
8. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant may have been eligible for subsidized health insurance, since Appellant's income of \$36,672.00 was less than \$48,060.00. The monthly premium for health insurance available on the private market in Worcester County for a 61 year old single person with one dependent was \$886.00. The tables reflect that Appellant could afford \$184.30. This is more than what the appellant is deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions)

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellant did submit a Statement of Grounds for Appeal-2018 under the grounds for Appeal, “During 2018, you incurred a significant, unexpected increase in essential expenses resulting directly from the consequences of domestic violence, the death of a spouse, family member or partner with primary responsibility for child care where household expenses were shared...” but should also have appealed under “ During 2018, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities.”

The Health Care Reform Act of 2006 requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage “so long as it is deemed affordable” under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). However, individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”) are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 13-1, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2013-releases/tir-13-1.html>. For 2018, 150 percent of the FPL was \$24,030.00 for a single person with one dependent. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf>; see also 830 Mass. Code Regs. 111M.2.1(5)(c) (2008). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months. *Id.*

Since Appellant’s 2018 income was more than 150 percent of the FPL, making her potentially subject to an individual mandate penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to her in 2018. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and second to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2017 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$35,672.00 in 2018, and Appellant’s filing status was single with one dependent. EX 2. According to the Affordability Schedule established by the Connector’s board and included in the Instructions and Worksheets of the 2017 Massachusetts Schedule HC, Appellant could afford to pay \$184.30 monthly for health insurance. See 2017 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to her from the Premium Tables, at a cost of \$886.00 monthly for coverage with one dependent. *Id.* at Table 4.

Appellants are subject to the tax penalty unless appellants demonstrate a hardship. 956 Mass. Code Regs. 6.07(1) (2008). To prevail on a hardship appeal, an appellant must establish that “based on all his

circumstances, minimum creditable coverage was not affordable to him[er] because [s]he experienced a hardship.” Id. at 6.08(1).

Appellant is deemed to afford \$184.30 for health insurance coverage because of her income. Private insurance in the market place was \$886.00 per month, which is more than she could afford. On these facts, I find that Appellant has shown that she was precluded from purchasing affordable health insurance during 2018. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that she is exempt from a tax penalty for her non-compliance with the individual mandate.

Accordingly, Appellant’s appeal is **ALLOWED**, and the 2018 penalty assessed is **OVERTURNED**.

PENALTY ASSESSED

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 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 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: PA18-46

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: May 6, 2018

Decision Date: May 8, 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 appeared at the hearing, which was held by telephone, on May 6, 2018.

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

- Exhibit 1: Notice of Hearing dated April 9, 2019
- Exhibit 2: Appeal Case Information from form Schedule HC
- Exhibit 3: Statement of Grounds for Appeal dated March 5, 2019

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is twenty-six years old and is single. He lives in Suffolk County, Massachusetts.

2. Appellant works in contract administration. He worked several jobs in 2018 as a server in restaurants.
3. Appellants parents moved out of state after he graduated from college. He lived with his grandmother but she died. He then lived in his cousin's home which was being foreclosed until the bank took over. He then stayed with his cousin for a while.
4. Appellant does have health insurance in 2019.
5. The Appellant's monthly expenses totaled \$2,581.00, consisting of rent \$400.00, cell phone \$120.00, car payment \$66.00, car insurance \$170.00, car gas \$400.00, food \$800.00, clothes \$50.00 toiletries \$200.00, moving cost \$175.00.
6. The Appellant did submit a Statement of Grounds for Appeal-2018 under the grounds for Appeal, During 2018, you were homeless, more than 30 days in arrears in rent or mortgage payments; or received an eviction or foreclosure notice." But should also should have appealed under " During 2018, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities." I will hear his appeal under both grounds.
7. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2018. Table 1 sets forth the income eligibility standards for various family sizes at 150% of the federal poverty level and Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard for the government-subsidized health insurance program. See Mass. G.L. c. 118H, s.3(a)(1). Tables 5 and 6 set forth the tax penalties for 2018.
8. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant may have been eligible for subsidized health insurance, since Appellant's income of \$35,046.00 was less than \$35,640.00. The monthly premium for health insurance available on the private market in Suffolk County for a 25 year old single person was \$150.00. The tables reflect that Appellant could afford \$146.02. This is more than what the appellant is deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions)

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellant did submit a Statement of Grounds for Appeal-2018 under the grounds for Appeal, During 2018, you were homeless, more than 30 days in arrears in rent or mortgage payments; or received an eviction or foreclosure notice.” But should also should have appealed under “ During 2018, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities.” I will hear his appeal under both grounds.

Appellant was homeless for a major portion of 2018 and had to move several times and did not have the money for a residence of his own.

The Health Care Reform Act of 2006 requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage “so long as it is deemed affordable” under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). However, individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”) are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 13-1, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2013-releases/tir-13-1.html>. For 2018, 150 percent of the FPL was \$17,820.00 for a single person with zero dependents. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf>; see also 830 Mass. Code Regs. 111M.2.1(5)(c) (2008). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months. *Id.*

Since Appellant’s 2018 income was more than 150 percent of the FPL, making him potentially subject to an individual mandate penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to him in 2018. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and second to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2017 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$35,046.00 in 2018, and Appellant’s filing status was single. EX 2. According to the Affordability Schedule established by the Connector’s board and included in the Instructions and Worksheets of the 2017 Massachusetts Schedule HC, Appellant could afford to pay \$146.02 monthly for health insurance. See 2017 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to him from the Premium Tables, at a cost of \$150.00 monthly for coverage with zero dependents *Id.* at Table 4.

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

Appellant is deemed to afford \$146.02 for health insurance coverage because of his income. Private insurance in the market place was \$150.00 per month, which is more than he could afford. On these facts, I find that Appellant has shown that he was precluded from purchasing affordable health insurance during 2018. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that he is exempt from a tax penalty for his non-compliance with the individual mandate.

Accordingly, Appellant’s appeal is **ALLOWED**, and the 2018 penalty assessed is **OVERTURNED**.

PENALTY ASSESSED

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 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 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: PA18-47

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: May 6, 2019

Decision Date: May 8, 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 appeared at the hearing, which was held by telephone, on May 6, 2019.

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

- Exhibit 1: Notice of Hearing dated April 9, 2019
- Exhibit 2: Appeal Case Information from form Schedule HC
- Exhibit 3: Statement of Grounds for Appeal, date February 28, 2019

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is thirty-nine years old and is single with one dependent. She lives in Suffolk County, Massachusetts.

2. Appellant works in the health services system.
3. Appellant did not have health insurance in 2018. She does have health insurance in 2019.
4. The Appellant's monthly expenses totaled \$4,021.00, consisting of rent \$1,187.00, heat & light \$150.00, internet & cable \$124.00, cell phone \$120.00, transportation \$200.00, food \$500.00, credit card \$1100.00, clothing \$200.00, entertainment \$200.00, toiletries \$200.00, tuition for child \$40.00.
5. The Appellant did not submit a Statement of Grounds for Appeal-2018 but should have filed her appeal under "During 2018, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities." I will hear her appeal under this ground.
6. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2018. Table 1 sets forth the income eligibility standards for various family sizes at 150% of the federal poverty level and Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard for the government-subsidized health insurance program. See Mass. G.L. c. 118H, s.3(a)(1). Tables 5 and 6 set forth the tax penalties for 2018.
7. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant would not have been eligible for subsidized health insurance, since Appellant's income of \$48,150.00 was more than \$48,060.00. The monthly premium for health insurance available on the private market in Suffolk County for a 38 year old single person with one dependent was \$650.00. The tables reflect that Appellant could afford \$296.92. This is more than what the appellant is deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions)

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellant did not submit a Statement of Grounds for Appeal-2018 but should have filed her appeal under "During 2018, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities." I will hear her appeal under this ground.

The Health Care Reform Act of 2006 requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage “so long as it is deemed affordable” under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). However, individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”) are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 13-1, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2013-releases/tir-13-1.html>. For 2018, 150 percent of the FPL was \$24,030.00 for a single person with one dependent. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf>; see also 830 Mass. Code Regs. 111M.2.1(5)(c) (2008). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months. *Id.*

Since Appellant’s 2018 income was more than 150 percent of the FPL, making her potentially subject to an individual mandate penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to her in 2018. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and second to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2017 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$48,150.00 in 2018, and Appellant’s filing status was single with one dependent. EX 2. According to the Affordability Schedule established by the Connector’s board and included in the Instructions and Worksheets of the 2017 Massachusetts Schedule HC, Appellant could afford to pay \$296.92 monthly for health insurance. See 2017 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to her from the Premium Tables, at a cost of \$650.00 monthly for coverage with one dependent. *Id.* at Table 4.

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

Appellant is deemed to afford \$296.92 for health insurance coverage because of her income. Private insurance in the market place was \$650.00 per month, which is more than she could afford. On these facts, I find that Appellant has shown that she was precluded from purchasing affordable health insurance during 2018. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that she is exempt from a tax penalty for her non-compliance with the individual mandate.

Accordingly, Appellant’s appeal is **ALLOWED**, and the 2018 penalty assessed is **OVERTURNED**.

PENALTY ASSESSED

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 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 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: PA18-48

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: May 6, 2018

Decision Date: May 9, 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 appeared at the hearing, which was held by telephone, on May 6, 2018.

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

- Exhibit 1: Notice of Hearing dated April 9, 2019
- Exhibit 2: Appeal Case Information from form Schedule HC
- Exhibit 3: Statement of Grounds for Appeal dated February 14, 2019

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is twenty-one years old and is single. He lives in Plymouth County, Massachusetts.

2. Appellant works in the food industry administration.
3. Appellants employer offers health insurance for a premium of \$572.00 per month.
4. Appellant does not have health insurance in 2019.
5. The Appellant's monthly expenses totaled \$1,144.00, consisting of rent \$800.00, cable \$214.00, clothes \$100.00 toiletries \$30.00.
6. The Appellant did submit a Statement of Grounds for Appeal-2018 under the grounds for Appeal, " During 2018, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities."
7. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2018. Table 1 sets forth the income eligibility standards for various family sizes at 150% of the federal poverty level and Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard for the government-subsidized health insurance program. See Mass. G.L. c. 118H, s.3(a)(1). Tables 5 and 6 set forth the tax penalties for 2018.
8. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant may have been eligible for subsidized health insurance, since Appellant's income of \$25,153.00 was less than \$35,640.00. The monthly premium for health insurance available on the private market in Plymouth County for a 20- year old single person was \$150.00. The tables reflect that Appellant could afford \$88.03. This is more than what the appellant is deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions)

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellant did submit a Statement of Grounds for Appeal-2018 under the grounds for Appeal, " During 2018, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities."

The Health Care Reform Act of 2006 requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage “so long as it is deemed affordable” under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). However, individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”) are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 13-1, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2013-releases/tir-13-1.html>. For 2018, 150 percent of the FPL was \$17,820.00 for a single person with zero dependents. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf>; see also 830 Mass. Code Regs. 111M.2.1(5)(c) (2008). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months. *Id.*

Since Appellant’s 2018 income was more than 150 percent of the FPL, making him potentially subject to an individual mandate penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to him in 2018. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and second to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2017 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$25,153.00 in 2018, and Appellant’s filing status was single. EX 2. According to the Affordability Schedule established by the Connector’s board and included in the Instructions and Worksheets of the 2017 Massachusetts Schedule HC, Appellant could afford to pay \$88.03 monthly for health insurance. See 2017 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to him from the Premium Tables, at a cost of \$150.00 monthly for coverage with zero dependents *Id.* at Table 4.

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

Appellant is deemed to afford \$88.03 for health insurance coverage because of his income. Private insurance in the market place was \$150.00 per month, which is more than he could afford. Employer health insurance was offered at a cost of \$572.00 per month, which was more than Appellant could afford. On these facts, I find that Appellant has shown that he was precluded from purchasing affordable health insurance during 2018. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that he is exempt from a tax penalty for his non-compliance with the individual mandate.

Accordingly, Appellant's appeal is **ALLOWED**, and the 2018 penalty assessed is **OVERTURNED**.

PENALTY ASSESSED

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 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 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: PA18-49

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: May 6, 2018

Decision Date: May 28, 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 appeared at the hearing, which was held by telephone, on May 6, 2018. The record was kept open to allow the Appellant to provide documentation of his insurance.

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

- Exhibit 1: Notice of Hearing dated April 9, 2019
- Exhibit 2: Appeal Case Information from form Schedule HC
- Exhibit 3: Statement of Grounds for Appeal dated February 22, 2019
- Exhibit 4: Written Statement of Appeal
- Exhibit 5: Open record documents

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is thirty-four years old and is single. He lives in Plymouth County, Massachusetts.
2. Appellant works in sales.
3. Appellant had insurance in the beginning of 2018 but left his job and did not find full-time employment until October 2018. He then had to wait a few months before he obtained health insurance, which he did in December 2018 as shown in his open record documents.
4. Appellant does have health insurance in 2019.
5. The Appellant's monthly expenses totaled \$1,988.00, consisting of rent \$250.00, internet & cable \$160.00, cell phone \$60.00, car payment \$550.00, car insurance \$80.00, car gas \$80.00, food \$320.00, credit card \$250.00, school loan \$58.00 clothes \$50.00, entertainment \$120.00 toiletries \$10.00.
6. The Appellant did submit a Statement of Grounds for Appeal-2018 under the grounds for Appeal,. " During 2018, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities."
7. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2018. Table 1 sets forth the income eligibility standards for various family sizes at 150% of the federal poverty level and Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard for the government-subsidized health insurance program. See Mass. G.L. c. 118H, s.3(a)(1). Tables 5 and 6 set forth the tax penalties for 2018.
8. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant may have been eligible for subsidized health insurance, since Appellant's income of \$31,668.00 was less than \$35,640.00. The monthly premium for health insurance available on the private market in Plymouth County for a 33 year old single person was \$294.00. The tables reflect that Appellant could afford \$131.95. This is more than what the appellant is deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions)

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellant did submit a Statement of Grounds for Appeal-2018 under the grounds for Appeal, “During 2018, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities.”

The Health Care Reform Act of 2006 requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage “so long as it is deemed affordable” under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). However, individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”) are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 13-1, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2013-releases/tir-13-1.html>. For 2018, 150 percent of the FPL was \$17,820.00 for a single person with zero dependents. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf>; see also 830 Mass. Code Regs. 111M.2.1(5)(c) (2008). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months. *Id.*

Since Appellant’s 2018 income was more than 150 percent of the FPL, making him potentially subject to an individual mandate penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to him in 2018. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and second to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2017 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$31,668.00 in 2018, and Appellant’s filing status was single. EX 2. According to the Affordability Schedule established by the Connector’s board and included in the Instructions and Worksheets of the 2017 Massachusetts Schedule HC, Appellant could afford to pay \$131.95 monthly for health insurance. See 2017 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to him from the Premium Tables, at a cost of \$294.00 monthly for coverage with zero dependents *Id.* at Table 4.

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

Appellant is deemed to afford \$131.95 for health insurance coverage because of his income. Private insurance in the market place was \$294.00 per month, which is more than he could afford. On these facts, I find that Appellant has shown that he was precluded from purchasing affordable health insurance during 2018. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that he is exempt from a tax penalty for his non-compliance with the individual mandate.

Accordingly, Appellant's appeal is **ALLOWED**, and the 2018 penalty assessed is **OVERTURNED**.

PENALTY ASSESSED

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 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 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: PA18-50

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: May 6, 2019

Decision Date: May 9, 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 appeared at the hearing, which was held by telephone, on May 6, 2019.

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

Exhibit 1: Notice of Hearing dated April 9, 2019

Exhibit 2: Appeal Case Information from form Schedule HC

Exhibit 3: Statement of Grounds for Appeal, date March 2, 2019

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is fifty-one years old and is single with one dependent. She lives in Fitzwilliam, New Hampshire.
2. Appellant works on an assembly line.
3. Appellant did have health insurance in 2018, until she moved to New Hampshire in April 2019 for a new job. She does have health insurance in 2019.
4. Appellant provided several proofs of her residence in New Hampshire, including her lease.
5. The Appellant did submit a Statement of Grounds for Appeal-2018 under the grounds for Appeal, "Other. During 2018 you didn't reside in Massachusetts during your period of uninsurance".
6. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2018. Table 1 sets forth the income eligibility standards for various family sizes at 150% of the federal poverty level and Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard for the government-subsidized health insurance program. See Mass. G.L. c. 118H, s.3(a)(1). Tables 5 and 6 set forth the tax penalties for 2018.

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellant did submit a Statement of Grounds for Appeal-2018 under the grounds for Appeal, "Other. During 2018 you didn't reside in Massachusetts during your period of uninsurance".

The Health Care Reform Act of 2006 requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage "so long as it is deemed affordable" under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). However, individuals with incomes up to 150 percent of the Federal Poverty Level ("FPL") are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release ("TIR") 13-1, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2013->

releases/tir-13-1.html. For 2018, 150 percent of the FPL was \$24,030.00 for a single person with one dependent. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. *See* Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf>; *see also* 830 Mass. Code Regs. 111M.2.1(5)(c) (2008). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months. *Id.*

Appellant provided proof that she did not reside in Massachusetts during her period of uninsurance in Massachusetts.

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

Accordingly, I conclude that she is exempt from a tax penalty for her non-compliance with the individual mandate.

Accordingly, Appellant’s appeal is **ALLOWED**, and the 2018 penalty assessed is **OVERTURNED**.

PENALTY ASSESSED

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 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 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: PA18-51

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: May 7, 2019

Decision Date: May 28, 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

Appellant appeared at the hearing, which was held by telephone, on May 7, 2019.

The hearing record consists of the Appellant's testimony, and the following documents which were admitted into evidence without objection by Appellant:

- Exhibit 1: Notice of Hearing (4-9-19) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2018 (1 page);
- Exhibit 3: Statement of Grounds for Appeal (2-15-19) (with letter) (5 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, age 29 during 2018, from Berkshire County, filed single on the tax return with a family size of 1.
2. Appellant did not have health insurance for 2018.
3. Appellant had recently moved to Massachusetts in 2018 and did not know that health insurance was required.
4. Appellant will enroll in the employer's health insurance in June 2019.
5. Appellant could afford health insurance based on the tables in Schedule HC, but the difference was small. Based on the tables, it would cost \$230 per month for insurance and she was deemed to afford \$235 per month.
6. Appellant's expenses for food, shelter, clothing, student loans and transportation used most of the income.

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply. Appellant did not have health insurance for 2018. Appellant could afford health insurance based on the tables in Schedule HC. Appellant’s expenses for food, shelter, clothing, school and transportation used most of the income. Paying for health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities. Based on this information, the penalty is waived.

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: PA18-62

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: May 10, 2018

Decision Date: May 13, 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 appeared at the hearing, which was held by telephone, on May 10, 2018.

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

- Exhibit 1: Notice of Hearing dated April 9, 2019
- Exhibit 2: Appeal Case Information from form Schedule HC
- Exhibit 3: Statement of Grounds for Appeal dated March 4, 2019
- Exhibit 4: Written Statement of Appeal, dated March 4, 2019

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is forty-two years old and is single. He lives in Middlesex County, Massachusetts.
2. Appellant works as a carpenter.
3. Appellant had health insurance with the Health Connector for a few years. He never paid a premium for his coverage. He went in early 2018 for a health related incident and found out later he had no coverage. He has received over \$7,000.00 in bills for his health related condition and because he had no health insurance he now has to pay these bills.
4. Appellant does have health insurance in 2019.
5. The Appellant's monthly expenses totaled \$2,896.00, consisting of rent \$1,500.00, heat & light \$266.00, internet & cable \$100.00, cell phone \$45.00, car insurance \$130.00, car gas \$160.00, food \$520.00, clothes \$40.00 toiletries \$15.00, entertainment \$40.00, child support \$80.00.
6. The Appellant did submit a Statement of Grounds for Appeal-2018 under the grounds for Appeal, Other. During 2018 other circumstances, such as applying the Affordability Tables In Schedule HC to you is inequitable."
7. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2018. Table 1 sets forth the income eligibility standards for various family sizes at 150% of the federal poverty level and Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard for the government-subsidized health insurance program. See Mass. G.L. c. 118H, s.3(a)(1). Tables 5 and 6 set forth the tax penalties for 2018.
8. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant would not have been eligible for subsidized health insurance, since Appellant's income of \$60,110.00 was more than \$35,640.00. The monthly premium for health insurance available on the private market in Middlesex County for a 41 year old single person was \$274.00. The tables reflect that Appellant could afford \$408.74. This is less than what the appellant is deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions)

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellant did submit a Statement of Grounds for Appeal-2018 under the grounds for Appeal, Other. During 2018 other circumstances, such as applying the Affordability Tables In Schedule HC to you is inequitable.”

The Health Care Reform Act of 2006 requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage “so long as it is deemed affordable” under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). However, individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”) are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 13-1, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2013-releases/tir-13-1.html>. For 2018, 150 percent of the FPL was \$17,820.00 for a single person with zero dependents. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf>; see also 830 Mass. Code Regs. 111M.2.1(5)(c) (2008). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months. *Id.*

Since Appellant’s 2018 income was more than 150 percent of the FPL, making him potentially subject to an individual mandate penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to him in 2018. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and second to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2017 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$60,110.00 in 2018, and Appellant’s filing status was single. EX 2. According to the Affordability Schedule established by the Connector’s board and included in the Instructions and Worksheets of the 2017 Massachusetts Schedule HC, Appellant could afford to pay \$408.74 monthly for health insurance. See 2017 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to him from the Premium Tables, at a cost of \$274.00 monthly for coverage with zero dependents *Id.* at Table 4.

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

Appellant had health insurance through the Health Connector in prior years for which he did not have to pay a premium. He had limited contact with the Health Connector and did not know he had to renew his health insurance each year. Appellant did not renew his health insurance for 2018 and therefore when he received treatment he received bills totaling over \$7,000.00, which he sent in a copy of in Exhibit 4. Appellant has already suffered a severe penalty.

Appellant is deemed to afford \$408.74 for health insurance coverage because of his income. Private insurance in the market place was \$274.00 per month, which is less than he could afford. On these facts, I find that Appellant has shown that he was partially precluded from purchasing affordable health insurance during 2018. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that he is partially exempt from a tax penalty for his non-compliance with the individual mandate.

Accordingly, Appellant's appeal is **ALLOWED**, and the 2018 penalty assessed is **OVERTURNED**.

PENALTY ASSESSED

Number of Months Appealed: 12 Number of Months Assessed: 4

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 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 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: PA 18-67

Appeal Decision: Appeal Denied

Hearing Issue: Appeal of a 2018 Tax Year Penalty

Hearing Date: May 1, 2019

Decision Date: May 31, 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. Appellant, a Massachusetts resident during 2018, appeals the assessment of a 2018 tax penalty for failure to comply with the individual health insurance mandate of Mass. Gen. Laws ch. 111M, § 2.

HEARING RECORD

Appellant appeared at the hearing which was held by telephone on May 1, 2019. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

Exhibit 1: Appeal dated March 5, 2019;

Exhibit 2: Notice of Hearing dated April 10, 2019; and

Exhibit 4: Appeal Case Information print-out dated April 10, 2019 generated from Appellant's 2018 Massachusetts Schedule HC.

FINDINGS OF FACT

Based on the testimony and documentary evidence contained in the record and reasonable inferences drawn from the evidence, I find that the following facts are established by a preponderance of the evidence:

1. Appellant was a single person who was a resident of Massachusetts during 2018. Testimony; Exhibits 1 and 3.
2. Appellant has three children who are claimed by their mother as tax dependents. Testimony. One child lives with Appellant who provides for the child's support. *Id.* Appellant also pays \$77.00 in weekly child support which is garnished from his pay for the other children. *Id.*

3. Prior to 2018, Appellant had health insurance coverage through Network Health. Testimony; Exhibit 1.
4. Appellant went to the emergency room in 2017 and was informed that his health insurance coverage had been canceled. Testimony; Exhibit 1.
5. Appellant’s employer offers health insurance which would have cost Appellant \$40.00 weekly for basic coverage in 2018, but Appellant was unable to enroll in this coverage because the open period for 2018 had ended by the time Appellant learned that the Network Health coverage had ended. Testimony; Exhibit 1. In addition, Appellant felt that the premiums for the employer-sponsored health insurance were not affordable. Testimony.
6. Appellant filed a Massachusetts Resident Income Tax Return for 2018 which reported a Federal Adjusted Gross Income of \$40,814.00. Exhibit 3. The Schedule HC filed with the return reported no health insurance coverage for 2018 that met minimum creditable coverage (“MCC”) requirements. *Id.*
7. Based on Appellant’s 2018 Schedule HC, the Department of Revenue assessed a 12-month tax penalty on Appellant. Exhibit 3.
8. Appellant lived with his father during 2018, and his monthly living expenses during 2018 were as follows:

Rent	\$400.00
Maintenance, Repairs and Utilities	\$550.00
TPass	\$92.00
Food	\$650.00
Child Support	\$334.00
Clothing / Laundry	\$173.00
Miscellaneous	\$303.00
Total	\$2,502.00 ¹

Testimony. Appellant also has at least \$5,000.00 in unpaid medical bills which he currently is unable to pay. *Id.*

In addition to the foregoing facts, I take administrative notice of the 2018 Schedule HC Instructions and Worksheets, available at <https://www.mass.gov/files/documents/2019/01/28/dor-2018-inc-sch-hc-inst.pdf>, and in particular Tables 1 – 6 which, as will be 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 Health Care Reform Act of 2006 (the “HCRA”) requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage “so long as it is deemed affordable” under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b).

¹ Appellant provided weekly amounts for some expenses which have been recalculated to arrive at a monthly figure.

Individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”), which was set at \$18,090.00 for family of one in 2017, are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 18-2, available at <https://www.mass.gov/technical-information-release/tir-18-2-individual-mandate-penalties-for-tax-year-2018>. In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. Mass. Gen. Laws ch. 111M, § 2. This provision, as implemented by 956 Mass. Code Regs., interprets the 63-day gap in coverage to be three months. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf; see also 830 Mass. Code Regs. 111M.2.1(5)(c). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months.

Since Appellant’s reported household income in 2018 (\$40,814.00) was more than 150 percent of the applicable FPL (\$18,090.00 for family of one), which makes Appellant subject to the individual mandate tax penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to Appellant in 2018. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and, second, to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2018 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a Federal AGI of \$40,814.00 in 2018, and Appellant’s filing status was single with no dependents. Exhibit 3. According to the Affordability Schedule established by the Connector’s board and included in the Instructions and Worksheets of the 2018 Massachusetts Schedule HC, Appellant could afford to pay 7.45 percent of the reported Federal AGI or **\$253.39** monthly ($\$40,814.00 \times 7.45\% = \$3,040.64 \div 12 = \$253.39$) for health insurance. See 2018 Schedule HC Instructions and Worksheets, *supra* at Table 3.

Appellant’s 2018 income exceeded the cut-off for government-subsidized health insurance which was set at \$36,180.00 for a family of one in 2018, See 2018 Schedule HC Instructions and Worksheets, *supra* at Table 2. Although Appellant missed the open enrollment period for employer-sponsored health insurance, private health insurance was available at a cost of **\$249.00** monthly for individual coverage based on Appellant’s age range (under 30) and county of residence (Middlesex) which is less than the \$253.39 monthly that is considered affordable under the Schedule. *Id.* at Table 4. Therefore, I find that affordable private health insurance was available to Appellant in 2018.

Since Appellant did not obtain affordable private health insurance coverage in 2018, Appellant is subject to the HCRA’s tax penalty unless Appellant demonstrates a qualifying hardship. 956 Mass. Code Regs. 6.08. To qualify for a waiver or reduction of a tax penalty based on hardship, an Appellant “must establish that, based on all his circumstances, health insurance that provided minimum creditable coverage was not affordable to him because he experienced a hardship.” 956 Mass. Code Regs. 6.08(1).

Based on a reported Federal AGI of \$40,814.00, Appellant’s gross monthly available income in 2018 was \$3,401.17. Appellant credibly testified to monthly living expenses of \$2,502.00 which is \$899.00 less than his monthly income. Even allowing for some additional expenses that Appellant did not list, I cannot find on this record that Appellant has demonstrated that the additional cost of \$249.00.00 monthly to purchase private health insurance coverage would have resulted in a serious deprivation of food, shelter, clothing or other necessities.” See 956 Mass. Code Regs. 6.08(1)(e). Indeed, Appellant’s income appears to have been sufficient in 2018 after deducting basic monthly living expenses, including health insurance at \$249.00 monthly, to permit repayment of the outstanding medical bills at \$500.00 monthly. I further find that Appellant has not alleged or demonstrated

any other circumstances in 2018 that would qualify as a hardship under the regulations. In the circumstances of this case where the record shows that Appellant had sufficient income after claimed living expenses to cover the cost of both health insurance and essential living expenses, I conclude that Appellant has not carried his burden of establishing “that, based on all his circumstances, health insurance that provided minimum creditable coverage was not affordable to him because he experienced a hardship.” 956 Mass. Code Regs. 6.08(1).

Accordingly, Appellant’s appeal is **DENIED**, and the 2018 penalty assessed is **AFFIRMED**.

PENALTY ASSESSED

Number of Months Appealed: 12

Number of Months Assessed: 12

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-76

Appeal Decision: Appeal Approved -- 2018 tax penalty overturned.

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: May 2, 2019

Decision Date: May 3, 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 appeared for the hearing, which I conducted by telephone. A document was submitted on behalf of the Massachusetts Department of Revenue (DOR) prior to the hearing (Exhibit 1). The hearing record consists of the Appellant's testimony under oath and the following documents that were admitted into evidence as exhibits.

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2018;
3. Landlord and Tenant Agreement (2 pages, dated 5/10/17); and
4. Health Connector's Notice of Hearing (3 pages, dated 4/10/19).

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 3 month penalty for 2018. The factual basis for the penalty was that the Appellant was insured for the months of July through December but not for the months of January through June 2018. Exhibits 1 and 2. (The penalty calculation is 12 months minus 6 months insured = 6 months uninsured minus 3-month administrative grace period = 3 penalty months.)

2. I find, as set forth in more detail below, that the Appellant was a part-year resident of Massachusetts in 2018 and that he had health insurance coverage for all six months (July – December) that he resided in Massachusetts. Testimony. See also Exhibit 1 and Exhibit 3.
3. The Appellant is a Canadian citizen, who resided in Canada for the months of January – June 2018. The Appellant’s appeal hearing testimony to this effect is supported by the Landlord and Tenant Agreement (Exhibit 3) that he submitted in support of his appeal. Under the Agreement the Appellant and a roommate rented an apartment in Canada for the period July 1, 2017, through June 30, 2018. The Agreement is dated May 10, 2017 and signed by the Appellant, by the roommate, and by two persons as the landlords.
4. The Appellant moved to Massachusetts on June 30 to start a new job on July 1, 2018. The Appellant continued to work at this job and to reside in Massachusetts for the remainder of 2018. The Appellant had employer-sponsored health insurance through his job for July – December 2018, as set forth in Exhibit 1. Testimony. See also Exhibit 3 (Canada apartment rental ended 6/30/18), Exhibit 2 (Massachusetts address in February 2019), and Exhibit 4 (Massachusetts address in April 2019).
5. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant’s 2018 Massachusetts income tax return.
6. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2018. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2018. (The DOR instructions are published online at <http://www.mass.gov/dor/2018ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2018.)

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 Massachusetts for the months of January - June 2018. 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 – 2017 that the Appellant signed and filed in this case. See Exhibit 2.

In this case, the evidence demonstrates that the Appellant was a part-year resident in 2018. The Appellant resided in Canada for the months of January – June 2018, and he resided in Massachusetts for the months of July – December 2018. As set forth in Exhibit 1 submitted on behalf of the state Department of Revenue (DOR), the Appellant was insured for the months of July – December while he resided in Massachusetts.

Under state law, as summarized above, only Massachusetts residents are subject to the individual mandate. Accordingly, I must vacate the penalty assessed by the DOR since the Appellant was not a Massachusetts resident prior to July 2018 and is not subject to a tax penalty for the months of January through June. See Mass. Gen. Laws c. 111M, sec. 2 (a), above.

PENALTY ASSESSED

Number of Months Appealed: 3 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 2018 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 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: PA18-80

Appeal Decision: Penalty Overturned in Full

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: May 3, 2019

Decision Date: May 22, 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

Appellant appeared at the hearing, which was held by telephone, on May 3, 2019. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified. At the conclusion of the testimony, the record was left open so that Appellant could submit further documents. Appellant submitted documents, which have been marked as Exhibit 5.

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

- Exhibit 1: Correspondence from the Health Connector
- Exhibit 2: Appeal Case Information from Schedule HC 2018
- Exhibit 3: Notice of Appeal, dated March 6, 2019
- Exhibit 4: Appeal Decision for 2017
- Exhibit 5: Documents regarding Appellant's health insurance in 2018

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 46 years old in 2018. Appellant filed a Massachusetts 2018 tax return as single with no dependents claimed (Exhibit 2).
2. Appellant resided in Middlesex county in 2018 (Exhibit 2).
3. Appellant was a member of a union. Pursuant to the collective bargaining agreement, Appellant was required to pay \$7.07 per hour worked for health insurance (Testimony of Appellant and Exhibit 4).

4. Appellant paid \$7,000 towards health insurance in 2018 (Testimony of Appellant).
5. Even though Appellant was required to pay \$7.07 for every hour worked, Appellant was required to work 350 hours per quarter to be covered by the union insurance (Testimony of Appellant).
6. Appellant was not eligible for health insurance in 2018 because Appellant worked less than 350 hours each quarter. Appellant did not receive a refund of the amount paid into the union insurance plan (Testimony of Appellant).
7. Appellant did not have health insurance for twelve months in 2018 (Exhibit 2 and Testimony of Appellant).
8. Appellant struggled to pay bills and expenses for necessities in 2018 (Testimony of Appellant).
9. Appellant was more than thirty days late with rent payments on two occasions in 2018 (Testimony of Appellant).
10. 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.
11. According to Table 3 of Schedule HC for 2018 a single person with no dependents with an adjusted gross income of \$69,102 could afford to pay \$464 per month for private insurance. According to Table 4, Appellant, aged 46 and living in Middlesex County could have purchased private insurance for \$354 per month. Private insurance was considered to be affordable for Appellant in 2018.
12. According to Table 2 of Schedule HC for 2018, Appellant, earning more than \$36,180, would not have met the income eligibility guidelines for government subsidized insurance.
13. Appellant has been assessed a penalty for twelve months for 2018 (Exhibit 2).
14. Appellant filed an Appeal on March 6, 2019, appealing the assessment of the penalty. Appellant claimed that Appellant was homeless or more than 30 day in arrears in rent or mortgage payments and that the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities (Exhibit 3).

ANALYSIS AND CONCLUSIONS OF LAW

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

Connector's regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08 (1).

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

Appellant had \$7,000 taken out of his pay during 2018 for health insurance coverage through a union health insurance fund. However, according to the collective bargaining agreement, Appellant did not work enough hours to qualify for the union's health insurance. According to Tables 2, 3 and 4 of Massachusetts Schedule HC 2018, Appellant was considered able to afford private insurance. Since Appellant potentially had access to affordable insurance, we need to consider whether Appellant experienced a financial hardship as defined by 956 CMR 6.08.

In 2018, Appellant struggled to pay bills and necessary expenses. Appellant was more than thirty days late on rent payments on two occasions. I find that the purchase of private health insurance would have caused Appellant to experience a serious deprivation of basic necessities. See Exhibits 2 and 3 and Testimony of Appellant, which I find to be credible and 956 CMR 6.08 (1)(a) and (c).

I find that the penalty should be waived in its entirety for 2018.

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 2018 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 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.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: 18-81

Appeal Decision: Appeal Approved
Hearing Issue: Appeal of the 2018 Tax Year Penalty
Hearing Date: May 3, 2019
Decision Date: May 24, 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

Appellant appeared at the hearing, which was held by telephone, on May 3, 2019. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

Exhibit 1: Notice of Hearing sent to Appellant dated April 10, 2019
Exhibit 2: Appeal Case Information Sheet from Schedule HC 2018
Exhibit 3: Statement of Grounds for Appeal 2018 signed by Appellant on March 5, 2019
Exhibit 4: Appeal decision for 2017

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 29 years old in 2018. Appellant filed a 2018 Massachusetts tax return as single, with no dependents claimed (Exhibit 2).
2. Appellant lived in Hampden County, MA in 2018 (Exhibit 2).
3. Appellant's Adjusted Gross Income for 2018 was \$48,428 (Exhibit 2).
4. Appellant worked as a food server and Appellant's hours and income were unsteady in 2017 and in early 2018 (Testimony of Appellant and Exhibit 4).
5. Appellant's job did not offer employer sponsored health insurance (Testimony of Appellant).

6. In late February, 2018, Appellant received a promotion with stable hours and a better salary (Testimony of Appellant).
7. After Appellant's promotion, Appellant applied for health insurance through the Massachusetts Health Connector (Testimony of Appellant).
8. Appellant was notified that Appellant would qualify for Health Connector insurance, but that Appellant could not begin insurance coverage until open enrollment began for 2019 (Testimony of Appellant).
9. Appellant did sign up for insurance through the Health Connector and began coverage in 2019 (Testimony of Appellant).
10. Appellant was assessed a penalty for twelve months for 2018 (Exhibit 2).
11. Appellant filed an appeal on March 5, 2019, claiming that Appellant did not have employer sponsored health insurance and that Appellant could not enroll in Health Connector insurance until open enrollment (Exhibit 3).

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 2018, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

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

Employer sponsored health insurance was not available to Appellant for 2018. In 2017 and early 2018, Appellant's hours and income were unsteady. In late February 2018, Appellant received a promotion with steady hours and a better salary. Appellant applied to the Health Connector after the promotion. However, Appellant was not permitted to enroll because it was outside of the open enrollment period. Therefore affordable health insurance was not available to Appellant in 2018. See 2018 Massachusetts HC Instructions, Exhibits 2, 3, 4 and Testimony of Appellant, which I find to be credible.

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 2018 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 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.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-86

Appeal Decision: Penalty Overturned in Full
Hearing Issue: Appeal of the 2018 Tax Year Penalty
Hearing Date: May 3, 2019
Decision Date: May 22, 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

Appellant appeared at the hearing, which was held by telephone, on May 3, 2019. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

- Exhibit 1: Correspondence from the Health Connector
- Exhibit 2: Appeal Case Information from Schedule HC 2018
- Exhibit 3: Notice of Appeal, dated February 10, 2019

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 32 years old in 2018. Appellant filed a Massachusetts 2018 tax return as Head of Household with one dependent claimed (Exhibit 2).
2. Appellant resided in Essex County, MA in 2018 (Exhibit 2).
3. Appellant had an Adjusted Gross Income for 2018 of \$35,567 (Exhibit 2).
4. Appellant had employer sponsored health insurance available at a cost of \$110 per week. Appellant did not sign up for the insurance due to the cost (Testimony of Appellant).
5. Appellant looked at health insurance through MassHealth and the Health Connector in 2018, but Appellant did not become insured (Testimony of Appellant).

6. Appellant began a new job in December 2018. After a waiting period, Appellant was enrolled in employer sponsored insurance in 2019 (Testimony of Appellant).
7. Appellant struggled to pay basic necessary expenses for Appellant and dependent in 2018. Appellant was consistently behind in paying the bills for basic utilities (Testimony of Appellant).
8. Appellant did not have insurance for twelve months in 2018 (Testimony of Appellant and Exhibit 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 a person filing as Head of Household with one dependent with an adjusted gross income of \$35,567 could afford to pay \$185 per month for private insurance. According to Table 4, Appellant, aged 32 and living in Essex County could have purchased private insurance for \$282 per month. Neither private insurance nor employer sponsored insurance were considered affordable for Appellant.
11. According to Table 2 of Schedule HC for 2018, Appellant, earning less than \$48,720, would have met the income eligibility guidelines for government subsidized insurance.
12. Appellant has been assessed a penalty for twelve months for 2018 (Exhibit 2).
13. Appellant filed an Appeal on February 10, 2019 appealing the assessment of the penalty. Appellant claimed that the expense of purchasing health insurance would have caused Appellant a serious deprivation of food, shelter and clothing (Exhibit 3).

ANALYSIS AND CONCLUSIONS OF LAW

G.L.c. 111M, § 2, also called the “individual mandate,” requires every adult resident of Massachusetts to obtain health insurance that meets minimum creditable coverage standards “[s]o long as it is deemed affordable” under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance or who do not obtain insurance that meets the minimum creditable coverage standard are subject to a tax penalty for “each of the months” that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2018, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector’s regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

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

During 2018, Appellant had access to employer sponsored health insurance. However, the employer sponsored insurance, at a cost of \$110 per week, was not considered affordable for Appellant. Since the employer sponsored insurance was more than 9.56 % of Appellant's Modified Adjusted Gross income, the employer sponsored insurance would not have blocked Appellant's access to government subsidized health insurance. Appellant was income eligible for government subsidized health insurance but Appellant did not apply. See 956 CMR 6.00, 45CFR 155.305 (f)(1)(ii)(B), 26CFR 1-36B-2(c)(3)(v), Schedule HC for Healthcare and Testimony of Appellant, which I find to be credible.

Since Appellant potentially had access to affordable insurance, we need to consider whether Appellant experienced a financial hardship as defined by 956 CMR 6.08. Appellant struggled to pay basic necessary expenses for Appellant and dependent in 2018. Appellant was consistently behind in paying the bills for basic utilities. I find that the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities in 2018.

I find the penalty assessed against Appellant for 2018 should be waived in its entirety.

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 2018 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 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.

ADDENDUM

Appellant should note that this decision is based on the facts as I have found them for 2018 and that a similar decision may not be made if Appellant fails to have health insurance in the future. Although Appellant was covered by employer sponsored health insurance at the time of the hearing, if Appellant loses such coverage, Appellant should explore the availability of health insurance through the Massachusetts Health Connector.

FINAL APPEAL DECISION: PA18-93

Appeal Decision: The penalty is overturned in full.
Hearing Issue: Appeal of the 2018 Tax Year Penalty
Hearing Date: May 9, 2019
Decision Date: May 16, 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 appeared at the hearing, which was held by telephone on May 9, 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.

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
- Exhibit 2: Statement of Grounds for Appeal 2018 signed by Appellant on March 4, 2019. (2PP).
- Exhibit 2(a) Appellant's Supplemental Statement of Appeal with Supporting Documents. (1P).
- Exhibit 3: Notice of Hearing dated April 10, 2019. (PP1-3).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2018 Massachusetts tax return reported she was single, was age 27 in 2018, and had no dependents. (Exhibit 1, Testimony of Appellant).
2. Appellant moved from Middlesex County in Massachusetts to Hampshire County, Massachusetts in July 2018. (Testimony of Appellant).
3. Appellant's Federal Adjusted Gross Income for 2018 was \$ 28,309.00 (Exhibit 1).
4. Appellant has been assessed a tax penalty for one (1) months in 2018. The appellant has appealed this assessment (Exhibits 1, 2).
5. Appellant had private health insurance from January-August with her prior Employer. (Testimony of Appellant).

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

6. Appellant upon moving to Hampshire County was self-employed in 2 different jobs and was paid on a contract basis. (Testimony).
7. Appellant contacted MassHealth during the time she was self employed and became eligible in October 2018. (Testimony).
8. Appellant obtained full time work in January 2018 and obtained private health insurance. (Testimony).
9. According to Table 3 Appellant could have afforded \$99.08 per month for health insurance in 2018. According to Table 4 Appellant could have purchased insurance for \$230.00 per month.
10. Appellant had the following monthly expenses for basic necessities in 2017: Rent \$600/month, Utilities \$260/month, Phone \$55/month, Car Insurance \$142/Month, Gas for Car \$320, Food \$500/month, Incidentals/Personal \$160/month. (Testimony of Appellant, Exhibit 2(a)).
11. 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. Appellant has been assessed a tax penalty for one (1) month in 2018. Appellant has appealed the penalty. See Exhibits 1 and 2.

The appellant submitted a statement of grounds for appeal (Ex. 2) wherein she indicated the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. She also submitted an itemization of monthly expenses (Ex. 2,2(a) as supporting documentation).

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. The appellant did not have insurance in Massachusetts from September through December 2018. 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 Appellant’s penalty should be waived in whole or in part, we must consider whether affordable insurance which met minimum creditable coverage standards was available to the appellant through employment, through the private market, or through a government-sponsored program. If affordable insurance was available, we must determine if such insurance was, in fact, not affordable to the appellant because Appellant experienced a financial hardship as defined in 956 CMR 6.08.

Appellant testified credibly she did not have access to employer private health insurance from September through the remainder 2018. (Ex. 1, Testimony of Appellant). According to Table 3 of Schedule HC for 2018, the Appellant had an adjusted gross income of \$ 28,309.00 in 2018 and could have afforded 99.18 per month. According to Table

4, Appellant, age 27 and living in Hampshire County during the time she was being penalized for not having insurance, could have purchased insurance for \$230.00 per month. Individual coverage was not affordable through the individual market for the appellant in 2018 (Schedule HC for 2018).

According to Table 2 of Schedule HC for 2017, Appellant during 2017 would have been eligible for the Connector Care program based upon income (Exhibit 1, Table 2 of Schedule HC-2018). Since Appellant had access to insurance through the ConnectorCare program, we need to determine if Appellant experienced a financial hardship such the coverage would have been unaffordable. See 956 CMR 6.08. et. seq.

Appellant testified credibly that she had the following monthly expenses for basic necessities of approximately \$2,013.56 in 2018, as follows: Condo Fee \$190/month, Student Loans \$536.50, Car Insurance \$200/Month, Food and Gas \$200/month, Car Payment \$387.06/month. (Testimony of Appellant, Exhibit 2(a)). Those expenses were greater than her regular monthly pre-tax income of approximately \$ 300-\$700 per month during the time she was working two contractor jobs, thereby making a private health insurance premium of \$230.00/month unaffordable.

Based on the foregoing and upon the totality of the evidence and the cost of her basic monthly expenses for necessities, I determine that pursuant to 956 CMR 6.08(1)(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.

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: 1 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 her income and employment have not changed, she 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: PA16-785

Appeal Decision: Penalty Overturned in Full
Hearing Issue: Appeal of the 2016 Tax Year Penalty
Hearing Date: April 8, 2019
Decision Date: May 27, 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

Appellant appeared at the hearing, which was held by telephone, on April 8, 2019. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

- Exhibit 1: Correspondence from the Health Connector
- Exhibit 2: Appeal Case Information from Schedule HC 2016
- Exhibit 3: Notice of Appeal, dated October 1, 2018

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 44 years old in 2016. Appellant filed a Massachusetts 2016 tax return as married filing separately with one dependent (Exhibit 2).
2. Appellant resided in Worcester County, MA in 2016 (Exhibit 2).
3. Appellant had an Adjusted Gross Income for 2016 of \$64,625 (Exhibit 2).
4. Appellant did not have employer sponsored health insurance available in 2016 (Testimony of Appellant).
5. Appellant looked at health insurance through the Health Connector in 2016, but did not apply due to the cost (Testimony of Appellant).
6. Appellant did not have insurance for twelve months in 2016 (Testimony of Appellant and Exhibit 2).

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 a person filing as married filing separately with one dependent and with an adjusted gross income of \$64,625 could afford to pay \$458 per month for private insurance. According to Table 4, Appellant, aged 44 and living in Worcester County could have purchased private insurance for \$237 per month.
9. Private insurance was considered to be affordable for Appellant in 2016 (Schedule HC for 2016).
10. According to Table 2 of Schedule HC for 2016, Appellant, earning more than \$47,790, would not have met the income eligibility guidelines for government subsidized insurance.
11. Appellant had the following monthly expenses for basic necessities during 2016: mortgage \$1,600; utilities \$330; telephone \$100; food \$975; clothing \$70; car insurance \$258; gasoline \$260; car payment \$197; car maintenance \$50; medical expenses \$15. The monthly expenses for basic necessities totaled \$3,855 (Testimony of Appellant).
12. Appellant has been assessed a penalty for twelve months for 2016 (Exhibit 2).
13. Appellant filed an Appeal on October 1, 2018 appealing the assessment of the penalty. Appellant claimed that the expense of purchasing health insurance would have caused Appellant a serious deprivation of food, shelter and clothing (Exhibit 3).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

During 2016, Appellant did not have access to employer sponsored health insurance. According to Tables 2, 3 and 4 of Massachusetts Schedule HC 2016, private insurance, at a cost of \$237 was considered affordable for Appellant. Since Appellant potentially had access to affordable insurance, we need to consider whether Appellant experienced a financial hardship as defined by 956 CMR 6.08.

During 2016, Appellant's expenses for basic necessities were \$3,855 per month. Appellant's income before taxes was \$5,385 per month. I find that the purchase of health insurance would not have caused Appellant to experience a serious deprivation of basic necessities. See Exhibits 2, and 3 and Testimony of Appellant, which I find to be credible and 956 CMR 6.08 (1) (e).

I find the penalty assessed against Appellant for 2016 should be upheld.

PENALTY ASSESSED

Number of Months Appealed: 12

Number of Months Assessed: 12

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-439

Appeal Decision: Appeal Approved

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: March 28, 2019

Decision Date: May 8, 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

Appellant appeared at the hearing, which was held by telephone, on March 28, 2019. Appellant also appeared for Appellant Spouse. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

- Exhibit 1: Notice of Hearing sent to Appellant dated March 4, 2019
- Exhibit 2: Appeal Case Information Sheet from Schedule HC 2017
- Exhibit 3: Statement of Grounds for Appeal 2017 signed by Appellants on May 14, 2018
- Exhibit 4: Statement in Support of Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 31 and Appellant Spouse was 19 years old in 2017. They filed a 2017 Massachusetts tax return as married filing jointly, with no dependents claimed (Exhibit 2).
2. Appellant Spouse lived out of the country until July 1, 2017 (Testimony of Appellant).
3. Appellants lived in Essex County, MA in 2017 (Exhibit 2).
4. Appellants' Adjusted Gross Income for 2017 was \$46,161 (Exhibit 2).
5. Appellants were married in July 2017 (Testimony of Appellant).

6. Appellant was covered by employer sponsored health insurance for the entire year (Exhibit 2 and Testimony of Appellant).
7. Appellant's job offered coverage for spouses, but Appellant could not sign up Appellant Spouse until certain documents were provided for Appellant Spouse (Testimony of Appellant).
8. It took Appellant Spouse longer than expected to get the documents that would permit Appellant Spouse to be added to the employer sponsored health insurance (Testimony of Appellant).
9. After Appellant Spouse got the documents that were necessary to enroll Spouse in the employer sponsored health insurance, Appellant was told that it was too late for a special enrollment period and that Appellants would need to wait until the company's open enrollment period to enroll (Testimony of Appellant).
10. Appellant Spouse did look for health insurance through the Health Connector but was denied (Testimony of Appellant).
11. Appellant Spouse was added to the employer sponsored health insurance in 2018 (Exhibit 4 and Testimony of Appellant).
12. Appellant Spouse was assessed a penalty for three months for 2017. Appellant was not assessed a penalty (Exhibit 2).
13. Appellants filed an appeal on May 14, 2018, claiming that Appellant Spouse could not be added to employer sponsored health insurance until Appellant Spouse provided certain documents (Exhibits 3 and 4).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2017 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 2017, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

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

Appellant was covered by employer sponsored health insurance for all of 2017. Appellant's job offered coverage for spouses but Appellant Spouse could not be covered until certain documents were provided by Appellant

Spouse. It took Appellant Spouse longer than expected to obtain the required documents. The Health Connector denied Appellant Spouse's application. Therefore affordable health insurance was not available to Appellant Spouse in 2017. See 2017 Massachusetts HC Instructions, 956 CMR 6, Exhibits 2, 3, 4 and Testimony of Appellant, which I find to be credible.

PENALTY ASSESSED

Number of Months Appealed: 0/3

Number of Months Assessed: 0/0

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2017 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 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.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-396

Appeal Decision: Penalty Overturned in Full
Hearing Issue: Appeal of the 2017 Tax Year Penalty
Hearing Date: March 28, 2019
Decision Date: May 13, 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

Appellant appeared at the hearing, which was held by telephone, on March 28, 2019. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

- Exhibit 1: Correspondence from the Health Connector
- Exhibit 2: Appeal Case Information from Schedule HC 2017
- Exhibit 3: Notice of Appeal, dated July 1, 2018
- Exhibit 4: Statement of Appellant in support of the Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 46 years old in 2017. Appellant filed a Massachusetts 2017 tax return as single, with no dependents claimed (Exhibit 2).
2. Appellant resided in Essex County, MA in 2017 (Exhibit 2).
3. Appellant had an Adjusted Gross Income for 2017 of \$32,132 (Exhibit 2).
4. During 2017, Appellant spent a substantial amount of time caring for a sick family member (Testimony of Appellant).
5. Due to Appellant's need to care for a family member, Appellant was only able to work at part-time or contract jobs (Testimony of Appellant).

6. Appellant did not have employer sponsored health insurance available in 2017 (Testimony of Appellant).
7. Appellant looked at health insurance through the Health Connector in 2017, but did not apply (Testimony of Appellant).
8. Appellant enrolled in health insurance through the Health Connector for 2018 (Testimony of Appellant).
9. Appellant struggled to pay basic necessary expenses in 2017 (Testimony of Appellant).
10. Appellant did not have insurance for twelve months in 2017 (Testimony of Appellant and Exhibit 2).
11. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 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 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
12. According to Table 3 of Schedule HC for 2017 a single person with no dependents with an adjusted gross income of \$32,132 could afford to pay \$134 per month for private insurance. According to Table 4, Appellant, aged 46 and living in Essex County could have purchased private insurance for \$313 per month.
14. Private insurance was not considered to be affordable for Appellant in 2017 (Schedule HC for 2017).
15. According to Table 2 of Schedule HC for 2017, Appellant, earning less than \$35,640, would have met the income eligibility guidelines for government subsidized insurance.
16. Appellant had the following monthly expenses for basic necessities during 2017: rent \$1,600; utilities \$400; telephone \$100; food \$600; clothing \$200; car insurance \$200; gasoline \$300; car maintenance \$100; medical expenses \$83. The monthly expenses for basic necessities totaled \$3,583 (Testimony of Appellant).
17. Appellant has been assessed a penalty for twelve months for 2017 (Exhibit 2).
18. Appellant filed an Appeal on July 1, 2018 appealing the assessment of the penalty. Appellant claimed that the expense of purchasing health insurance would have caused Appellant a serious deprivation of food, shelter and clothing (Exhibits 3 and 4).

ANALYSIS AND CONCLUSIONS OF LAW

G.L.c. 111M, § 2, also called the “individual mandate,” requires every adult resident of Massachusetts to obtain health insurance that meets minimum creditable coverage standards “[s]o long as it is deemed affordable” under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance or who do not obtain insurance that meets the minimum creditable coverage standard are subject to a tax penalty for “each of the months” that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2017, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector’s regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

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

During 2017, Appellant did not have access to employer sponsored health insurance. According to Tables 2, 3 and 4 of Massachusetts Schedule HC 2017, Appellant was eligible for government subsidized health insurance but Appellant did not apply. Since Appellant potentially had access to affordable insurance, we need to consider whether Appellant experienced a financial hardship as defined by 956 CMR 6.08.

During 2017, Appellant's job situation was influenced by the need to care for a family member. Appellant's expenses for basic necessities were \$3,583 per month. Appellant's income before taxes was \$2,677 per month. I find that the purchase of health insurance would have caused Appellant to experience a serious deprivation of basic necessities. See Exhibits 2, 3 and 4 and Testimony of Appellant, which I find to be credible and 956 CMR 6.08 (1) (e).

I find the penalty assessed against Appellant for 2017 should be waived in its entirety.

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 2017 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 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.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-641

Appeal Decision: Appeal Approved -- 2017 tax penalty overturned.

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: May 7, 2019

Decision Date: May 26, 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 (Wife) 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. Health Connector's Notice Dismissing Appeal (1 page, dated 8/1/18);
3. Appellant's Request to Vacate Dismissal and Letter Supporting Appeal (1 page, dated 8/6/18);
4. Husband's Email Requests to Add Wife to Health Plan (1 page, dated April, May and June 2017);
5. Husband's Statement Supporting Appellant's Appeal (1 page, undated);
6. Health Connector's Notice of Hearing (3 pages, dated 12/27/18);
7. Health Connector's Second Hearing Notice (3 pages, dated 1/7/19);
8. Hearing Officer's Entry That Appellant Did Not Appear for Hearing (1 page, dated 2/1/19);
9. Health Connector's Second Notice Dismissing Appeal (1 page, dated 2/4/19);
10. Appellant's Request to Vacate Dismissal (1 page, dated 6/3/19 [sic]); and
11. Health Connector's Third Hearing Notice (3 pages, dated 4/10/19).

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 (Wife) appealed from the Department of Revenue's assessment of a 12 month penalty for 2017. The basis for the penalty was that the Appellant was not insured at any time in 2017. Exhibits 1 and 2. As set forth in more detail below I find that the Wife was a part-year Massachusetts resident in 2017 and that her efforts to enroll in her Husband's employer-sponsored health plan were unsuccessful in 2017.
2. For 2017 the Wife filed a Massachusetts personal income tax return as a married person filing separately. Exhibit 1.
3. The Wife was 23 years old at the beginning of 2017. Exhibit 1.
4. Husband and Wife were married in December 2015 in another country. After the wedding the Husband returned to Massachusetts; the Wife remained in the other country. Testimony, Exhibit 3 and Exhibit 5.
5. On March 3, 2017 the Wife came to the United States and resided in Massachusetts with her Husband in Middlesex County. Exhibit 5. See also Exhibit 1, Exhibit 3, and Testimony.
6. In 2017 the Husband was enrolled in a health plan offered by his employer as job benefit. Testimony, Exhibit 4, and Exhibit 5. See also Exhibit 1 (no penalty assessed against Husband).
7. The Husband made several efforts to enroll his Wife in his employer's health plan in 2017. His efforts included emails to his employer dated April 28, 2017, May 26, 2017, and June 5, 2017, that are set forth in the hearing record. In each email the Husband stated, "I am trying to add my wife in my health insurance plan. Please let me know if you need anything else." Exhibit 4. See also Exhibit 5.
8. The employer declined to enroll the Wife for 2017 because the open enrollment period had closed. Testimony and Exhibit 3.
9. In November 2017 the Wife was able to enroll in the health plan offered by her Husband's employer during the new open enrollment period. Her health insurance coverage was effective in January 2018. Testimony and Exhibit 3.
10. 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 2017 Massachusetts income tax return.
11. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2017. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that

are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2017. (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 2017.)

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 2017. 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 – 2017 that the Appellant signed and filed in this case. See Exhibit 2.

In this case, I vacate the entire penalty assessed against the Wife for a combination of two reasons.

First, the evidence shows that the Wife did not reside in Massachusetts for all of 2017. Under Massachusetts law, as just noted above, only Massachusetts residents are subject to the individual mandate and the state tax penalty. The uncontradicted evidence demonstrates that the Wife did not arrive in Massachusetts until March 3, 2017. Under the policy adopted by the state Department of Revenue (DOR) for part-year residents the Wife would not be subject to a tax penalty until the "first day

of the third month following the month you became a resident of Massachusetts.” Accordingly, the Wife was not subject to a tax penalty until June 2017. 2017 Massachusetts Schedule HC Health Care Instructions, page HC-2.

Second, the Husband’s employer did not enroll the Wife in his employer-sponsored health insured plan in 2017. The evidence shows that the Husband requested that his employer enroll his Wife in his health plan in emails in April, May and June 2017. The Husband’s efforts to insure his Wife in 2017 were not successful, due to the position that his employer took concerning its open enrollment period. Instead, the Wife enrolled in her Husband’s health plan at the earliest opportunity in November 2017, and her insurance coverage took effect in January 2018.

In sum, I waive the entire penalty assessed against the Wife for 2017 because the Wife was a part-year Massachusetts resident who did not have access to her Husband’s health plan until January 2018 due to the employer’s open enrollment plan.

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 2017 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 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.

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA17-661

Appeal Decision: Appeal Approved -- 2017 tax penalty overturned.

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: April 5, 2019

Decision Date: May 4, 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 appeared for the hearing, which I conducted by telephone. A document was submitted on behalf of the Massachusetts Department of Revenue (DOR) prior to the hearing (Exhibit 1). The hearing record consists of the Appellant's testimony under oath and the following documents that were admitted into evidence as exhibits.

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2017 (dated 7/13/18);
3. Appellant's National Grid Shut Off Notice (1 page, dated 9/27/17);
4. Prior Hearing Officer's Entry That Appellant Did Not Appear for Hearing (1 page, dated 1/29/19);
5. Appellant's Request to Reschedule Hearing (2 pages, dated 1/29/19);
6. 2014 Tax Penalty Appeal Hearing Decision (6 pages, dated 12/10/15);
7. Health Connector's Notice of Hearing (3 pages, dated 12/28/18);
8. Health Connector's Second Notice of Hearing (3 pages, dated 3/11/19);
9. Hearing Officer's Open Record Order (1 page, dated 4/5/19);
10. Appellant's Cover Letter (1 page, dated 4/20/19);
11. Child Support and Custody Court Judgment (Stipulation of Parties) (1 page, dated 8/14/13);
and
12. Employer's Open Enrollment Email (2 pages, dated 11/22/17).

At the conclusion of the hearing on April 5, 2019, I entered an Open Enrollment Order that requested that the Appellant submit additional document in support of his appeal. Exhibit 9. In response I received Exhibits 10, 11, and 12 from the Appellant on May 3, 2019.

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 1 month penalty for 2017. The basis for the penalty was that the Appellant was insured for the months of January – August (8 months) but was not insured for the months of September – December 2017 (4 months). Exhibits 1 and 2. Based on Exhibit 1 and the Appellant's hearing testimony, I find that the penalty assessment is factually accurate. (The penalty calculation is 12 months minus 8 months insured = 4 months uninsured minus 3-month administrative grace period = 1 penalty month.)
2. The Appellant filed a Massachusetts personal income tax return for 2017 as a head of household with 1 dependent. The Appellant's federal adjusted gross income (AGI) for 2017 was \$99,321. Exhibit 1.
3. I find that the Appellant has two children (now ages 19 years and 14 years). Under a 2013 Probate and Family Court Order (Exhibit 11) the Appellant claims one child as a tax dependent and the Mother claims the other child as a tax dependent. Exhibit 11 and Testimony.
4. The two children have health insurance coverage through their Mother. The Appellant pays \$144.20 per week for child support through the state Department of Revenue Child Support Unit. Exhibit 11 and Testimony.
5. The Appellant shares physical custody of the two children, who spend every weekend (Friday evening – Sunday evening) with the Appellant. Exhibit 11 and Testimony.
6. The Appellant was 44 years old at the beginning of 2017 and resided in [name of city or town omitted] in Suffolk County, Massachusetts. Exhibit 1.
7. The Appellant's AGI was more than 150% of the federal poverty level. On this basis I conclude that the Appellant was not automatically exempt from the assessment of a tax penalty in 2017. DOR Table 1.
8. The Appellant's 2017 AGI (\$99,371) was substantially more than 300% of the federal poverty level (\$61,260 for a three person household). DOR Table 2. On this basis I infer that the Appellant would not satisfy the financial eligibility requirements for government-subsidized health insurance.
9. Based on DOR Table 3 the Appellant could afford to pay 8.16% of his income -- or \$675 per month -- for health insurance coverage in 2017 as a head of household with either one or two dependents. (I note that the two children are insured through their Mother.)

10. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage for himself at his age and location for \$310 per month in 2017.
11. The Appellant did not have health insurance in 2014, and the DOR assessed a 12 month penalty. On appeal, a hearing officer reduced the penalty to 4 months under the Health Connector's financial hardship regulation. Exhibit 6.
12. By a bill dated 9/27/17 National Grid informed the Appellant that he owed \$9.67 for his current bill and \$83.85 for prior bills and stated that his gas service was "subject to termination" if the past due bill was not paid. The termination notice was set forth in a message in fine print at the bottom of the bill without a fixed date. The Appellant's service was not terminated. Exhibit 3 and Testimony. See also Exhibit 10.
13. In 2017 the Appellant provided accounting services to businesses on a consulting basis through a staffing agency. Testimony.
14. The Appellant provided services to one business during the months of January – August 2017. Testimony. During this time the Appellant was enrolled in the health plan provided through his staffing agency, as set forth in Exhibit 1 prepared by the DOR. Testimony and Exhibit 1.
15. In August 2017 the Appellant shifted his employment to a new staffing agency. As a new employee the Appellant did not qualify for the new staffing agency's health plan. Testimony.
16. On November 21, 2017, the Appellant inquired, by an email that the Appellant submitted in response to my Open Record Order (see Exhibit 9), if it was the open enrollment period for health insurance and dental insurance. The employer replied the next day that its "benefit year runs from June to June so our open enrollment period isn't for another 7 months" (i.e., May or June 2018). Exhibit 12 and Testimony.
17. The Appellant did not present any evidence that he attempted to obtain health insurance coverage when he started to work for the second staffing agency in 2017, except as set forth in Findings of Fact, No. 16, above.
18. 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 2017 Massachusetts income tax return.
19. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2017. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility

standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2017. (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 2017.)

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 for the months of September through December 2017. 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 – 2017 that the Appellant signed and filed in this case. See Exhibit 2.

The evidence presented in this appeal does not establish that the Appellant sustained any financial hardship in 2017 or that he was unable to afford health insurance during the four months from September through December when he was not insured in 2017. The Appellant's federal adjusted gross income (AGI) was \$99,321, and he was employed steadily in 2017. Under the objective standards set forth DOR Tables 3 and 4 the Appellant could afford pay \$675 per month for health insurance that was available to the Appellant for \$310 per month. See, e.g., Findings of Fact, Nos. 2, 8, 9 and 10, above. If the matter were closer, I would factor in the Appellant's child support payment obligation and his part-time physical custody of the two children, as well as the fact that the Mother provides for the children's health insurance. (I note that, as an accountant, the Appellant provided no evidence about these

expenses.) Especially when taken in context, the one gas utility bill that the Appellant submitted is not an indication of financial hardship. See Findings of Fact, No. 12, above.

The context of the one month penalty assessment is more striking, however. The Appellant was insured during the months of January – August when he worked for his first employer in 2017 and was able to enroll in his employer’s health plan. Although the evidence that the Appellant presented is slim – and came only in response to my Open Record Order – it appears that the Appellant’s second employer in 2017 imposed a waiting period before the Appellant could enroll in its health plan. The DOR’s three-month administrative grace period has already reduced the Appellant’s tax penalty from four months (September – December) to one month (December alone). The administrative grace period is intended to provide for a transition between employers and insurers. Ordinarily, three months is sufficient period of time for this purpose, but it appears that it was not in this case. Under the unusual circumstances presented here, I will not impose a one month penalty for December 2017.

However, the Appellant should not assume that any penalty that might be imposed for 2018 will also be reduced or overturned. By virtue of the new employer’s November 22, 2017, email (Exhibit 12) the Appellant was on notice that he would not be insured through the employer starting in January 2018. That poses the question what steps the Appellant took – or might be expected to take – to insure himself in 2018 in order to comply with the individual mandate that was described earlier. See Findings of Fact, No. 17, above. The Appellant should also be expected to make a more careful presentation of the evidence if he files another appeal for 2018 or subsequent years.

In sum, I vacate the one month penalty that DOR assessed for 2017.

PENALTY ASSESSED

Number of Months Appealed: 1 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 2017 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 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.

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-667

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: January 9, 2019

Decision Date: May 28, 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 appeared at the hearing, which was held by telephone, on January 9, 2019. The procedures to be followed during the hearing were reviewed with Appellant, and the Appellant was sworn in. The exhibits were marked and admitted into evidence without objection from the Appellant. The Appellant testified, and did not seek to introduce any additional exhibits.

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

- Exhibit 1: Notice of Hearing sent to Appellant dated December 28, 2018 (4 pages).
- Exhibit 2: Appeal Case Information from Schedule HC, for tax year 2017 (1 page).
- Exhibit 3: Scanned copy of Envelope addressed to Massachusetts Department of Revenue. (2 pages)
- Exhibit 4: Statement of Grounds for Appeal (4 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant was 23 years old in 2017, and during 2017 resided in Suffolk County. (Exhibit 2 and Testimony).
2. In 2017, the Appellant had adjusted gross income of \$53,502. (Exhibit 2 and Testimony).

3. Appellant's filing status in 2017 was "single." (Exhibit 2 and Testimony).
4. The information provided to the Department of Revenue showed that in 2017, the Appellant lacked insurance for the months of January through May, 2017, and therefore lacked insurance for a total of five months. (Exhibit 2 and Testimony).
5. Appellant filed an appeal on or about May 11, 2018, appealing the assessment of the penalty. (Exhibit 4.)
6. Appellant testified that during January through May 2017 Appellant did in fact have health insurance coverage through Appellant's parents' policy. The error arose because when Appellant filed using TurboTax, Appellant erroneously did not include that information. Additionally, Appellant obtained employer-sponsored health insurance in May 2017. (Exhibit 4 Testimony).
7. With the Statement of the Grounds for Appeal, Appellant included a copy of the IRS Form 1095C reporting coverage for Appellant's parents and their family. That Form included Appellant by name as a covered individual, and the last four digits of the Social Security number for Appellant shown on that Form match those shown in the Massachusetts Schedule HC. (Exhibits 2 and 4, and Testimony).
8. Consistent with the information on the IRS Form 1095C, Appellant testified that the coverage is an employer-sponsored plan for state and municipal employees in the State of New York. Appellant testified, and I found Appellant's testimony credible, that this policy provides comprehensive coverage for covered individuals. (Testimony and Exhibit 4).

ANALYSIS AND CONCLUSIONS OF LAW

G.L c. 111M, § 2, also called the "individual mandate", requires every adult resident of Massachusetts to obtain health insurance coverage "[s]o long as it is deemed affordable." Residents who do not obtain insurance are subject to a tax penalty. Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty should not apply because Appellant in fact had health insurance coverage throughout 2017.

In 2017, Appellant was determined to have been uninsured for the months of January through May, a total of five months. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a penalty; for Tax Year 2017, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Thus, the Appellant is appealing the penalty of **two** months.

In fact, the Appellant did in fact have health insurance throughout 2017, and the penalty was assessed because of Appellant's error when filing their taxes.

Accordingly, I find the penalty assessed against Appellant for 2017 should not have been imposed, and should be vacated or waived.

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.

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-668

Appeal Decision: Appeal Approved.

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: May 8, 2019

Decision Date: May 13, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on May 8, 2019. 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 Appellant telephoned the Health Connector after the hearing concluded and left a message regarding an additional monthly expense of \$25 for dental services. The message was recorded by a staff member and was added to the hearing transcript.

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

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated April 10, 2019.
- Exhibit 2: Appeal Case Information from Schedule HC 2017.
- Exhibit 3: The Statement of Grounds for Appeal dated April 20, 2018.
- Exhibit 4: The Appellant's request to vacate a prior dismissal of this appeal with attachments dated February 27, 2019.
- Exhibit 5: A Health Connector Final Appeal Decision of the 2014 Tax Year Penalty dated July 27, 2015.
- Exhibit 6: A Health Connector Final Appeal Decision of the 2015 Tax Year Penalty dated February 7, 2017.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant turned 37 years old in October 2017. The Appellant filed their Federal Income Tax return as an individual with no dependents claimed (Exhibit 2).
2. The Appellant lived in Plymouth County, MA in 2017 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2017 was \$30,368 (Exhibit 2, Appellant Testimony).

4. The Appellant had health insurance for the months of January and February but did not have insurance for the period of March through December in tax year 2017 (Exhibit 2, Appellant Testimony).
5. The Appellant has been assessed a seven-month tax penalty for 2017. The Appellant filed an appeal of the assessment in April 2018 (Exhibits 2, 3 and Appellant Testimony).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 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 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
7. In accordance with Table 3 of Schedule HC for 2017, the Appellant filing the Federal tax return as an individual, with no dependents claimed, with an annual adjusted gross income of \$30,368 could afford to pay \$126 per month for health insurance. In accordance with Table 4, the Appellant, age 37, living in Plymouth County, could have purchased private insurance for \$302 per month for a plan (Schedule HC for 2017). Private insurance was not affordable for the Appellant in 2017.
8. The Appellant would have been eligible for ConnectorCare coverage in 2017 because the Appellant's income was less than 300% of the federal poverty level, which was \$35,640 in 2017. The Appellant testified that the insurance provided by their employer was not affordable during the period of February through December in tax year 2017 (See Table 2 of Schedule HC-2017 and 956 CMR 12.04) (Appellant Testimony).
9. The Appellant testified that they were unemployed for six months in tax year 2016 and obtained health insurance through the Division of Unemployment Assistance when they applied for unemployment compensation. The Appellant said that they reported that they had found a job in late January 2017 and this insurance was cancelled. The Appellant said that they looked at obtaining insurance from their employer and the Health Connector but could not afford either option (Exhibit 2 and Appellant Testimony).
10. The Appellant lives with their mother sharing some expenses. The Appellant's 2017 monthly living expenses of \$2,229 included: rent, heat and electricity-\$800; cell phone-\$50; car payment-\$189; car insurance-\$130; gasoline- \$217; food-\$737; Discover credit card-\$31; Capital One credit card-\$50 and a \$25 monthly payment for dental services. The Appellant said that their mother had to sell their home in October 2017 because it was too expensive, and the Appellant had to rent a U-Haul for \$100. In addition, the Appellant had to purchase brakes, tires and a car battery. The repairs totaled \$1,470. The Appellant pays \$75 monthly for a Firestone credit card. I found the Appellant to be a credible witness (Exhibit 3 and Appellant Testimony).
11. The Appellant testified that they received a raise and are now able to afford their employer sponsored health insurance. The Appellant is enrolled (Appellant Testimony).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

The Appellant had health insurance for the first two months of tax year 2017 but did not have health insurance for the ten-month period of March through December in tax year 2017. The Appellant has been assessed a seven-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 2017, the Appellant filing the Federal tax return with no dependents claimed with an adjusted gross income of \$30,368 could afford to pay \$126 per month for health insurance. According to Table 4, the Appellant, age 37, living in Plymouth County, could have purchased a private insurance plan for \$302 per month. See Schedule HC for 2017. Private insurance was not affordable for the Appellant in tax year 2017.

The Appellant had no access to affordable employer-sponsored health insurance during the period of March through December 2017. The Appellant would have been eligible for ConnectorCare coverage based upon the Appellant’s income which was less than \$35,640. See Table 2 of Schedule HC 2017 and 956 CMR 12.04 for eligibility criteria. Since affordable insurance was available to the Appellant in 2017, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1).

The Appellant lived in a shared housing arrangement with their mother. The Appellant verified monthly day to day living expenses in excess of \$2,200 and testified credibly that they struggled to meet these expenses with their limited income. The Appellant and their mother sold their home in October 2017 because expenses were too high. 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 seven -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 2017. The Appellant should not assume that a similar determination will be made for subsequent tax years should they again be assessed a penalty for failure to have health insurance.

PENALTY ASSESSED

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

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 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: PA17-718

Appeal Decision: Appeal Approved.

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: May 8, 2019

Decision Date: May 13, 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 (Spouse) appeared at the hearing, which was held by telephone, on May 8, 2019. The Appellant listed as the Primary taxpayer did not attend the hearing. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated April 11, 2019.
- Exhibit 2: Appeal Case Information from Schedule HC 2017.
- Exhibit 3: Statement of Grounds for Appeal, with attachments, signed by the Appellants on May 8, 2018.
- Exhibit 4: Appellant's letter in support of this appeal with attachments dated May 15, 2018.
- Exhibit 5: Health Connector Appeals Unit Notice dated April 19, 2018 with notations made by the Appellant and submitted to the Appeals Unit on May 20, 2019.
- Exhibit 6: A copy of a Health Connector Final Appeal Decision of the 2016 Tax Penalty dated April 11, 2018.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant and their spouse were 53 years old in 2017. The Appellants filed their Federal Income Tax return as a married couple with one dependent claimed (Exhibit 2).
2. The Appellants lived in Norfolk County, MA in 2017 (Exhibit 2).
3. The Appellants' Federal Adjusted Gross Income for 2017 was \$148,689 (Exhibit 2; Appellant Testimony).
4. The Appellant was insured for the months of February through May but did not have health insurance that met Massachusetts requirements for the months of January and June through

December in 2017. The Appellant has been assessed a four-month penalty (Exhibit 2; Appellant Testimony).

5. The Appellant listed as the Primary taxpayer was insured for the months of February through April but did not have health insurance that met Massachusetts requirements for the months of January and May through December in 2017. The Appellant Primary has been assessed a five-month penalty (Exhibit 2; Appellant Testimony).
6. The Appellants filed an appeal of the assessments in May 2018 (Exhibits 2, 3, 4).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 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 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
8. In accordance with Table 3 of Schedule HC for 2017, the Appellants filing the Federal tax return as a married couple with one dependent claimed, with an annual adjusted gross income of \$148,689 could afford to pay \$1,011 per month for health insurance. In accordance with Table 4, the Appellants, age 53, living in Norfolk County, could have purchased private insurance for \$886 for a family plan (Schedule HC for 2017). Private insurance was affordable for the Appellants in 2017.
9. The Appellants would not have been eligible for ConnectorCare coverage in 2017 because the Appellants' income was greater than 300% of the federal poverty level, which was \$60,480 in 2017. The Appellants had no access to affordable insurance through employment in tax year 2017 (See Table 2 of Schedule HC-2017 and 956 CMR 12.04) (Appellant Testimony).
10. The Appellant testified that they were working with an agent and the failure to have health insurance for January was an error. The Appellant explained that they are self-employed in the real estate business and their spouse does not have access to health care through their employer. The Appellants purchased a plan through the Health Connector and were paying approximately \$1,100 during the months of February through May. The Appellant said that they had to stop the insurance because they could not afford the premiums. The Appellant said that they purchased a catastrophic plan for themselves as they had done in tax year 2016. They also paid \$300 each month for their child's health insurance through their college. The Appellant also testified that in September they had to stop working in order to care for their parent who was diagnosed with lung cancer. The Appellant said that their parent stayed with their family during the week and they went to the parent's home on the weekend. The Appellant said that they transported their parent to treatment but ultimately, he passed away on December 25, 2017. I found the Appellant to be a credible witness (Exhibits 2, 3, 4, 6 and Appellant Testimony).
11. The Appellants' 2017 monthly living expenses included: mortgage and taxes-\$5,300; \$200; gas heat-\$250-\$300; electricity-\$200; cable/telephone- \$300; car insurance- \$150; food-\$650 and a home equity loan of \$350. The Appellant said that they have other expenses for their child who is in their last year of college and owe a great deal of money for student loans (Appellant Testimony).
12. The Appellants received a utility shut off notice in June 2017 (Exhibit 4).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

The Appellants had health insurance that met MCC standards for some months of tax year 2017. The Appellants dropped this coverage and purchased a catastrophic plan. It is undisputed that the plan did not meet MCC standards. The Appellant Primary taxpayer has been assessed a five-month penalty and the Appellant Spouse has been assessed a four-month penalty. The Appellants submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply in this case because of financial hardship and other circumstances. 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 Appellants through employment, through private insurance, or through a government sponsored program. If affordable insurance was available, it must be determined if such insurance was not affordable to the Appellants because the Appellants experienced a financial hardship as defined in 956 CMR 6.08.

In accordance with Table 3 of Schedule HC for 2017, the Appellants filing the Federal tax return as a married couple with one dependent claimed with an adjusted gross income of \$148,689 could afford to pay \$1,011 per month for health insurance. According to Table 4, the Appellants, age 53, living in Norfolk County, could have purchased a private insurance plan for \$747 per month for a couple and \$886 for a family plan. See Schedule HC for 2017. Private insurance appeared affordable for the Appellant in tax year 2017.

The Appellants had no access to affordable employer-sponsored health insurance in tax year 2017. The Appellants would not have been eligible for ConnectorCare coverage based upon the Appellants’ income which was greater than \$60,480. See Table 2 of Schedule HC 2017 and 956 CMR 12.04 for eligibility criteria. Since affordable insurance was available to the Appellants in 2017, it must be determined whether the Appellants experienced a financial hardship pursuant to 956 CMR 6.08 (1).

The Appellant testified credibly that their adjusted gross income does not accurately reflect their financial circumstances for all of tax year 2017. The Appellant explained that they had to stop working in September of tax year 2017 to take care of their gravely ill parent. The Appellant’s parent stayed with the Appellant for most of the week so that the Appellant could provide care and transport their parent to chemotherapy treatment. The Appellant stayed with their parent in the parent’s home on the weekend. Sadly, the Appellant’s parent passed away on December 25, 2017. The Appellant Spouse suffered a substantial hardship as set forth at 956 CMR 6.08(1)(d)(3).

The Appellants' monthly living expenses were substantially high in 2017 and the Appellants were using a home equity line of credit to help meet these expenses. The Appellants did receive a utility shut off notice in June 2017. The cost of purchasing health insurance would have caused the Appellants to experience a serious financial hardship. See 956 CMR 6.08(1)(e). The Appellant Primary's five-month penalty and the Appellant Spouse's four-month penalty are therefore waived.

The Appellants should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2017. The Appellant should not assume that a similar determination will be made for subsequent tax years should they again be assessed a penalty for failure to have health insurance.

PENALTY ASSESSED

Appellant Primary: Number of Months Appealed: 5 Number of Months Assessed: 0
Appellant Spouse: 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 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: PA17-726

Appeal Decision: Penalty Overturned in Full
Hearing Issue: Appeal of the 2017 Tax Year Penalty
Hearing Date: March 28, 2019
Decision Date: May 7, 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

Appellant appeared at the hearing, which was held by telephone, on March 28, 2019. Appellant also appeared for Appellant Spouse. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

- Exhibit 1: Correspondence from the Health Connector
- Exhibit 2: Appeal Case Information from Schedule HC 2017
- Exhibit 3: Notice of Appeal, dated May 15, 2018
- Exhibit 4: Statement of Appellant in support of the Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 48 and Appellant Spouse was 42 years old in 2017. Appellants filed a Massachusetts 2017 tax return as Married Filing Jointly, with two dependents claimed (Exhibit 2).
2. Appellants resided in Essex County, MA in 2017 (Exhibit 2).
3. Appellants had an Adjusted Gross Income for 2017 of \$70,834 (Exhibit 2).
4. From January through August 2017, Appellants were covered by MassHealth (Testimony of Appellant).
5. Sometime in the summer of 2017, Appellants received a notice that their MassHealth coverage would stop but that they would have Health Safety Net (Testimony of Appellant)

6. Appellants continued to receive treatment at a Community Health Center in late 2017 (Testimony of Appellant and Exhibit 4).
7. Appellants thought that they were covered by health insurance since they continued to see the same medical providers at the Community Health Center without a charge (Testimony of Appellant).
8. In early 2018, Appellants learned that Health Safety Net was not health insurance (Testimony of Appellant).
9. In early 2018, Appellants enrolled in a Health Connector plan (Testimony of Appellant).
10. Appellants did not have health insurance from September through December 2017 (Exhibit 2).
11. Appellants have each been assessed a penalty for one month for 2017 (Exhibit 2).
12. Appellants filed an Appeal on May 15, 2018 stating that after their MassHealth coverage ended, they continued to receive treatment at the same location and thought that Health Safety Net was insurance (Exhibits 3 and 4).

ANALYSIS AND CONCLUSIONS OF LAW

G.L.c. 111M, § 2, also called the “individual mandate,” requires every adult resident of Massachusetts to obtain health insurance that meets minimum creditable coverage standards “[s]o long as it is deemed affordable” under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance or who do not obtain insurance that meets the minimum creditable coverage standard are subject to a tax penalty for “each of the months” that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2017, 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.

Appellants have each been assessed a tax penalty for one month. Appellants were covered by MassHealth during January through August. They continued to receive medical care at the same community health center through Health Safety Net and they did not understand that Health Safety Net was not health insurance. When they were made aware that Health Safety Net was not insurance, they applied to the Health Connector and began coverage through the Health Connector. See Testimony of Appellant, which I find to be credible.

Given these circumstances and since Appellants enrolled in a Health Connector plan in early 2018, I find that the penalty assessed against Appellants for 2017 should be waived in its entirety.

PENALTY ASSESSED

Number of Months Appealed: 1/1

Number of Months Assessed: 0/0

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2017 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 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.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-736

Appeal Decision: Appeal Approved.

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: May 8, 2019

Decision Date: May 13, 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 and their attorney appeared at the hearing, which was held by telephone, on May 8, 2019. The procedures to be followed during the hearing were reviewed with the parties and the Appellant was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant or their attorney. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated April 10, 2019.
- Exhibit 2: Appeal Case Information from Schedule HC 2017.
- Exhibit 3: A Health Connector Authorized Representative form submitted by the Appellant on February 19, 2019.
- Exhibit 4: The Appellant's request to vacate a prior dismissal entered on July 31, 2018 that was submitted to the Health Connector Appeals Unit on August 22, 2018.
- Exhibit 5: Documents related to the initial hearing scheduled for February 8, 2019 that was rescheduled at the Appellant's request.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant turned 30 years old in June 2017. The Appellant filed their Federal Income Tax return as an individual with no dependents claimed (Exhibit 2).
2. The Appellant lived in Middlesex County, MA in 2017 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2017 was \$72,466 (Exhibit 2).

4. The Appellant had health insurance for the months of January through March but did not have insurance for the period of April through December in tax year 2017 (Exhibit 2 and Appellant Testimony).
5. The Appellant has been assessed a six-month tax penalty for 2017. The Appellant filed an appeal of the assessment in August 2018 (Exhibits 2, 4 and Appellant Testimony).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 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 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
7. In accordance with Table 3 of Schedule HC for 2017, the Appellant filing the Federal tax return as an individual, with no dependents claimed, with an annual adjusted gross income of \$72,466 could afford to pay \$493 per month for health insurance. In accordance with Table 4, the Appellant, age 30, living in Middlesex County, could have purchased private insurance for \$150 per month for a plan (Schedule HC for 2018). Private insurance was affordable for the Appellant in 2017.
8. The Appellant would not have been eligible for ConnectorCare coverage in 2017 because the Appellant's income was greater than 300% of the federal poverty level, which was \$35,640 in 2017. (See Table 2 of Schedule HC-2018 and 956 CMR 12.04) (Exhibit 2).
9. The Appellant testified that they had employer sponsored health insurance for the first three months of tax year 2017 but lost it because they were laid off from their position. The Appellant said that coverage through COBRA was available at a cost of \$535 per month but the Appellant could not afford that. The cost of this coverage is in excess of the \$493 affordability standard for the Appellant as noted above (Appellant Testimony).
10. The Appellant testified that they were unemployed for the period of April through December in tax year 2017. Most of the adjusted gross income reported came from the Appellant's 401K account which they were forced to access in order to meet their monthly living expenses. The Appellant explained that they were lawfully present in the United States under a work visa and considered returning to their home country when they were unable to find work. The Appellant said that they did not realize they were required to purchase health insurance given their immigration status (Exhibit 4 and Appellant Testimony).
11. The Appellant's 2017 monthly living expenses included: rent-\$750; heat-\$160; electricity- \$20; telephone-\$60; car insurance-\$100; gasoline-\$70; and food-\$433. The Appellant said that they had credit card payments totaling \$1,000 per month. Most of the expenditures were for things charged when the Appellant was working including car repairs of between \$500 and \$600. The Appellant said that they tried to preserve funds in their 401K but remained unemployed. I found the Appellant to be a credible witness (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. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies See G.L. C. 111M, sec. 2(b) and for Tax Year 2010, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c.176Q as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of financial hardship. See 956 CMR 6.08.

The Appellant had employer sponsored health insurance for the first three months of tax year 2017 but did not have health insurance for the nine-month period of April through December in tax year 2017. The Appellant has been assessed a six-month penalty. The Appellant asserts that the penalty should not apply in this case because of financial hardship and other circumstances. 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 \$72,466 could afford to pay \$493 per month for health insurance. According to Table 4, the Appellant, age 30, living in Middlesex County, could have purchased a private insurance plan for \$150 per month. See Schedule HC for 2017. Private insurance was not affordable for the Appellant in tax year 2017.

The Appellant had no access to affordable employer-sponsored health insurance during the period of April through December 2019. The Appellant would not have been eligible for ConnectorCare coverage based upon the Appellant's income which was greater than \$35,640. 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 their gross income figure does not reflect their month to month financial circumstances in tax year 2017. The Appellant lost their job in April and was unable to secure employment for the remainder of 2017. The Appellant is present in the United States under a work visa and testified credibly that they were not aware that they could purchase health insurance privately after losing their employer sponsored coverage. In addition, the Appellant explained that without earned income they were forced to liquidate the funds in their 401K account to meet their living expenses.

The Appellant verified substantial day to day living expenses and testified credibly that they struggled to meet these expenses while trying to preserve their retirement assets. 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 six-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 2017. 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: ____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 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: PA17740

Appeal Decision: The penalty is overturned in full.

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: February 8, 2019

Decision Date: May 19, 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 appeared at the hearing which was held by telephone on February 8, 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. At the end of the hearing, the record was left open until March 1, 2019 to give Appellant time to submit additional evidence. Documents were received from the appellant. They have been marked as exhibits and admitted in evidence. The record for this hearing 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 2017

Exhibit 2: Statement of Grounds for Appeal 2017 signed and dated by Appellant on May 10, 2018

Exhibit 3: Notice of Hearing sent to Appellant dated January 10, 2019 for February 8, 2019 hearing

Exhibit 4: Appellant's 2017 1095-A Form

Exhibit 5: Appellant's 2017 1095-C

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2017 Massachusetts tax return as a single individual with no dependents claimed, was 36 years old in 2017 (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Essex County in 2017 until the end of August when Appellant moved to another state (Exhibit 1, Testimony of Appellant).
3. Appellant had a Federal adjusted gross income for 2017 of \$31,011 (Testimony of Appellant).
4. In 2017, the appellant was employed in Massachusetts until he moved to another state (Testimony of Appellant).

5. Appellant had health insurance through the Connector from January through the end of August, 2017, though this was not indicated on his Schedule HC for 2017 (Testimony of Appellant, Exhibits 1, and 4).
6. The appellant has been assessed a tax penalty for all of 2017. Appellant has appealed the assessment (Exhibits 1 and 2).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2017 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 2017. The appellant has appealed the assessment. Exhibits 1, 2.

Appellant had health insurance coverage through the Connector from January through the end of August, 2017. See the testimony of the appellant which I find to be credible and Exhibits 4 and 5. On Exhibit 4, the Commonwealth is listed as the marketplace. Since appellant had insurance through the Connector, the penalty for January through August is waived.

Appellant lived in Essex County from January through the end of August, 2017. He then moved to another state. See the testimony of the appellant which I find to be credible and Exhibits 1 and 2. The penalty for September through December is, therefore, waived. See Massachusetts General Laws, Chapter 111, Section 2 which provides, among other things, that residents of the Commonwealth are required to have health insurance coverage. Once, Appellant moved, he no longer was subject to that provision.

Appellant’s penalty is fully waived because he had coverage for the first eight months of the year and then moved from the Commonwealth..

Appellant should note that any waiver granted here is for 2017 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 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.

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-766

Appeal Decision: Appeal Denied.

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: May 8, 2019

Decision Date: May 13, 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 appeared at the hearing, which was held by telephone, on May 8, 2019. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated April 11, 2019.
- Exhibit 2: Appeal Case Information from Schedule HC 2017.
- Exhibit 3: The Appellant's request to vacate a prior dismissal of this appeal with attachments submitted to the Health Connector Appeals Unit on February 12, 2019.
- Exhibit 4: A letter written by the Appellant requesting a replacement Hearing Notice dated February 12, 2019.
- Exhibit 5: The Appellant's request to vacate a 02/25/19 dismissal, with attachments.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant turned 25 years old in March 2017. The Appellant their Federal Income Tax return as a single person with no dependents claimed (Exhibit 2).
2. The Appellant lived in Suffolk County, MA in 2017 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2017 was \$36,544 (Exhibit 2).
4. The Appellant did not have insurance for any months of tax year 2017 (Exhibit 2 and Appellant Testimony).

5. The Appellant has been assessed a twelve-month tax penalty for 2017. The Appellant filed an appeal of the assessment in August 2018 (Exhibits 2, 3).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 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 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
7. In accordance with Table 3 of Schedule HC for 2017, the Appellant filing the Federal tax return as a single person, with no dependents claimed, with an annual adjusted gross income of \$36,544 could afford to pay \$225 per month for health insurance. In accordance with Table 4, the Appellant, age 25, living in Suffolk County, could have purchased private insurance for \$150 per month for a single plan (Schedule HC for 2017). Private insurance was affordable for the Appellant.
8. The Appellant would not have been eligible for ConnectorCare coverage in 2017 because the Appellant's income was greater than 300% of the federal poverty level, which was \$35,640 in 2017. The Appellant testified that their employer did provide access to employer-sponsored insurance (See Table 2 of Schedule HC-2017 and 956 CMR 12.04) (Appellant Testimony).
9. The Appellant testified that they had MassHealth in tax year 2016 but this ended when they began working. The Appellant said that they reapplied for MassHealth under a claim of disability but MassHealth would not allow them to be insured pending the decision of the DES (Disability Evaluation Services Unit). The Appellant said that they were told they could not apply through the Health Connector for insurance while the DES decision was pending. The DES took months to review and deny the Appellant's claim. The Appellant was advised that this seemed unlikely since it is not in compliance with Health Connector policy. The Appellant then testified that they did look at Health Connector plans but could not afford the premium, which was \$187.00 (Exhibit 3 and Appellant Testimony).
10. The Appellant testified that their 2017 monthly living expenses included: rent - \$976; electricity \$80; telephone-\$136; food-\$433; a monthly T pass-\$60; and a student loan \$130. The Appellant explained that for the months of March through August they had to pay an additional \$400 for rent arrearages under a court agreement. The Appellant moved in August and their rent was \$1,000 for the period of September through December (Appellant Testimony).
11. In tax year 2017 the Appellant did not face eviction, did not receive any utility shut off notices, did not incur a significant and unexpected increase in expenses due to a natural or human caused disaster and did not incur significant expenses as a result of a family emergency (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 for any months of tax year 2017. The Appellant has been assessed a twelve-month penalty. The Appellant submitted a statement of grounds for this appeal citing financial hardship and other reasons. To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met minimum creditable coverage standards was available to the Appellant through employment, through private insurance, or through a government sponsored program. If affordable insurance was available, it must be determined if such insurance was not affordable to the Appellant because the Appellant experienced a financial hardship as defined in 956 CMR 6.08.

The Appellant would not have been eligible for ConnectorCare coverage in 2017 because the Appellant's income was greater than 300% of the federal poverty level, which was \$35,640 in 2017. The Appellant testified that their employer did provide access to affordable insurance (See Table 2 of Schedule HC-2017 and 956 CMR 12.04).

In accordance with Table 3 of Schedule HC for 2017, the Appellant filing the Federal tax return as a single person with no dependents claimed, with an adjusted gross income of \$36,544 could afford to pay \$225 per month for health insurance. In accordance with Table 4, the Appellant, age 25, living in Suffolk County, could have purchased private insurance for \$150 per month for a plan (Schedule HC for 2017). Private insurance was affordable for the Appellant in 2017.

The Appellant initially testified that they were told that they could not apply for health insurance through the Health Connector because they had a claim of disability under review by the DES through MassHealth. When informed that this testimony was not credible because it is inconsistent with Health Connector policy, the Appellant said that they did look at plans through the Health Connector but could not afford the monthly premium quoted which was \$187.

Since affordable insurance was available to the Appellant in 2017, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1). The Appellant's monthly income averaged \$3,045 in tax year 2017. The Appellant testified to monthly expenses of \$1,815 for January and February, \$2,215 for March through August and \$1,839 for the period of September through December. The Appellant was not facing eviction, did not receive any utility shut off notices and did not incur significant and unexpected expenses due to a family emergency, natural or other human caused disaster. Given that in accordance with Table 4 of Schedule HC for 2017 the Appellant could have purchased insurance for as low as \$150 per month, the Appellant has failed to substantiate their claim that the cost of purchasing health insurance for 2017 would have caused the Appellant to experience a serious financial hardship. See 956 CMR 6.08(1)(e). The Appellant's penalty for all twelve months is upheld.

PENALTY ASSESSED

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2017 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the 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: PA17-789

Appeal Decision: Appeal Approved.

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: May 8, 2019

Decision Date: May 13, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on May 8, 2019. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The Hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated April 10, 2019.
- Exhibit 2: Appeal Case Information from Schedule HC 2017.
- Exhibit 3: The Statement of Grounds for Appeal dated September 4, 2018.
- Exhibit 4: The Appellant's letter in support of this appeal with attachments.
- Exhibit 5: The Appellant's request to vacate a 02/14/19 dismissal for failing to attend a hearing on 02/13/19, with attachments submitted to the Appeals Unit on February 22, 2019.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant turned 37 years old in September 2017. The Appellant filed their Federal Income Tax return as an individual with no dependents claimed (Exhibit 2).
2. The Appellant lived in Suffolk County, MA in 2017 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2017 was \$43,421 (Exhibit 2, Appellant Testimony).
4. The Appellant did not have insurance for any months of tax year 2017 and has been assessed a twelve-month tax penalty for 2017 (Exhibit 2).

5. The Appellant filed an appeal of the assessment in September 2018 (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 2017 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 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
7. In accordance with Table 3 of Schedule HC for 2017, the Appellant filing the Federal tax return as an individual, with no dependents claimed, with an annual adjusted gross income of \$43,421 could afford to pay \$275 per month for health insurance. In accordance with Table 4, the Appellant, age 37, living in Suffolk County, could have purchased private insurance for \$256 per month for a plan (Schedule HC for 2017). Private insurance was affordable for the Appellant in 2017.
8. The Appellant would not have been eligible for ConnectorCare coverage in 2017 because the Appellant's income was greater than 300% of the federal poverty level, which was \$35,640 in 2017. The Appellant testified that the insurance provided by their employer was not affordable in tax year 2017 (See Table 2 of Schedule HC-2017 and 956 CMR 12.04) (Exhibit 4 and Appellant Testimony).
9. The Appellant testified that they were hired as a contracted employee for all of tax year 2017. The Appellant said that they did not always work full time and during the period of June through August they were not employed. The Appellant explained that they moved in with their mother in 2016 to help with finances and could not afford health insurance in tax year 2017.
10. The Appellant lives with their mother sharing some expenses. The Appellant's 2017 monthly living expenses of \$2,961 included: \$1,000 of the monthly \$1,700 mortgage; heat-\$400 in the colder months; water-\$87; electricity- \$43; cable-\$289; car payment-\$297; car insurance-\$325; gasoline-\$217; and food-\$520. The Appellant said that they incurred some additional expenses when a pipe burst in the basement and they are unsure if insurance reimbursed them for this. The Appellant said that they struggled to meet these expenses. The Appellant's credible testimony is supported by two shut off notices from National Grid dated October 5, 2017 and December 11, 2017 (Exhibits 3, 4 and Appellant Testimony).
11. The Appellant testified that they were eventually hired as a permanent employee and are enrolled in employer sponsored health insurance (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. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies See G.L. C. 111M, sec. 2(b) and for Tax Year 2010, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c.176Q as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of financial hardship. See 956 CMR 6.08.

The Appellant did not have health insurance for any months of tax year 2017. 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 2017, the Appellant filing the Federal tax return as a single person with no dependents claimed with an adjusted gross income of \$43,421 could afford to pay \$275 per month for health insurance. According to Table 4, the Appellant, age 37, living in Suffolk County, could have purchased a private insurance plan for \$256 per month. See Schedule HC for 2017. Private insurance was affordable for the Appellant in tax year 2017.

The Appellant had no access to affordable employer-sponsored health insurance during 2017. The Appellant would not have been eligible for ConnectorCare coverage based upon the Appellant's income which was greater than \$35,640. See Table 2 of Schedule HC 2017 and 956 CMR 12.04 for eligibility criteria. Since affordable insurance was available to the Appellant in 2017, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1).

In tax year 2017 the appellant was a contract employee. The Appellant did not always have full time work and in fact was unemployed for the months of June through August. The Appellant lived in a shared housing arrangement with their mother. The Appellant verified monthly day to day living expenses in excess of \$2,900 and testified credibly that they struggled to meet these expenses with their limited income. The Appellant did receive two shut off notices from their utility company. In addition, due to a burst pipe the Appellant incurred some unexpected expenses to keep their home habitable. 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)(b)(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 2017. 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 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: PA17-807

Appeal Decision: Penalty Overturned in Full
Hearing Issue: Appeal of the 2017 Tax Year Penalty
Hearing Date: April 8, 2019
Decision Date: May 15, 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

Appellant appeared at the hearing, which was held by telephone, on April 8, 2019. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified. At the end of the hearing, the record was left open so that Appellant could submit additional documents. Appellant submitted additional documents, which have been marked as Exhibit 4.

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

- Exhibit 1: Correspondence from the Health Connector
- Exhibit 2: Appeal Case Information from Schedule HC 2017
- Exhibit 3: Notice of Appeal, dated October 27, 2019
- Exhibit 4: Healthcare documents

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 29 years old in 2017. Appellant filed a Massachusetts 2017 tax return as single with no dependents claimed (Exhibit 2).
2. Appellant resided in Worcester County, MA from June through December 2017 (Exhibit 2).
3. Appellant had an Adjusted Gross Income for 2017 of \$44,111 (Exhibit 2).
4. Appellant's Massachusetts tax return indicated that Appellant did not have health insurance for the entire year (Exhibit 2).

5. In June 2017, Appellant left the military service and moved to Massachusetts (Testimony of Appellant).
6. Shortly after moving, Appellant enrolled in the Veteran's Administration Health System (Testimony of Appellant and Exhibit 4).
7. Appellant has been assessed a penalty for four months for 2017 (Exhibit 2).
8. Appellant filed an Appeal appealing the assessment of the penalty on October 27, 2018 (Exhibit 3).

ANALYSIS AND CONCLUSIONS OF LAW

G.L.c. 111M, § 2, also called the "individual mandate," requires every adult resident of Massachusetts to obtain health insurance that meets minimum creditable coverage standards "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance or who do not obtain insurance that meets the minimum creditable coverage standard are subject to a tax penalty for "each of the months" that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2017, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08 (1).

During the time that Appellant lived in Massachusetts, from June through December 2017, Appellant was insured by the Veterans Administration Health System. Such insurance meets the Massachusetts Minimum Creditable Coverage Standards (See 2017 Massachusetts schedule HC Health Care).

I find the penalty should be waived in its entirety for 2017.

PENALTY ASSESSED

Number of Months Appealed: 4 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 2017 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 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.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-808

Appeal Decision: Appeal Approved -- 2017 tax penalty overturned.

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: May 7, 2019

Decision Date: May 28, 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 appeared for the hearing, which I conducted by telephone. A document was submitted on behalf of the Massachusetts Department of Revenue (DOR) prior to the hearing (Exhibit 1). The hearing record consists of the Appellant's testimony under oath and the following documents that were admitted into evidence as exhibits.

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2017;
3. Appellant's Letter in Support of Appeal (1 page, dated 10/30/18);
4. Employer's Letter Supporting Appeal (1 page, dated 11/7/17);
5. Prior Hearing Officer's Entry That Appellant Did Not Appear for Hearing (1 page, dated 4/8/19);
6. Health Connector's Notice of Hearing (3 pages, dated 3/15/19) (Massachusetts address); and
7. Health Connector's Second Hearing Notice (3 pages, dated 4/10/19) (out-of-state address).

FINDINGS OF FACT

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

1. The Appellant appealed from the Department of Revenue's assessment of a 6 month penalty for 2017. The basis for the penalty was that the Appellant was insured for the months of January, February, and March 2017, but was not insured for April through December 2017 (9 months). Exhibits 1 and 2. Based on Exhibit 1 and the Appellant's hearing testimony, I find that the penalty assessment is factually accurate, except as set forth in more detail below. (The calculation is 12

months minus 3 months insured = 9 months uninsured minus 3-month administrative grace period = 6 penalty months.)

2. The Appellant filed a Massachusetts personal income tax return for 2017 as a single person with no dependents. The Appellant's federal adjusted gross income (AGI) for 2017 was \$32,736. Exhibit 1 and Testimony.
3. The Appellant was 49 years old at the beginning of 2017 and resided in [name of city or town omitted] in Essex County, Massachusetts. Exhibit 1 and Testimony. See also Exhibit 1, Exhibit 2, page 2, and Exhibit 6, page 1 (all same Massachusetts address). Compare Exhibit 7, page 1 (new out-of-state address).
4. The Appellant's AGI was more than 150% of the federal poverty level. On this basis I conclude that the Appellant was not automatically exempt from the assessment of a tax penalty in 2017. DOR Table 1.
5. The Appellant's 2017 AGI (\$32,736) was less than 300% of the federal poverty level (\$35,640 for a one person household). DOR Table 2. On this basis I infer that the Appellant satisfied the financial eligibility requirement for government-subsidized health insurance.
6. The Appellant was enrolled in a health insurance plan through the Health Connector at the beginning of 2017. Exhibit 3 and Testimony.
7. The Health Connector notified the Appellant that it was cancelling his health insurance coverage effective for April 2017 because he earned too much money. Exhibit 3 and Testimony.
8. Several years earlier the Appellant had worked in a restaurant located in Essex County. The Appellant learned that another person with the same first and last names (a common name) was subsequently using the Appellant's Social Security number to report his earnings at the restaurant. By a letter dated November 7, 2017, the restaurant's human resources manager confirmed that the Appellant had not worked at the restaurant since 2011. Exhibits 3 and 4 and Testimony. (The Appellant stated that there are 650,000 people with the same name, which quantifies common knowledge.)
9. I find, based on the evidence in the hearing record, that the Health Connector mistakenly terminated the Appellant's health plan in April 2017 because it combined the Appellant's wages with the imposter's wages as wages for both individuals were being reported on the Appellant's Social Security number. See Exhibits 3 and 4 and Testimony.
10. I credit the Appellant's representation during the appeal hearing that the Internal Revenue Service (IRS) subsequently straightened the matter out with the restaurant, and the Appellant reenrolled in health insurance coverage for 2018. (I note that there is no document from either the IRS or the Health Connector in the hearing record to verify these points.)

11. The Appellant recently moved out of Massachusetts. Testimony and Exhibit 7. (I note that there is no verification in the hearing record that the Appellant notified the Health Connector to cancel his health insurance coverage.)
12. Based on DOR Table 3 the Appellant could afford to pay 5.00% of his income -- or \$136 per month -- for health insurance coverage in 2017. (The calculation is 5.00 % multiplied by \$32,736 AGI = \$1,636.80 per year divided by 12 months = \$136.40 per month.)
13. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage at his age and location for \$313 per month in 2017.
14. 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 2017 Massachusetts income tax return.
15. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2017. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2017. (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 2017.)

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 for the months of April through December 2017. 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 – 2017 that the Appellant signed and filed in this case. See Exhibit 2.

This unusual appeal presents a case of mistaken identity. On this basis I vacate the entire penalty that the DOR assessed for 2017. See 956 Code Mass. Regs. 6.08 (3).

At the beginning of 2017 the Appellant was enrolled in a health plan through the Health Connector, as verified by Exhibit 1. At this point, needless to say, the Appellant had complied with the individual mandate and no penalty was assessed for the months of January, February, and March 2017.

Starting in April, the Health Connector terminated the Appellant’s health insurance coverage, leading to the DOR’s assessment of a penalty for April – December 2017. The coverage termination, it turned out, was based on an inaccurate wage verification. Restaurant wages – where the Appellant had last worked in 2011 – were being reported on the Appellant’s Social Security number by another person who had the same first and last name as the Appellant. The identity issue was later resolved, with the restaurant’s assistance, but it was too late to resume the Appellant’s health insurance coverage for 2017.

The affordability standards set forth in DOR Tables 3 and 4 lend further support to the resolution of this appeal in the Appellant’s favor, as the Appellant could not afford health insurance in 2017 without the assistance of a government subsidy from the Health Connector. At his income the Appellant could afford to pay \$136 per month, but health insurance would cost \$313 per month. See Findings of Fact, Nos. 12 and 13, above. See Mass. Gen. Laws, c. 211M, sec. 2 (a), summarized above.

In sum, the entire penalty assessed for 2017 is vacated. The Appellant should not be penalized for the mistaken wage verification information.

PENALTY ASSESSED

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2017 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 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.

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-810

Appeal Decision: Penalty Overturned in Full
Hearing Issue: Appeal of the 2017 Tax Year Penalty
Hearing Date: April 8, 2019
Decision Date: May 17, 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

Appellants appeared at the hearing, which was held by telephone, on April 8, 2019. The procedures to be followed during the hearing were reviewed with Appellants. Appellants were sworn in. Exhibits were marked and admitted in evidence with no objection from Appellants. Appellants testified. At the conclusion of the testimony, the record was left open so that Appellants could submit further documents. Appellants submitted documents, which have been marked as Exhibit 5.

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

- Exhibit 1: Correspondence from the Health Connector
- Exhibit 2: Appeal Case Information from Schedule HC 2017
- Exhibit 3: Notice of Appeal, dated November 1, 2018
- Exhibit 4: Statement of Appellants in support of the Appeal
- Exhibit 5: Documents regarding Appellants health insurance in 2017

FINDINGS OF FACT

The record shows, and I so find:

1. Appellants were 36 and 37 years old in 2017. Appellants filed a Massachusetts 2017 tax return as married filing jointly with one dependent claimed (Exhibit 2).
2. Appellant resided in Worcester county in 2017 (Exhibit 2).
3. Appellants were married in July 2017 (Testimony of Appellant).

4. Appellant was covered by employer sponsored health insurance through an out of state union from January through December (Testimony of Appellant and Exhibit 5).
5. Appellant Spouse was covered by employer sponsored insurance from January through June. Appellant Spouse's employer sponsored health insurance from January through June met Massachusetts minimum creditable coverage standards (Testimony of Appellant and Exhibit 5).
6. Appellant Spouse had coverage under Appellant's employer sponsored health insurance from July through December (Testimony of Appellant Spouse and Exhibit 5).
7. Appellant's union health fund was based out of state (Testimony of Appellant).
8. Appellant's union fund was paid for by contributions from Appellant's employer into the union fund. Appellant was required to work a certain amount of hours per year to get full coverage and Appellant worked the required amount of hours (Testimony of Appellant).
9. Appellant's union health fund informed covered Massachusetts residents that the health fund did not meet Massachusetts Minimum Creditable coverage standards because it did not cover maternity services to the pregnant daughter of a participant (Exhibit 5).
10. Neither Appellant nor Appellant Spouse provide health insurance for a daughter (Testimony of Appellant).
11. Appellant has been assessed a penalty for three months and Appellant Spouse has been assessed a penalty of twelve months for 2017 (Exhibit 2).
12. Appellants filed an Appeal on November 1, 2018, appealing the assessment of the penalty. Appellants claimed that Appellants purchased health insurance that didn't meet the Massachusetts standards because that is what the employer offered and circumstances prevented Appellants from buying other insurance that met the standards (Exhibit 3).

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellant was covered by an out of state union health fund for all of 2017. Appellant Spouse was covered by employer sponsored health insurance that met Massachusetts standards from January through June 2017. Beginning in July 2017, Appellant Spouse was also covered by Appellant's out of state union health fund. The

issue to be decided is whether the union health fund policy substantially met the Massachusetts minimum creditable coverage standards and whether Appellants should be assessed a penalty for the months that Appellants were covered by Appellant's plan.

Appellant's union was located out of state. The union health fund was comprehensive and met most of the Massachusetts standards. However, the policy did not cover maternity care for covered dependents and therefore did not meet the minimum creditable coverage standards. See Schedule HC and Exhibits 4, 5 and Testimony of Appellants, which I find to be credible.

I find that Appellants did have comprehensive health insurance through the Appellant's employer that substantially met minimum creditable coverage standards during 2017. See 956 CMR 6.08 (2)(d)

I find that the penalty should be waived in its entirety for 2017.

PENALTY ASSESSED

Number of Months Appealed: 12/6

Number of Months Assessed: 0/0

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2017 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 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.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-813

Appeal Decision: Penalty Overturned in Full

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: April 10, 2019

Decision Date: May 19, 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 appellants, husband and wife, appeared at the hearing which was held by telephone on April 10, 2019 and testified under oath. The hearing record consists of their testimony and the following documents which were admitted into evidence without their objection:

- Ex. 1—Statement of Grounds for Appeal—2017
- Ex. 1A—Residential Rental Contract for the period 8/10/2017-7/31/2018
- Ex. 1B—Auto insurance verification of coverage dated 8/2/2017
- Ex. 1C—Energy company confirmation of service dated 8/9/2017
- Ex. 1D—Reservation confirmations dated 7/30/2017 and 7/31/2017
- Ex. 1E—Internet service confirmation dated 8/23/2017
- Ex. 2—Appeal Case Information from Schedule HC ¹
- Ex. 3—Notice of Hearing

The record was held open at the conclusion of the hearing for documentation requested by the hearing officer from the appellants. The documentation was not filed in a timely manner and a second request was made by letter dated May 2, 2019. The appellants responded to the second notice and submitted the requested documentation which was marked as follows:

- Ex. 4—2017 Form MA 1099-HC

FINDINGS OF FACT

The record shows, and I so find:

¹ Ex. 2 is a computer printout that extracts information submitted by the appellants on Schedule HC as part of their 2017 Massachusetts income tax return. It also contains information about prior appeals, if any.

1. The appellant wife is 45-years-old and the appellant husband is 55-years-old. They do not have children. In 2017, they had health insurance for the portion of the year they resided in Massachusetts. (Testimony, Ex. 4)
2. The appellants lived in Massachusetts from February, 2017 until July 30, 2017, and had health insurance through the husband's employer for that period of time. (Testimony, Ex. 4)
3. The appellants left Massachusetts on July 30, 2017, and moved to North Carolina where they resided for the remainder of the year. (Testimony, Exs. 1A, 1B, 1C, 1D, 1E)
4. The appellant wife completed their Schedule HC and mistakenly indicated that neither of them had health insurance during the months they resided in Massachusetts, and that only her husband was subject to a penalty for being uninsured. (Testimony, Ex. 2)

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellants submitted a statement of grounds for appeal (Ex. 1), claiming that the individual mandate did not apply to them during 2017 for "other" reasons such as being a non-resident of the state or not qualifying for government subsidized insurance. The appellants had health insurance from January through July, but indicated on their Schedule HC that they were uninsured for that period of time, and that they were part-year residents from January 1, 2017-August 1, 2017.² According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a tax penalty; for Tax Year 2017, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Although the appellants were insured while they resided in the state, the husband was assessed a penalty of four months which reflected his part year residence of seven months less three months pursuant to the rule for part year residents set forth in the Schedule HC Instructions.

The appellants testified credibly that they resided in Massachusetts from February through July, 2017 during which time they were insured through the husband's employer. They testified that they left Massachusetts on July 30, 2017 and moved to North Carolina for the remainder of the year. Finally, they testified that the wife mistakenly indicated on their Schedule HC that neither of them had health insurance while residing in the state.

The appellants' testimony was corroborated by documentation indicating that they had health insurance from January through July, 2017, and that they moved to North Carolina at the beginning of August, 2017. Accordingly, the husband is not liable for a penalty.

² As noted in Finding No. 4, the appellant wife indicated on their Schedule HC that they did not have health insurance while residents of the state, and that only her husband was subject to a penalty for being uninsured.

Based on the foregoing, the appellants' request for a waiver from the penalty is **granted**. The determination that the appellant husband is eligible for a waiver is with respect to 2017, only and is based upon the extent of information submitted by them in this appeal.

PENALTY ASSESSED

Number of Months Appealed: 4 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 2017 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-824

Appeal Decision: Appeal Denied

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: April 11, 2019

Decision Date: May 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 appeared at the hearing, which was held by telephone, on April 11, 2019. The Appellant offered testimony under oath or affirmation. At the end of the hearing, the record was left open until May 2, 2019, for the Appellant to submit additional evidence. The Appellant did not submit any additional evidence, and the record was closed on May 2, 2019.

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

- Exhibit 1: Appeal Case Information from 2017 Schedule HC
- Exhibit 2: 5/5/18 Appeal (13 pages)
- Exhibit 3: 3/15/19 Hearing Notice (3 pages)

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant appealed from the assessment of a seven-month penalty on his 2017 income tax return, contending that he could not find affordable health insurance in 2017, as the grounds for his appeal. (Appellant's testimony)
2. The Appellant's filing status in 2017 was Single with no dependents. The Appellant's federal AGI in 2017 was \$20,120. The Appellant resided in Suffolk County in 2017. The Appellant turned twenty years old in 2017. (Exhibit 1)
3. The Appellant did not have health insurance coverage during the first ten months of 2017. The Appellant had coverage in November and December 2017 and has coverage currently. (Appellant's testimony; Exhibit 1)
4. The Appellant graduated from high school in June 2016. The Appellant had health insurance coverage through his parents until that time. (Appellant's testimony)

5. The Appellant was employed throughout 2017. His employer did not offer health insurance coverage. (Appellant’s testimony)
6. The Appellant’s aunt tried to get health insurance coverage for the Appellant during 2017, without any success. The Appellant does not know what efforts his aunt made to get him insurance coverage. (Appellant’s testimony)
7. According to Table 2 of the Schedule HC 2017, the Appellant was eligible for government-subsidized insurance in 2017, since his AGI for 2017 was less than \$35,640 for a family of one.
8. According to Table 3, Affordability, of the Schedule HC 2017, based on his 2017 AGI and Single with no dependents tax filing status, the Appellant could have afforded to pay up to 2.9 percent of income for health insurance, which calculates to a monthly premium of up to \$48, for health insurance coverage in 2017.
9. According to Table 4, Premiums, health insurance coverage was available to the Appellant in the private market in 2017 for a monthly premium of \$150, based on the Appellant’s age and county of residence in 2017.
10. The Appellant was unaware in 2017 that health insurance coverage was available to him for a monthly premium of \$48. If he had known this, he would have purchased the coverage. (Appellant’s testimony)

ANALYSIS AND CONCLUSIONS OF LAW

M.G.L c. 111M, § 2, also called the “individual mandate”, requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable.” Residents who do not obtain insurance are subject to a tax penalty. Individuals have a three-month grace period to obtain new coverage, after their coverage has terminated.

The Appellant contended initially that he could not have afforded health insurance coverage in 2017. The evidence in the record shows otherwise. However, the Appellant testified that he was unaware in 2017 that coverage was available to him throughout the year at a cost of \$48/monthly, and further testified that, had he known, he would have purchased the coverage in 2017. I find the Appellant’s testimony credible. As a nineteen year old at the beginning of 2017, the Appellant was new to obtaining health insurance coverage on his own and relied on his aunt’s efforts in finding affordable coverage. While the Appellant did not provide any evidence of his aunt’s specific efforts, if she had checked out the private market, she would have found a lowest-cost coverage of \$150/monthly. This was far beyond what the Appellant could have afforded to pay for coverage in 2017. Based on the Appellant’s unfamiliarity in 2017 with the process of obtaining health insurance coverage and his good faith reliance on his aunt’s representation that she could not find affordable coverage for him, it would not serve the purposes of M.G.L c. 111M, § 2, to assess a penalty against the Appellant for 2017.

Therefore, I conclude that health insurance that provided minimum creditable coverage was not affordable to the Appellant in 2017, under 956 CMR 6.08(3).

Accordingly, the Appellant’s seven-month penalty for 2017 shall be waived.

PENALTY ASSESSED

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2017 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 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.

Hearing Officer

Cc: Connector Appeals Unit