

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA21-2401 (JW + LW)

**Appeal Decision:** Appeal Approved -- 2021 tax penalty overturned.

**Hearing Issue:** Appeal of the 2021 Tax Year Penalty

**Hearing Date:** April 21, 2023

**Decision Date:** April 30, 2023

**AUTHORITY**

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

**JURISDICTION**

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

**HEARING RECORD**

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellants’ Statement of Grounds for Appeal – 2021;
3. Barmenia’s Confirmation of Insurance Coverage (3 pages); and
4. Health Connector’s Notice of Hearing (2 pages).

**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 Appellants appealed from the Department of Revenue's assessment of a 24 month penalty for 2021 (12 months for Husband and 12 months for Wife). The basis for the penalty was that the Appellants (Husband and Wife) were not insured at any time in 2021. Exhibits 1 and 2.
2. The Appellants filed a Massachusetts personal income tax return for 2021 as a married couple filing jointly with one dependent. The Appellants' federal adjusted gross income (AGI) for 2021 was \$83,803. Exhibit 1.
3. The Wife was 34 years old at the beginning of 2021 (the Husband is younger), and the Appellants resided in [name of city or town omitted] in Norfolk County, Massachusetts. Exhibit 1.
4. Based on DOR Table 2 the Appellants' federal AGI (\$83,803) was more than 300% of the federal poverty level (\$65,160 for a three-person household). On this basis I infer that the Appellants would not qualify for government-subsidized health insurance in 2021.
5. Based on DOR Table 3 (Part III) the Appellants could afford to pay 7.60% of their joint income -- or \$531 per month -- for health insurance coverage in 2021. (The calculation is 7.60% multiplied by \$83,803 AGI = \$6,369.02 per year divided by 12 months = \$530.75 per month.)
6. Based on DOR Table 4 (Region 2) the Appellants could obtain family health insurance coverage at their age (31-34 age range) and location (Norfolk County) for \$684 per month in 2021.
7. Husband and Wife are both German citizens. Husband and Wife both resided in Massachusetts for all of 2021, and they were both employed as physicians at a Massachusetts hospital. Their child was born in the United States in 2021. Testimony. See also Exhibit 2, page 2 (handwritten statement) and Exhibit 3.
8. The Appellants purchased health insurance for 2021 through Barmenia that covered both of the parents and their child in Massachusetts. The insurance covered the Wife's pre-natal, child-birth, and post-natal care and the child's well-baby care in Massachusetts as well as other family medical needs. Testimony. See also Exhibit 2 and Exhibit 3.

9. Barmenia is a German company that provides world-wide medical insurance coverage for out-patient, in-patient, and dental needs. Exhibit 3, pages 1 – 3. See also Exhibit 2, page 2 (Appellant’s handwritten statement: “[We] continued to be fully insured by our international world-wide health insurer, Barmenia Germany.”). Barmenia typically works through an intermediary, such as United Health Care in Massachusetts. Testimony.
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 2021 Massachusetts income tax return.
11. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2021 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 2021. 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 2020. (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 2021.)

## **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 24 month tax penalty because the Appellants (Husband and Wife) did not have health insurance coverage in 2021. 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 – 2021 that the Appellant signed and filed in this case. See Exhibit 2.

Based on the evidence presented in this appeal there are two independent reasons why I conclude that the 24 month penalty assessed by the Massachusetts Department of Revenue (DOR) should be vacated.

The first reason is based on the affordability standards set forth in the DOR Tables described earlier. Under DOR Table 3 the Appellants could afford to pay \$531 per month for health insurance in Massachusetts. The monthly premium for family coverage (Husband, Wife, and Child) is \$684 per month under DOR Table 4 (Region 2) -- or more than they could afford to pay. See Findings of Fact, Nos. 5 and 6, above.

The second reason is based on the evidence that the Appellants actually had health insurance for all of 2021 for which the Appellants paid a premium to Barmenia. Detailed documentary evidence of coverage may be limited in this hearing record, but it is clear

that Barmenia provided both in-patient and out-patient global coverage (see Exhibit 3 and Exhibit 2, page 2 (handwritten statement)). The evidence of the Appellants' actual use of the health insurance in 2021 to cover the costs of the Wife's pregnancy and the newborn's medical care reinforces the broad statements in Barmenia's written "confirmation of coverage" that appears in Exhibit 3 (pages 1, 2 and 3).

After considering all the circumstances, I conclude that it is appropriate to waive the entire 24 month penalty assessed against the Appellants (Husband and Wife) for 2021. See my RECOMMENDATION below.

**PENALTY ASSESSED**

Number of Months Appealed: 12 (Husband) Number of Months Assessed: -0-  
Number of Months Appealed: 12 (Wife) 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 2021 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 2021.

**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: Massachusetts Health Connector Appeals Unit

RECOMMENDATION: Your situation is unusual, and you may encounter it again in the 2022 tax year. You could seek advice outside the Health Connector in advance at the free helpline operated by Health Care For All at [www.hcfama.org](http://www.hcfama.org) or telephone 800-272-4232. Submitting more detailed information about Barmenia’s coverage would also be helpful to show that your Barmenia coverage satisfies the Massachusetts minimum creditable coverage standards (“MCC”). If possible, submit a 2022 MA Form 1099-HC with your state tax return, which is the primary information that the DOR looks for in connection with the health insurance portion of your state tax return.



Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA21-2463 [LV + AV]

**Appeal Decision:** Appeal Approved -- 2021 tax penalty overturned.

**Hearing Issue:** Appeal of the 2021 Tax Year Penalty

**Hearing Date:** May 16, 2023

**Decision Date:** May 17, 2023

**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 on behalf of herself and the Co-Appellant (Husband), 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 (Wife'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. Appellants' Statement of Grounds for Appeal – 2021;
3. Appellants' Letter in Support of Appeal (3 pages);
4. Husband's Medical Record for Emergency Treatment (10/19/21, page 2 of 64 pages);
5. Wife's UCONN Medical Treatment Records (4/13/22, 3/9/22 and 7/28/21);
6. Wife's Health Equity Record;
7. Husband's MassHealth Approval (12/8/21, eff. 11/30/21);
8. MA Department of Transitional Assistance SNAP (Food Stamps) Processing Letter (5/6/22);



9. MA Fuel Assistance Letter (2022);
10. National Grid Low Income Approval (2021);
11. GoNetSpeed Affordable Connectivity Program;
12. Credit Card No. 1 (Temporary Hardship Plan);
13. Credit Card No. 2 (Temporary Financial Relief Plan);
14. Credit Card No. 3 (Customer Assistance Plan);
15. Credit Card No. 4 (Temporary Payment Program);
16. Brokerage Firm Withdrawal;
17. Husband's MassHealth Card; and
18. Health Connector Hearing Notice.

### **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 Appellants (Wife and Husband) appealed from the Department of Revenue's assessment of a four-month penalty for 2021. As set forth in more detail below the DOR did not assess a penalty against the Wife, and it assessed a four-month penalty against the Husband. Based on Exhibits 1 and 2 and the hearing testimony I find that the penalty assessment is factually accurate.
2. The basis for the four month penalty assessment is that the Husband was insured for January and February 2021 (2 months), DOR applied the administrative grace period to March, April and May when the Husband was not insured (3 months), the penalty was assessed for June, July, August and September when the Husband was not insured (4 months); and the Husband was insured by MassHealth for October, November and December (3 months). See Exhibit 1.
3. In 2020 the Wife and Husband were both employed by different employers, and they were both insured by employer-sponsored health plans. Both Wife and Husband lost their jobs and their

health insurance due to reductions in force caused by the coronavirus pandemic (COVID-19). Testimony and Exhibit 3.

4. For 2021 the Appellants reassessed their situation based on the loss of earned income and health insurance coverage. Their assessment was that the Wife had an urgent need for health insurance coverage due to her medical condition and that they could not afford health insurance for both Wife and Husband while they were unemployed. Testimony and Exhibit 3. See also Exhibit 5 (Wife's hospitalizations).
5. The Wife insured herself through COBRA after the loss of her employer-sponsored health insurance. Her individual premium was \$654 per month. The quote that the Appellants received for joint coverage under COBRA was \$1600 per month. Testimony and Exhibit 3. For comparison, under DOR Table 4 (Region 2) health insurance was projected to cost \$779 per month for a married couple with no dependents at their age (58 and 55 years old) and location (Hampshire County) or \$401 per month to cover only the Wife only. See Exhibit I.
6. The Appellants' planning suffered a set-back when the Husband had a severe medical reversal in October 2021. The Husband then successfully applied for MassHealth, which is reflected in the DOR Exhibit 1 showing insurance coverage in October, November and December 2021. Exhibit 1 and Testimony. See also Exhibits 3, 4, 7, and 17.
7. To support themselves the Appellants withdrew funds from their 401k and 403b retirement accounts (paying both income taxes and the IRS tax penalty for early withdrawals) and also used their savings. Testimony and Exhibit 3. Consequently, the federal adjusted gross income reported on their 2021 state income tax return does not accurately reflect their financial circumstances in 2021. See Exhibit 1.

8. The Appellants considered bankruptcy given their dire assessment of their financial circumstances. In 2023 the Wife was approved for Social Security Disability on her initial application so bankruptcy was no longer under consideration. On the other hand, the expectation is that the Wife will no longer be able to work, while the Husband was able to return to work in years after 2021. Testimony and Exhibit 3.
9. The Appellants successfully sought financial support from government programs, including unemployment insurance benefits, food stamps (SNAP), fuel assistance, and internet coverage. Testimony and Exhibits 3, 8, 9, and 11.
10. The Appellants also were able to obtain relief from the lenders on four credit cards and on their electric bill. Testimony and Exhibits 3, 10, 11, 12, 13, and 14.
11. The Appellants were able to maintain their home mortgage payments, which was a priority. Testimony and Exhibit 3.
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 2021 Massachusetts income tax return.
13. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2021 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 2021. 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 2020. (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 2021.)

## **ANALYSIS AND CONCLUSIONS OF LAW**

The case is before me on the Appellants' (Wife and Husband) appeal from the state Department of Revenue's (DOR) assessment of a 4 month tax penalty. The Wife was insured in 2021 under the COBRA program after she lost her job due to the coronavirus pandemic while the Husband was insured for only part of 2021 after he also lost his job due to the coronavirus pandemic (COVI-19). 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 – 2021 that the Appellant signed and filed in this case. See Exhibit 2.

The evidence presented in this appeal shows that first the Wife and then the Husband suffered major medical reverses in 2021. For both Wife and Husband these dire medical circumstances came on the heels of the loss of their jobs and their employer sponsored health insurance due to the coronavirus pandemic (COVID-19).

The jobs losses and the urgent medical needs triggered financial reserves. Health insurance for just the Wife under the COBRA program cost \$654 per month – substantially more than contemplated under the Health Connector affordability standards that are incorporated in the DOR Tables. The Appellants were resourceful as they turned to both government programs – including unemployment insurance benefits and other programs such as SNAP and fuel assistance – and to private programs – such as credit card and utility deferral programs. This was not enough, however, and the Appellants also withdrew funds from their tax-sheltered retirement plans (paying both taxes and an IRS penalty) to cover their expenses.

The facts are compelling, and it is apparent that the Appellants in this appeal have sustained a financial hardship that deserves relief. Accordingly, I waive the full penalty that the DOR assessed against Wife and Husband for 2021. See, e.g., 956 Code Mass. Regs. 6.08 (1) (e) ([The Appellants] experienced financial circumstances such that the expense of purchasing health insurance that met minimum creditable coverage standards would have caused [them] to experience a serious deprivation of food, shelter, clothing or other necessities.”).

**PENALTY ASSESSED**

Number of Months Appealed: WIFE -0- _____	Number of Months Assessed: __-0-
Number of Months Appealed: HUSBAND -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 2021 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 2021.

**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: Massachusetts Health Connector Appeals Unit



# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA21-2439

**Appeal Decision:** The penalty is overturned.

**Hearing Issue:** Appeal of the 2021 Tax Year Penalty

**Hearing Date:** May 9, 2023

**Decision Date:** May 26, 2023

### **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 May 9, 2023. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

Exhibit 1: Statement of Grounds for Appeal 2021 signed and dated by Appellants on May 19, 2022

Exhibit 2: Appeal Case Information from Schedule HC 2021

Exhibit 3: Notice of Hearing sent to Appellant dated April 11, 2023 for May 9, 2023 hearing

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellants, who filed a 2021 Massachusetts tax return jointly with no dependents claimed, were 57 and 55 years old in 2021 (Exhibit 2, Testimony of Appellant).
2. Appellants resided in Norfolk County in 2021 (Testimony of Appellant, Exhibit 2).
3. Appellants had a Federal Adjusted Income of \$55,236 in 2021 (Testimony of Appellant, Exhibit 2).
4. Appellant was employed in 2020. When he left his job, he and his spouse obtained health insurance through COBRA. Both were covered by COBRA until the end of February, 2021. At Appellant's next job which started in February, 2021, Appellant was offered health insurance, but it did not meet the Commonwealth's minimum creditable coverage standards. Appellant remained at this job the rest of 2021 (Testimony of Appellant, Exhibit 2).
5. The other appellant did not have paid employment in 2021. She was a caretaker for her mother who was ill (Testimony of the Appellant).
6. Appellant found a new job in 2022. He now has health insurance (Testimony of Appellant).
7. Appellants have each been assessed a tax penalty for seven months, June through December, 2021 (Testimony of Appellant, Exhibit 2).



8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2021 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 2021. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2021.

9. According to Table 3 of Schedule HC for 2021, the appellants with no dependents claimed with an adjusted gross income of \$55,236 could afford to pay \$342 per month for health insurance. According to Table 4, Appellants, 57 and 55 years old and living in Norfolk County, could have purchased insurance for \$802 per month for a plan for a married couple. Insurance on the individual market was unaffordable for the appellants (Schedule HC for 2021 Tables 3 and 4, Exhibit 2).

10. According to Table 2 of Schedule HC for 2021, Appellants who earned more than \$51,720 per year, would have been ineligible for the ConnectorCare program based upon income (Table 2 of Schedule HC-2021, and Exhibit 2).

11. Appellants were not eligible for any government-sponsored health insurance in 2021. They was not eligible for Medicare and they were not eligible for any coverage through Veterans Affairs (Testimony of Appellant).

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

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2021 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.

Appellants had health insurance which met the Commonwealth’s minimum creditable coverage standards in January and February, 2021. The appellants have been assessed a penalty for only seven months each, June through December, since Appellants are entitled to a three-month grace period after losing coverage. The appellants have appealed the assessment. See Exhibits 1, 2.

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

According to Table 3 of Schedule HC for 2021, the appellants with no dependents claimed with an adjusted gross income of \$55,236 could afford to pay \$342 per month for health insurance. According to Table 4, Appellants, 57 and 55 years old and living in Norfolk County, could have purchased insurance for \$802 per month for a plan for a

married couple. Insurance on the individual market was unaffordable for the appellants. See Schedule HC for 2021 Tables 3 and 4, Exhibit 2.

In 2021, one of the appellants was unemployed all year. She was an unpaid caretaker for her mother who was ill. The other appellant had health insurance through work at an international company, but the coverage did not meet the Commonwealth's minimum creditable coverage standards. See the testimony of the Appellant which I find credible, and Exhibit 2. Neither appellant had access to affordable health insurance which met the Commonwealth's standards in 2021.

Appellants were ineligible for coverage through the ConnectorCare program. The appellants' annual Federal Adjusted Income was \$55,236, more than the income limit for two persons (\$51,720). See 956 CMR 12.00 et. seq., Exhibit 2, and Table 2 of Schedule HC 2021. There is no evidence that the appellants had access to any other government-sponsored coverage. See the testimony of the appellant which I find to be credible.

The appellants had no access to affordable health insurance which met the Commonwealth's standards from June through December, the months for which Appellants have been assessed a tax penalty. Pursuant to Massachusetts General Laws Chapter 111M, Section 2, if an individual has no access to affordable health insurance, the individual should not be assessed a tax penalty. In this matter, Appellants had no access to insurance through the individual market, through employment, or through a government program. Appellants' penalty is, therefore, waived.

Appellants should note that any waiver granted here is for 2021 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 Appellants be assessed a penalty in the future.

#### **PENALTY ASSESSED**

Number of Months Appealed:   14   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 2021.

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

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

Cc: Connector Appeals Unit

Hearing Officer

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA21-2478 (CG)

**Appeal Decision:** Appeal Approved -- 2021 tax penalty overturned.

**Hearing Issue:** Appeal of the 2021 Tax Year Penalty

**Hearing Date:** May 23, 2023

**Decision Date:** May 29, 2023

**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. With the Appellant’s consent, his Mother was also sworn as a witness and participated in the 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 by his Mother 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 – 2021;
3. Health Connector’s Notice of Hearing (2 pages); and
4. Child Support Order and Employer’s Remittance.

**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 2021. The basis for the penalty was that the Appellant was not insured at any time in 2021. 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 2021 as a single person with no dependents. The Appellant's federal adjusted gross income (AGI) for 2021 was \$52,926. Exhibit 1.
3. The Appellant has two children (ages 9 and 11 in 2023). The children's mother claims both children as dependents on her tax return so they do not appear on Exhibit 1 as the Appellant's dependents. Testimony. See also Exhibit 4.
4. The Appellant pays \$433.34 child support semi-monthly pursuant to a court order. The Appellant's employer deducts the child support from the Appellant's paycheck and remits the payment. Testimony and Exhibit 4.
5. The Appellant frequently provides additional child support to meet the children's needs. Testimony.
6. The Appellant was 23 years old at the beginning of 2021 and resided in [name of city or town omitted] in Middlesex County, Massachusetts. Exhibit 1.
7. The Appellant's 2021 AGI (\$52,926) was more than 300% of the federal poverty level (\$38,280 for a one person household). DOR Table 2. Given the facts presented by this appeal I cannot predict whether the Health Connector would determine that the Appellant would satisfy the financial eligibility requirements for government-subsidized health insurance. I note, however, the Appellant's testimony that he has been enrolled in health Connector insurance plans.
8. Based on DOR Table 3 the Appellant could afford to pay 8.00 % of his income -- or \$353 per month -- for health insurance coverage in 2021. (The calculation is 8.00% multiplied by \$52,925 AGI = \$4,234 per year divided by 12 months = \$352.83 per month.) This calculation under DOR Table 3 does not accurately predict the Appellant's financial circumstances as it omits the two children and the child support paid by the Appellant in the amount of \$433.34 semi-monthly.

9. I recalculated the Appellant's federal adjusted gross income to deduct the court order child support payments. After the child support payment (\$11,266.84 per year) the recalculated AGI is \$41,659 annually.. Based on DOR Table 3 the Appellant could afford to pay \$258 per month for health insurance.
10. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage at the Appellant's age and location for \$263 per month in 2021.
11. I credit the hearing testimony by the Appellant and Mother that they unsuccessfully approached the Health Connector on multiple occasions seeking health insurance. Testimony.
12. The Appellant obtained health insurance through the Health Connector in 2019. He lost that coverage sometime in 2020 when he fell behind on monthly premium payments. Testimony.
13. The Appellant's effort to reenroll in the Health Connector failed because he was required to make all the missed premium payments, which he was unable to do. Based on the hearing testimony by both Appellant and Mother I infer that the Health Connector also rejected the Appellant's effort to reenroll because the open enrollment period had closed and the Appellant did not satisfy the qualifying events requirements. Testimony.
14. The Appellant successfully reenrolled in Health Insurance coverage in late 2022. Testimony.
15. The Appellant sustained medical reverses while he was not insured, including a physical injury and a diabetes diagnosis, with the need to administer insulin. Testimony.
16. 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 2021 Massachusetts income tax return.

17.I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2021 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 2021. 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 2020. (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 2021.)

## **ANALYSIS AND CONCLUSIONS OF LAW**

The case is before me on the Appellant's appeal from the state Department of Revenue's (DOR) assessment of a 12 month tax penalty because the Appellant did not have health insurance coverage in 2021. 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 – 2021 that the Appellant signed and filed in this case. See Exhibit 2.

The court-ordered child support payments tip the scale in this appeal.

The appellant pays \$433.34 semi-monthly in child support, which is not reflected in the information that the Department of Revenue extracted from the Appellant’s 2021 state income tax return (Exhibit 1). The child support amounts to \$11,266 annually (\$433.34 multiplied by 26 payment periods). When this amount is factored into the objective affordability standards set forth in DOR Table 3 and Table 4 the health insurance premium is more than the Appellant can afford. See, e.g., Findings of Fact, Nos. 7 - 10, above. While the margin may not be great, it does not take into account the extra amounts the Appellant pays to support his children or the other living expenses – particularly medical expenses and health insurance premiums – that he incurred. I also recognize that the Appellant made efforts to reenroll in health insurance.

After considering all the circumstances, I conclude that it is appropriate to waive the entire penalty assessed against the Appellant for 2021. 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.”).

**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 2021 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 2021.

**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: Massachusetts Health Connector Appeals Unit





Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA21-2480 (DR)

**Appeal Decision:** Appeal Approved -- 2021 tax penalty overturned.

**Hearing Issue:** Appeal of the 2021 Tax Year Penalty

**Hearing Date:** May 23, 2023

**Decision Date:** May 29, 2023

**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 – 2021);
3. Health Connector’s Notice of Hearing (2 pages); and
4. Appellant’s Letter in Support of Appeal with 2 attachments (3 pages).

**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 2021. The basis for the DOR penalty assessment was that the Appellant was insured for the months of August through December 2021 (5 months), but not for January through July 2021 (7 months). Exhibits 1 and 2. (The calculation is 12 months minus 5 months insured = 7 months uninsured minus 3-month administrative grace period = 4 penalty months.)
2. I find, based on the entirety of the record on appeal, that the Appellant was insured for all 12 months in 2021. Testimony, Exhibit 1, and Exhibit 4 (including attachments).
3. The Appellant, who was 24 years of age in 2021, was insured on her Mother's health plan for the months of January through July 2021. Testimony and Exhibit 4 (including attachments). See Exhibit 1 (DOB). This period is not covered by the DOR's penalty assessment in Exhibit 1 but was supported by credible evidence on appeal.
4. For the remainder of 2021 (August – December) the Appellant was insured through a university health plan in Massachusetts where she was enrolled as a graduate student, which is the period set forth in Exhibit 1 that is the basis for the DOR penalty assessment. Testimony and Exhibit 4 (Appellant's supporting letter).
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 2021 Massachusetts income tax return.
6. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2021 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 2021. 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 2020. (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 2021.)

## **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 4 month tax penalty because the Appellant did not have health insurance coverage for all of 2021. 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 – 2021 that the Appellant signed and filed in this case. See Exhibit 2.

In this case, the credible evidence presented on appeal establishes that the Appellant was insured for all 12 months in 2021. The Appellant was insured for the month of January through July on her Mother's health plan and for the months of August through December on a university health plan. The Appellant has, in sum, complied with the individual mandate, as summarized above.

Accordingly, I waive the entire penalty assessed for 2021.

**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 2021 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 2021.

**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: Massachusetts Health Connector Appeals Unit



Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA21-2462 (KA)

**Appeal Decision:** Appeal Approved -- 2021 tax penalty overturned.

**Hearing Issue:** Appeal of the 2021 Tax Year Penalty

**Hearing Date:** May 16, 2023

**Decision Date:** May 22, 2023

**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 – 2021; and
3. Health Connector’s Notice of Hearing (2 pages).

**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 2021. The basis for the penalty was that the Appellant was not insured at any time in 2021. 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 2021 as a single person with no dependents. The Appellant's federal adjusted gross income (AGI) for 2021 was \$42,688. Exhibit 1.
3. The Appellant was 27 years old at the beginning of 2021 and resided in [name of city or town omitted] in Worcester County, Massachusetts. Exhibit 1.
4. The Appellant's 2021 AGI (\$42,688) was more than 300% of the federal poverty level (\$38,280 for a one person household). DOR Table 2. On this basis I infer that it is likely that the Appellant would not satisfy the financial eligibility requirements for government-subsidized health insurance.
5. Based on DOR Table 3 the Appellant could afford to pay 7.45% of the Appellant's income -- or \$265 per month -- for health insurance coverage in 2021. (The calculation is 7.45% multiplied by \$42,688 AGI = \$3,180.25 per year divided by 12 months = \$265.02 per month.)
6. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage for \$263 per month in 2021 (under age 30 years in Worcester County).
7. The Appellant was insured under his father's health insurance plan until he was no longer eligible for coverage after his 26th birthday. The Appellant did not successfully complete the transition to the health plan offered by his employer for 2021 -- the year at issue in this appeal -- as the Appellant missed the employer's open enrollment deadline. According to the Appellant he did subsequently enroll in the employer's health plan. Testimony.
8. The Appellant maxed out a credit card that covered some college expenses and has a \$2,000 current balance. The Appellant has paid off a \$2,000 student loan. The Appellant did not complete the college degree. Testimony.



9. The Appellant did not incur medical expenses for 2021, but he does have outstanding dental expenses. Testimony.
10. The Appellant's ordinary monthly living expenses include: \$1,000 rent, \$200 electric, \$80 internet, and \$120 groceries. The Appellant has paid off a tax debt. The Appellant also provides occasional financial support to his parents. Testimony.
11. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2021 Massachusetts income tax return.
12. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2021 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 2021. 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 2020. (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 2021.)

## **ANALYSIS AND CONCLUSIONS OF LAW**

The case is before me on the Appellant's appeal from the state Department of Revenue's (DOR) assessment of a 12 month tax penalty because the Appellant did not have health insurance coverage in 2021. 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 – 2021 that the Appellant signed and filed in this case. See Exhibit 2.

This is a close case based on the testimony presented by the Appellant. It appears that the Appellant missed the deadlines to shift his health insurance from his father’s policy to his employer’s policy when he was no longer eligible to be covered as a dependent on his father’s policy.

The case is also close under the affordability standards set forth in the DOR affordability standards. Based on DOR Table 2 the Appellant would not qualify for government subsidized health insurance since his earned income was somewhat more than 300% of the federal poverty level. Under DOR Table 3 the Appellant could afford to pay \$265 per month for health insurance, but the projected premium was \$263 per month under DOR Table 4 (Region 2). See Findings of Fact, Nos. 4, 5 and 6, above.

There is little margin for error for this young person to traverse the requirements of the individual mandate under Massachusetts law summarized above. See, e.g., Findings of Fact, Nos. 7 - 10, above. After considering all the circumstances, I conclude

that it is appropriate to waive the entire penalty assessed against the Appellant for 2021. See, e.g., 956 Code Mass. Regs. 6.08 (1) (e). The Appellant should be aware, however, that a tax penalty may be imposed for future years if the Appellant does not comply with the legal obligation to “obtain and maintain” health insurance coverage. See Mass. General Laws, c. 111M, sec. 2 (a), above.

**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 2021 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 2021.

**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: Massachusetts Health Connector Appeals Unit



# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA212436

**Appeal Decision:** The penalty is overturned in full.

**Hearing Issue:** Appeal of the 2021 Tax Year Penalty

**Hearing Date:** May 9, 2023

**Decision Date:** May 30, 2023

### **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**

Both of the appellants appeared at the hearing which was held by telephone on May 9, 2023. The procedures to be followed during the hearing were reviewed with Appellants who were then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellants. Appellants testified.

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

Exhibit 1: Statement of Grounds for Appeal 2021 signed and dated by Appellants on May 17, 2022 with letter attached

Exhibit 2: Appeal Case Information from Schedule HC 2021

Exhibit 3: Notice of Hearing sent to Appellant dated April 11, 2023 for May 9, 2023 hearing

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellants, who filed a 2021 Massachusetts tax return jointly with three dependents claimed, were 36 and 34 years old in 2021 (Exhibit 2, Testimony of Appellant).
2. Appellants lived in Bristol County County in 2021. In October 2020, the couple moved to Massachusetts from another state (Exhibit 2, Testimony of Appellant).
3. Appellants' Federal Adjusted Gross Income for 2021 was \$74,269 (Exhibit 2, Testimony of Appellant).
4. One of the appellants was employed all year. Appellant had health insurance all of 2021 through her job. She paid \$130 a month for coverage for her and for the couple's minor children. It would have cost the couple \$200 more a month if the other appellant had been added to the plan. The couple felt they could not afford the cost (Testimony of Appellant).
5. The other appellant was unemployed all year. This appellant last worked in October, 2020. After the couple moved to Massachusetts, this appellant tried to get coverage through the Connector. It would have cost close to \$300 for coverage for him, so he did not enroll in a plan. By the time the couple realized this, the spouse could not

enroll in the other's coverage through employment because they had missed the open enrollment period (in April) (Testimony of Appellant, Exhibit 1 attachment).

6. One of the appellants had health insurance which met the Commonwealth's minimum creditable coverage standards all year. The other was uninsured all year. He has been assessed a tax penalty for all of 2021 (Testimony of Appellant Exhibit 2).

7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2021 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 2021. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2021.

8. According to Table 3 of Schedule HC for 2021, the appellants with three dependents claimed with an adjusted gross income of \$74,269 could afford to pay \$461 per month for health insurance. According to Table 4, Appellants, 36 and 34 years old and living in Bristol County, could have purchased insurance for \$698 per month for a family plan. This would have been unaffordable. The cost for an individual plan would have been \$275. Only one of the appellants needed coverage. The other and the children were covered for \$130 a month. Adding the premiums together, the total cost for coverage for the family would have been \$405 a month, affordable according to Table 3. Coverage through the individual market was, therefore, affordable for the uninsured appellant in 2021 (Schedule HC for 2021, Exhibit 2).

9. According to Table 2 of Schedule HC for 2021, Appellants, with three dependents, earning less than \$92,040, the income limit for a family of five, would have been eligible for the ConnectorCare program based upon income (Exhibit 2, Table 2 of Schedule HC-2021, 956 CMR 12.00 et. seq.).

10. Appellants did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2021 (Testimony of Appellant).

11. Appellants did not fall more than thirty days behind in mortgage payments in 2021 (Testimony of Appellant).

12. Appellants did not receive any shut-off notices for basic utilities during 2021 (Testimony of Appellant).

13. Appellants had the following monthly expenses for basic necessities in 2021: Mortgage, property tax, and home owner's insurance-\$1,871; electricity-\$160; heat-\$375; propane for cooking-\$60; telephone and internet-\$150; food, personal care items, household items-\$1,200; clothing-\$200; car insurance-\$100; gas-\$260; car repairs-\$90; health insurance for one appellant and children-\$130. The couple had \$20,000 debt. They paid off \$500 a month. They also had to replace the septic tank at their home. This cost \$10,000. One of the appellants had to get new eyeglasses. These cost \$300 (Testimony of Appellant).

## **ANALYSIS AND CONCLUSIONS OF LAW**

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2021 should be waived, either in whole or in part. One of the appellants had health insurance which met the Commonwealth's minimum creditable coverage standards all year. The other was uninsured all year. They have been assessed a penalty for twelve months. Appellants have appealed the penalty. See Exhibits 1 and 2, and Massachusetts General Laws Chapter 111M, Section 2.

G.L. c. 111M, § 2, also called the “individual mandate,” requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable” under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for “each of the months” that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2010, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector’s regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08. 45 CFR Section 155.305 and 26 CFR Section 1.36B-2 provide eligibility requirements for advance premium tax credits.

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

According to Table 3 of Schedule HC for 2021, the appellants with three dependents claimed with an adjusted gross income of \$74,269 could afford to pay \$461 per month for health insurance. According to Table 4, Appellants, 36 and 34 years old and living in Bristol County, could have purchased insurance for \$698 per month for a family plan. This would have been unaffordable. The cost for an individual plan would have been \$275. Only one of the appellants needed coverage. The other and the children were covered for \$130 a month. The total cost for coverage for the family would have been \$405 a month, affordable according to Table 3. Coverage through the individual market was, therefore, affordable for the uninsured appellant in 2021. See Schedule HC for 2021, Tables 3 and 4, and Exhibit 2.

According to Table 2 of Schedule HC for 2021, the uninsured appellant, with three dependents, earning less than \$92,040, the income limit for a family of five, would have been eligible for the ConnectorCare program based upon income. See Exhibit 2, Table 2 of Schedule HC-2021, 956 CMR 12.00 et. seq.

Since the uninsured appellant had access to affordable insurance through the individual market, and the Connector-Care program, we need to determine if the appellants experienced a financial hardship such the coverage would have been unaffordable for them. See 956 CMR 6.08 et. seq.

In 2021, Appellants faced many financial and employment problems. One appellant lost his job in late 2020 and was unemployed all of 2021. After the family moved to Massachusetts in late 2020, they had a major expense. They had to pay \$10,000 for a new septic tank for their house in 2021. They also had \$20,000 of debt; the appellants paid \$500 a month to pay off the debt. In total, their monthly expenses for basic necessities amounted to over \$5,100 a month. Their monthly income, before taxes, amounted to about \$5,300. After taxes, they ran a deficit each month. See Exhibit 2 and the testimony of the appellants which I find to be credible.

Based upon the facts summarized above, I determine that the penalty assessed should be waived. See 956 CMR 6.08(1)(e). The cost of purchasing health insurance would have caused the appellants to experience a serious deprivation of basic necessities. In addition, pursuant to 956 CMR 6.08(3), consideration is given to other financial issues raised by the appellants during the hearing. In this case, I take into account the \$10,000 appellants had to pay for a new septic tank and the \$20,000 debt which appellants had.

The penalty is waived in its entirety.

Appellants should note that any waiver granted here is for 2021 only and is based upon the specific facts I have found to be true; they should not assume that the same determination will be made should Appellants 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 2021.

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

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

Cc:     Connector Appeals Unit

Hearing Officer



Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA21-2465 (MS)

**Appeal Decision:** Appeal Approved -- 2021 tax penalty overturned.

**Hearing Issue:** Appeal of the 2021 Tax Year Penalty

**Hearing Date:** May 16, 2023

**Decision Date:** May 17, 2023

**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 – 2021;
3. Appellant’s Letter in Support of Appeal (1 page); and
4. Health Connector’s Notice of Hearing (2 pages).

**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 5 month penalty for 2021. The basis for the penalty was that the Appellant was not insured for the months of January – August but was insured for the months of September – December 2021. Exhibits 1 and 2. Based on Exhibit 1 and the Appellant's hearing testimony, I find that the penalty assessment is accurate. (The calculation is 12 months minus 4 months insured = 8 months uninsured minus 3-month administrative grace period = 5 penalty months.)
2. The Appellant filed a Massachusetts personal income tax return for 2021 as a single person with no dependents. The Appellant's federal adjusted gross income (AGI) for 2021 was \$48,278. Exhibit 1.
3. The Appellant was 27 years old at the beginning of 2021 and resided in [name of city or town omitted] in Suffolk County, Massachusetts. Exhibit 1.
4. I find that the Appellant's statement that she was not aware of the Massachusetts requirement that residents must obtain medical insurance is credible. The Appellant had been insured under her parents' health insurance plan until her birthday when she was no longer eligible to continue coverage with her parents. The Appellant had recently moved to Massachusetts. She had previously lived with her parents in California, which does not have an individual mandate, and she had attended university in Europe. Testimony and Exhibit 3.
5. The Appellant found it difficult to obtain a job when she moved to Massachusetts, perhaps due to the coronavirus pandemic (COVID-19). She obtained work through an agency that paid her \$25 per hour. The Appellant denied the agency's insurance offer which offered the Appellant a choice of paying either \$429.39 per month or \$606.95 per month.
6. The Appellant felt that the insurance offered by the agency was too expensive, especially for a young person just starting to work. By comparison, under DOR Table 4 (Region 3) health insurance should cost \$263 per month for a person of her age (under 30 years) and location (Suffolk County). Testimony and Exhibit 3.
7. The Appellant started a new job in September 2021, and she enrolled in her new employer's health insurance plan effective September 2021. The Appellant was

insured for the remainder of 2021 (September – December) and on into 2020. Testimony and Exhibits 1 and 3.

8. The Appellant's new job paid her a salary of \$68,000 per year, or considerably more than the \$25 per hour she had earned working for the agency earlier in 2021. Consequently, I cannot use the Appellant's \$48,278 federal adjusted gross income (AGI) to calculate the affordability of health insurance under DOR Tables 3 and 4. Testimony and Exhibit 3.
9. Later in 2021 and 2022 the Appellant incurred expenses due to her Mother's diagnosed illness, as the Appellant and her Sister arranged to move her parents closer to her Sister in Texas. These costs are reflected in the Appellant's \$8,000 credit card balance. Testimony.
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 2021 Massachusetts income tax return.
11. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2021 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 2021. 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 2020. (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 2021.)

## **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 five month tax penalty because the Appellant did not have health insurance coverage for the months of January – August and obtained insurance for the months of September – December 2021. 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 – 2021 that the Appellant signed and filed in this case. See Exhibit 2.

In this case, the Appellant was not aware that in Massachusetts the individual mandate described above required individuals to have health insurance coverage. Such an assertion is now rare in Massachusetts, but I find that the Appellant's assertion was credible because she had until been recently been insured under her parents' health plan, she had lived with her parents in California, and she had recently moved to

Massachusetts after attending university in Europe. See, e.g., Findings of Fact, No. 4, above.

The Appellant’s assertion has more force because she obtained health insurance in September 2021 when she obtained a new full-time salaried job and immediately enrolled in her new employer’s health plan for September – December 2021. Earlier in 2021 the Appellant had reasonably declined the agency job’s health insurance offer as unreasonably expensive when she was paid \$25 per hour. The premium choices offered to the Appellant at the agency job were \$429 or \$606 per month, which were substantially higher than the \$263 monthly premium set forth in DOR Table 4 (Region 2). See, e.g., Findings of Fact, Nos. 5 and 6, above.

After considering all the circumstances I conclude that it is appropriate to waive the entire penalty that the DOR assessed for 2021.

**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 2021 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 2021.

**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: Massachusetts Health Connector Appeals Unit



# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA20-1252

**Appeal Decision** Appeal Approved.

**Hearing Issue:** Appeal of the 2020 Tax Year Penalty

**Hearing Date:** April 18, 2023

**Decision Date:** May 8, 2023

### **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 18, 2023. 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 (3-16-23) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2020 (1 page);
- Exhibit 3: Statement of Grounds for Appeal (6-10-22) (with letter) (4 pages); and
- Exhibit 4: Final Appeal Decision TY2018 (2-17-21) (4 pages).

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, age 54 during 2020, from Plymouth County, filed single on the tax return with a family size of 1. (Exhibit 2).
2. Appellant did not have health insurance for 2020. (Appellant's testimony, Exhibit 2). Appellant did not believe that health insurance was affordable. (Testimony, Exhibit 3).
3. Appellant's Federal Adjusted Gross Income for 2020 was \$31,929.00 (Exhibit 2).
4. Appellant's expenses for food, shelter, transportation, and other necessities used most of the income. The expenses totaled approximately \$2,063.00 per month or \$24,756.00 per year. (Testimony).

5. Appellant also indicated they had lost their job during the pandemic and struggled financially as a result. (Testimony).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2020 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 2020. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2020.
7. Appellant could not afford health insurance based on the tables in Schedule HC. According to Table 4, the health insurance would cost \$420.00 for coverage. According to Table 3, Appellant was deemed to afford \$133.00.
8. Private insurance was not affordable for the Appellant in 2020. (Schedule HC for 2020).
9. Appellant's AGI was under 300% of the Federal Poverty Level, and Appellant therefore may have qualified for subsidized health insurance through the Health Connector. (Schedule HC for 2020).
10. Appellant claimed that they should be granted a waiver based on the grounds that paying for health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities. (Testimony of Appellant, Exhibit 3).
11. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence or the sudden responsibility for providing full care for an aging parent or other family member; and did not incur such expenses due to the death of a spouse, family member, or partner who shared household expenses. Appellant did not incur additional expenses as a result of a fire, flood, or other natural or man-made disaster in 2020 (Exhibit 3).
12. Appellant was not homeless, was not thirty days or more behind in rent in 2020, and did not receive eviction notices. Appellant did not receive a shut-off notice for basic utilities. (Appellant's Testimony, Exhibit 3).

## **ANALYSIS AND CONCLUSIONS OF LAW**

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2020 should be waived in whole, in part, or not at all.

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

Appellant did not have health insurance for 2020. They have been assessed a tax penalty for twelve months. Appellant appealed the assessment. See Exhibits 2, and 3. To determine if the penalty should be waived in whole or in part, we must consider whether affordable insurance which met minimum



creditable coverage standards was available to the Appellant through employment, through the private market, or through a government-sponsored program. If affordable insurance was available, we must determine if such insurance was, in fact, not affordable to the Appellant because they experienced a financial hardship as defined in 956 CMR 6.08.

Private insurance was not affordable for the Appellant during 2020. According to Tables 3 and 4 of the HC Schedule for 2020, Appellant, with an adjusted gross income of \$31,929.00 was deemed to not have been able to afford health insurance on the private market. According to Table 3, Appellant could have afforded to pay \$133.00 per month; according to Table 4, Appellant, who was 54 years old in 2020, from Plymouth County, and filed the 2020 Massachusetts taxes as single with a family size of 1, would have had to pay \$420.00 for coverage per month for insurance on the private market. See CMR 6.05 (1)(2), Schedule HC Tables 3 and 4, and Exhibit 2.

With regard to the hardship waiver of the penalty, Appellant claimed that paying for health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities. Appellant's expenses for necessities used most of the income. For these reasons, the waiver of the penalty is approved.

Appellants should note that the waiver of the penalty is based upon the facts that I have determined to be true for the 2020 appeal. They should not assume that a similar determination will be made in the future should they again be assessed a penalty for failure to have health insurance which meets the Commonwealth's minimum creditable coverage standards.

#### **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 2020.

#### **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

**NOTE:** The pronoun "they" is used in order to be gender neutral, regardless of the singular or plural.

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA21-2230

**Appeal Decision:** Appeal Granted

**Hearing Issue:** Appeal of the 2021 Tax Year Penalty

**Hearing Date:** January 18, 2023

**Decision Date:** April 24, 2023

### **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**

A hearing was held by telephone, on January 18, 2023. The Appellant offered testimony under oath or affirmation. At the end of the hearing, the record was closed.

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 2021 Schedule HC (1 page)
- Exhibit 2: 5/4/22 Appeal (7 pages)
- Exhibit 3: 1/3/23 Notice of Hearing (2 pages)

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant's filing status for 2021 was Single with no dependents. The Appellant's federal AGI in 2021 was \$25,013 The Appellant turned sixty-two years old in 2021. The Appellants resided in Middlesex County throughout 2021. (Exhibit 1)
2. The Appellant appeals from the assessment of a six-month penalty assessed against on her 2021 income tax return, checking off "Other" as the basis of her appeal; and, stating that she had extensive trouble logging on to her account when she tried to apply for 2021 coverage through the Health Connector. (Exhibit 2)
3. The Appellant had health insurance coverage in 2021 only during the last three months of the year. (Exhibit 2)
4. The Appellant
5. (Appellant's testimony)

6. According to Table 2 of the 2021 Schedule HC Guidelines, the Appellants did not qualify for government-subsidized health insurance coverage in 2021, since their 2021 AGI income was more than \$51,720 for a family size of two.
7. According to Table 3, Affordability, based on their 2021 AGI and Married with no dependents tax filing status, the Appellants could have afforded to pay up to \$782/monthly for health insurance coverage in 2021.
8. According to Table 4, Premiums, based on his age and county of residence, the Appellant/husband could have purchased health insurance coverage in the Massachusetts private market in 2021 for a monthly premium of \$268, based on his age and county of residence in 2020.

### **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.

As the Appellant had a three-month grace period at the beginning of 2021 to obtain health insurance coverage and had health insurance coverage during the last three months of 2021, at issue here is the Appellant’s failure to have coverage during the six months from April 2021 through September 2021.

The Appellant contends that, when he started his new employment on January 26, 2021, he understood that he was not eligible to apply for the employer-sponsored health insurance coverage offered by his employer for ninety days--until April 26, 2021, for coverage beginning May 1. I am doubtful that an employer would offer such a small window for a new employee to apply for health insurance coverage. The general purpose of the common three-month waiting period before new employees can enroll in employer-sponsored coverage is to avoid the costs of short-term employment. Even accepting the Appellant’s position, the Appellant still had five weekdays—from April 26 through April 30, 2021—to enroll in his employer’s coverage, but failed to do so.

In addition, throughout 2021, health insurance coverage was available to the Appellant in private market for a monthly premium of \$268. There is nothing in the record to support the conclusion that the Appellant made any effort to obtain coverage through the private market.

Therefore, I conclude that the Appellant has not established that affordable health insurance coverage was not available to him throughout 2021.

Accordingly, the Appellant’s 6-month tax penalty for 2021 shall not be waived in full.

### **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 2021 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 2020.

**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: PA21-2386

**Appeal Decision** Appeal Approved.

**Hearing Issue:** Appeal of the 2021 Tax Year Penalty

**Hearing Date:** April 18, 2023

**Decision Date:** May 4, 2023

### **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 18, 2023. 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 (3-16-23) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2021 (1 page); and
- Exhibit 3: Statement of Grounds for Appeal (5-17-22) (with letter and documents) (15 pages).

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, age 50 during 2021, from Norfolk County, filed single on the tax return with a family size of 1. (Exhibit 2).
2. Appellant did have health insurance for January and for November and December of 2021, but did not have health insurance for the other months of 2021. (Appellant's testimony, Exhibit 2). Appellant did not believe that health insurance was affordable for the months Appellant did not have it. (Testimony, Exhibit 3).
3. Appellant's Federal Adjusted Gross Income for 2021 was \$44,887.00 (Exhibit 2).
4. Appellant's expenses for food, shelter, transportation, and other necessities used all of the income for the months that Appellant did not have health insurance. Appellant's income for those months was approximately \$2,000.00. The expenses totaled approximately \$2,197.00 per

month or \$26,364.00 per year. (Testimony). Once Appellant began working full-time and was able to obtain health insurance through an employer, Appellant signed up for the health insurance. (Testimony).

5. Appellant still has health insurance through the employer. (Testimony).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2021 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 2021. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2021.
7. Appellant could not afford health insurance based on the tables in Schedule HC. According to Table 4, the health insurance would cost \$390.00 for coverage. According to Table 3, Appellant was deemed to afford \$284.00.
8. Private insurance was not affordable for the Appellant in 2021. (Schedule HC for 2021).
9. Appellant's AGI was over 300% of the Federal Poverty Level, and Appellant therefore would not have qualified for subsidized health insurance through the Health Connector. (Schedule HC for 2021).
10. Appellant claimed that they should be granted a waiver based on the grounds that paying for health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities. (Testimony of Appellant, Exhibit 3).
11. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence or the sudden responsibility for providing full care for an aging parent or other family member; and did not incur such expenses due to the death of a spouse, family member, or partner who shared household expenses. Appellant did not incur additional expenses as a result of a fire, flood, or other natural or man-made disaster in 2021 (Exhibit 3).
12. Appellant was not homeless, was not thirty days or more behind in rent in 2021, and did not receive eviction notices. Appellant did not receive a shut-off notice for basic utilities. (Appellant's Testimony, Exhibit 3).

## **ANALYSIS AND CONCLUSIONS OF LAW**

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2021 should be waived in whole, in part, or not at all.

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

Appellant did have health insurance for three months of 2021, but did not have health insurance for the remaining months of 2021. They have been assessed a tax penalty for six months. Appellant appealed the assessment. See Exhibits 2, and 3. To determine if the penalty should be waived in whole or in part, we must consider whether affordable insurance which met minimum creditable coverage standards was available to the Appellant through employment, through the private market, or through a government-sponsored program. If affordable insurance was available, we must determine if such insurance was, in fact, not affordable to the Appellant because they experienced a financial hardship as defined in 956 CMR 6.08.

Private insurance was not affordable for the Appellant during 2021. According to Tables 3 and 4 of the HC Schedule for 2021, Appellant, with an adjusted gross income of \$44,887.00 was deemed to not have been able to afford health insurance on the private market. According to Table 3, Appellant could have afforded to pay \$284.00 per month; according to Table 4, Appellant, who was 50 years old in 2021, from Norfolk County, and filed the 2021 Massachusetts taxes as single with a family size of 1, would have had to pay \$390.00 for coverage per month for insurance on the private market. See CMR 6.05 (1)(2), Schedule HC Tables 3 and 4, and Exhibit 2.

With regard to the hardship waiver of the penalty, Appellant claimed that paying for health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities. Appellant's expenses for necessities used all of the income. Appellant obtained insurance as of November 2021, and still has health insurance. For these reasons, the waiver of the penalty is approved.

Appellants should note that the waiver of the penalty is based upon the facts that I have determined to be true for the 2021 appeal. They should not assume that a similar determination will be made in the future should they again be assessed a penalty for failure to have health insurance which meets the Commonwealth's minimum creditable coverage standards.

#### **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 2021.

#### **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

**NOTE:** The pronoun "they" is used in order to be gender neutral, regardless of the singular or plural.

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA21-2387

**Appeal Decision** Appeal Approved.

**Hearing Issue:** Appeal of the 2021 Tax Year Penalty

**Hearing Date:** April 18, 2023

**Decision Date:** May 4, 2023

### **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 18, 2023. 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 (3-16-23) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2021 (1 page); and
- Exhibit 3: Statement of Grounds for Appeal (5-18-22) (with letter and documents) (5 pages).

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, age 24 during 2021, from Middlesex County, filed single on the tax return with a family size of 1. (Exhibit 2).
2. Appellant did have health insurance for 2021 but did not realize that they had it. (Appellant's testimony, Exhibit 3). Appellant's parent had their insurance card, although it is not clear that it was current. (Testimony, Exhibit 3).
3. Appellant's Federal Adjusted Gross Income for 2021 was \$32,196.00 (Exhibit 2).
4. Appellant updated the insurance for 2022 and continues to have health insurance (Testimony).
5. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2021 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 2021. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2021.

6. Appellant could not afford health insurance based on the tables in Schedule HC. According to Table 4, the health insurance would cost \$263.00 for coverage. According to Table 3, Appellant was deemed to afford \$134.00.
7. Private insurance was not affordable for the Appellant in 2021. (Schedule HC for 2021).
8. Appellant's AGI was under 300% of the Federal Poverty Level, and Appellant therefore may have qualified for subsidized health insurance through the Health Connector. (Schedule HC for 2021).
9. Appellant claimed that they should be granted a waiver based on the grounds that they did not realize that they had insurance and answered on the tax form that they did not have it. (Testimony of Appellant, Exhibit 3).
10. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence or the sudden responsibility for providing full care for an aging parent or other family member; and did not incur such expenses due to the death of a spouse, family member, or partner who shared household expenses. Appellant did not incur additional expenses as a result of a fire, flood, or other natural or man-made disaster in 2021 (Exhibit 3).
11. Appellant was not homeless, was not thirty days or more behind in rent in 2021, and did not receive eviction notices. Appellant did not receive a shut-off notice for basic utilities. (Appellant's Testimony, Exhibit 3).

## **ANALYSIS AND CONCLUSIONS OF LAW**

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2021 should be waived in whole, in part, or not at all.

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

Appellant did have health insurance for 2021, but did not realize that they had it as their parent had their insurance card. Appellant therefore answered on the tax form that they did not have health insurance. They have been assessed a tax penalty for twelve months. Appellant appealed the assessment. See Exhibits 2, and 3. To determine if the penalty should be waived in whole or in part, we must consider whether affordable insurance which met minimum creditable coverage standards was available to the Appellant through employment, through the private market, or through a government-sponsored program. If affordable insurance was available, we must determine if such insurance was, in

fact, not affordable to the Appellant because they experienced a financial hardship as defined in 956 CMR 6.08.

Private insurance was not affordable for the Appellant during 2021. According to Tables 3 and 4 of the HC Schedule for 2021, Appellant, with an adjusted gross income of \$32,196.00 was deemed to not have been able to afford health insurance on the private market. According to Table 3, Appellant could have afforded to pay \$134.00 per month; according to Table 4, Appellant, who was 24 years old in 2021, from Middlesex County, and filed the 2021 Massachusetts taxes as single with a family size of 1, would have had to pay \$263.00 for coverage per month for insurance on the private market. See CMR 6.05 (1)(2), Schedule HC Tables 3 and 4, and Exhibit 2.

Regarding the hardship waiver of the penalty, Appellant claimed that they actually had health insurance but did not realize it and answered incorrectly on the tax form. Appellant also updated their information with the Health Connector for 2022. For these reasons, the waiver of the penalty is approved.

Appellants should note that the waiver of the penalty is based upon the facts that I have determined to be true for the 2021 appeal. They should not assume that a similar determination will be made in the future should they again be assessed a penalty for failure to have health insurance which meets the Commonwealth's minimum creditable coverage standards.

**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 2021.

**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

**NOTE:** The pronoun "they" is used in order to be gender neutral, regardless of the singular or plural.

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA21-2392

**Appeal Decision** Appeal Approved.

**Hearing Issue:** Appeal of the 2021 Tax Year Penalty

**Hearing Date:** April 18, 2023

**Decision Date:** May 8, 2023

### **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 18, 2023. 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 (3-16-23) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2021 (1 page);
- Exhibit 3: Statement of Grounds for Appeal (5-15-22) (with letter) (3 pages); and
- Exhibit 4: Final Appeal Decision TY2018 (2-17-21) (4 pages).

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, age 55 during 2021, from Plymouth County, filed single on the tax return with a family size of 1. (Exhibit 2).
2. Appellant did not have health insurance for 2021. (Appellant's testimony, Exhibit 2). Appellant did not believe that health insurance was affordable. (Testimony, Exhibit 3).
3. Appellant's Federal Adjusted Gross Income for 2021 was \$30,117.00 (Exhibit 2).
4. Appellant's expenses for food, shelter, transportation, and other necessities used most of the income. The expenses totaled approximately \$2,063.00 per month or \$24,756.00 per year. (Testimony).

5. Appellant also indicated they had lost their job during the pandemic and struggled financially as a result. (Testimony).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2021 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 2021. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2021.
7. Appellant could not afford health insurance based on the tables in Schedule HC. According to Table 4, the health insurance would cost \$401.00 for coverage. According to Table 3, Appellant was deemed to afford \$105.00.
8. Private insurance was not affordable for the Appellant in 2021. (Schedule HC for 2021).
9. Appellant's AGI was under 300% of the Federal Poverty Level, and Appellant therefore may have qualified for subsidized health insurance through the Health Connector. (Schedule HC for 2021).
10. Appellant claimed that they should be granted a waiver based on the grounds that paying for health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities. (Testimony of Appellant, Exhibit 3).
11. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence or the sudden responsibility for providing full care for an aging parent or other family member; and did not incur such expenses due to the death of a spouse, family member, or partner who shared household expenses. Appellant did not incur additional expenses as a result of a fire, flood, or other natural or man-made disaster in 2021 (Exhibit 3).
12. Appellant was not homeless, was not thirty days or more behind in rent in 2021, and did not receive eviction notices. Appellant did not receive a shut-off notice for basic utilities. (Appellant's Testimony, Exhibit 3).

## **ANALYSIS AND CONCLUSIONS OF LAW**

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2021 should be waived in whole, in part, or not at all.

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

Appellant did not have health insurance for 2021. They have been assessed a tax penalty for twelve months. Appellant appealed the assessment. See Exhibits 2, and 3. To determine if the penalty should be waived in whole or in part, we must consider whether affordable insurance which met minimum

creditable coverage standards was available to the Appellant through employment, through the private market, or through a government-sponsored program. If affordable insurance was available, we must determine if such insurance was, in fact, not affordable to the Appellant because they experienced a financial hardship as defined in 956 CMR 6.08.

Private insurance was not affordable for the Appellant during 2021. According to Tables 3 and 4 of the HC Schedule for 2021, Appellant, with an adjusted gross income of \$30,117.00 was deemed to not have been able to afford health insurance on the private market. According to Table 3, Appellant could have afforded to pay \$105.00 per month; according to Table 4, Appellant, who was 55 years old in 2021, from Plymouth County, and filed the 2021 Massachusetts taxes as single with a family size of 1, would have had to pay \$401.00 for coverage per month for insurance on the private market. See CMR 6.05 (1)(2), Schedule HC Tables 3 and 4, and Exhibit 2.

With regard to the hardship waiver of the penalty, Appellant claimed that paying for health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities. Appellant's expenses for necessities used most of the income. For these reasons, the waiver of the penalty is approved.

Appellants should note that the waiver of the penalty is based upon the facts that I have determined to be true for the 2021 appeal. They should not assume that a similar determination will be made in the future should they again be assessed a penalty for failure to have health insurance which meets the Commonwealth's minimum creditable coverage standards.

#### **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 2021.

#### **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

**NOTE:** The pronoun "they" is used in order to be gender neutral, regardless of the singular or plural.

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA21-2411

**Appeal Decision:** Penalty Overturned in Full

**Hearing Issue:** Appeal of the 2021 Tax Year Penalty

**Hearing Date:** April 1, 2023

**Decision Date:** May 15, 2023

### **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, 2023. 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: Schedule HC for Healthcare from DOR

Exhibit 2: Notice of Appeal and supporting documents, dated May 19, 2022

Exhibit 3: Correspondence from Health Connector dated April 11, 2023

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant was 22 years old in 2021. Appellant filed a Massachusetts 2021 tax return as single with no dependents claimed (Exhibit 1).
2. Appellant resided in Essex County during 2021 (Exhibit 1 and Testimony of Appellant).
3. Appellant's Adjusted Gross Income for 2021 was \$70,616 (Exhibit 1).
4. Appellant had been a student in 2020 and had health insurance through the university (Testimony of Appellant).
5. After graduating, Appellant struggled to find a job due to the pandemic (Exhibit 1 and Testimony of Appellant).
6. For most of 2021, Appellant worked at a contract job that could be terminated, and employer sponsored health insurance was not available (Testimony of Appellant).
7. Appellant looked at various health insurance plans and purchased a plan online (Testimony of Appellant).
8. Appellant paid \$199 per month for the plan (Exhibit 2 and Testimony of Appellant).
9. The plan covered a limited number of preventative care visits and a limited number of primary care visits (Exhibit 2 and Testimony of Appellant).
10. The plan did not cover hospitalization or treatment for serious illness. (Exhibit 2 and Testimony of Appellant).

11. The plan documents state that the insurance is not designed to replace major medical insurance (Exhibit 2).
12. When Appellant purchased the plan, Appellant was unaware about the need for coverage which met the Massachusetts standards (Testimony of Appellant).
13. In late 2021, Appellant began a job that included employer sponsored health insurance and Appellant has been covered by this insurance through the present time (Testimony of Appellant).
14. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2021 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 2021. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2021.
15. According to Table 3 of Schedule HC for 2021 a person filing as single with no dependents claimed with an adjusted gross income of \$70,616 could afford to pay \$471 per month for private insurance. According to Table 4, Appellant, aged 22, filing as with no dependents claimed and living in Essex County could have purchased private insurance for \$263 per month.
16. Private insurance was considered to be affordable for Appellant in 2021 (Schedule HC for 2021).
17. Appellant has been assessed a penalty for eight months for 2021 (Exhibit 2).
18. Appellant filed an Appeal and a Statement in support of Appeal appealing the assessment of the penalty on May 19, 2022 (Exhibit 2).

## **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 has been assessed a tax penalty for eight months. During most of 2021, Appellant was covered by a plan that did not meet the Massachusetts standards. 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. We must also consider whether the plan that Appellant had in 2021 substantially met the Massachusetts minimum creditable coverage standards and whether Appellant’s circumstances prevented Appellant from buying other insurance that met the Massachusetts requirements.

After graduation from college, Appellant struggled to find a job. Appellant began working at a contract job that could be terminated that did not offer employer sponsored health insurance. Appellant was not aware of the need for health insurance that met Massachusetts creditable coverage standards. Appellant purchased health insurance that cost Appellant \$199 per month. The health insurance purchased by Appellant was very limited. The plan covered a limited number of preventative care visits and a limited number of primary care visits. The

plan did not cover hospitalization or treatment for serious illness. The plan did not substantially meet the Massachusetts minimum creditable coverage standards. See 956 CMR 6.08 (2)(d).

Considering that Appellant was working in an insecure contract job and that Appellant began employer sponsored health insurance that met Massachusetts standards in late 2021, I find that the penalty assessed against Appellant for 2021 should be waived in its entirety. See 956 CMR 6.08 (3), Schedule HC for 2021, Exhibits 1, 2, and Testimony of Appellant which I find to be credible.

**Appellant is advised that this decision is based upon the facts as I have found them for 2021 and should not assume that a similar decision will be made if Appellant fails to have health insurance that meets Massachusetts standards in the future.**

**PENALTY ASSESSED**

Number of Months Appealed: 8                      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 2021 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 2021.

**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.

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# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA21-2420

**Appeal Decision:** The tax penalty is overturned.

**Hearing Issue:** Appeal of the 2021 Tax Year Penalty

**Hearing Date:** May 5, 2023

**Decision Date:** June 16, 2023

### **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 Massachusetts General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on May 5, 2023. 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 that were admitted into evidence:

- Exhibit 1: Appeal Case Information from Schedule HC 2021 (1 page).
- Exhibit 2: The Statement of Grounds for Appeal and supporting documentation (16 pages).
- Exhibit 3: Health Connector Appeals Unit Notice of Hearing on May 5, 2023 (2 pages).

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant, who turned age 51 in January 2021, filed their federal income tax return as a single person with no dependents claimed. (Exhibit 1).
2. The Appellant's legal residence was in Franklin County throughout 2021. (Exhibit 1) and Appellant Testimony.
3. The Appellant's federal Adjusted Gross Income ("AGI") for 2021 was \$27,528. (Exhibit 1).

4. According to the Appellant's Appeal Case Information from Schedule HC, the Appellant did not have health insurance that met Massachusetts minimum creditable coverage (MCC) requirements for the entirety of 2021. The Appellant was assessed a twelve-month tax penalty for 2021. (Exhibit 1).
5. The Appellant filed an appeal of the twelve-month penalty assessment in May 2022. The Appellant checked off the following box in the Appellant's Statement of Grounds for Appeal: "During 2021 other circumstances, such as applying the Affordability Tables in Schedule HC to you is inequitable (for example, because of family size); that you were unable to obtain government-subsidized insurance even though your income qualified you; or that you didn't reside in Massachusetts during your period of uninsurance." (Exhibit 2).
6. A hearing on the Appellant's appeal took place telephonically on May 5, 2023. (Exhibit 3).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the Department of Revenue ("DOR") 2021 Massachusetts Schedule HC Health Care Instruction 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 2021. Table 2 sets forth income at 300% of the federal poverty level, and Tables 5 and 6 set forth tax penalties in effect for 2021.
8. The Appellant's AGI of \$27,258 was less than 300% of the Federal Poverty Level, which was \$38,280 for a household of one in 2021. (See Table 2 of Schedule HC-2021 and 956 CMR 12.04).
9. According to Table 3 of Schedule HC for 2021, the Appellant, who filed their federal tax return as a single person with no dependents and claimed an adjusted gross income of \$27,258, could have afforded to pay \$72 per month for health insurance. The calculation is as follows: Table 3 states that a single individual with no dependents whose 2021 AGI was between \$25,521 and \$31,900 could have spent 4.2% of their earnings on health insurance; 4.2% of \$27,258 is \$866, and one-twelfth of \$866 is \$72.
10. According to Table 4 of Schedule HC for 2021, the least expensive health insurance plan meeting Massachusetts' minimum creditable coverage requirements that the Appellant, a single person age 51 living in Franklin County in January 2021, could have purchased on the private market cost \$413 per month.
11. The Appellant testified that they were largely unemployed from January 2021 through August 2021 because they were furloughed in 2020 from their job in food services at a university due to the COVID-19 pandemic. The Appellant testified that their income from January to the end of August 2021 primarily came from unemployment insurance, but that they worked a small number of hours as a seasonal employee at a department store in January 2021.
12. The Appellant testified that they were told at a medical clinic in late 2020 that they were eligible for MassHealth and that they tried multiple times to enroll in MassHealth, both through paper

and on-line applications. The Appellant testified that that for reasons they do not understand, they were not successful in enrolling in MassHealth and that they were unable to resolve their enrollment difficulties in phone calls to MassHealth.

13. The Appellant testified that in late August 2021, they were re-employed by the employer that had furloughed them in 2020. The Appellant testified that they mistakenly believed that their employer-based health insurance was reinstated upon their re-employment, and that they only learned that their employer-based health insurance was not active when they went for a medical exam in early 2022, and their physician's office told them that their health insurance was not in effect. The Appellant testified that because they believed that they had health insurance upon their re-employment in August 2021, they did not make further efforts to enroll in MassHealth. The Appellant testified that they were not actually enrolled in their employer's health insurance until 2022 and that they currently have employer-based health insurance.

## **ANALYSIS AND CONCLUSIONS OF LAW**

The case is before me on the Appellant's appeal from the DOR's assessment of a twelve-month tax penalty because the Appellant's tax forms indicated that they did not have health insurance that met minimum creditable coverage ("MCC") standards during any month in 2021. The issue to be decided is whether the tax penalty should be waived in whole or in part.

I begin by summarizing the legal rules underlying this appeal. 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 health 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 ("Connector"). G.L. c. 111M, § 2(a). Any health insurance policy must also satisfy the Massachusetts MCC standards for a taxpayer to avoid the penalty.

If these requirements are not met, a tax penalty is assessed for each of the months that the individual did not have health insurance as required by the individual mandate. There is, however, 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, § 2(b) and Administrative Information Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00 (clarifying that for purposes of penalty calculation, taxpayers will not be subject to penalty if they had lapses in coverage consisting of three or fewer consecutive calendar months). The Connector's regulations also provide for a waiver of the tax penalty in cases of hardship. See 956 CMR 6.07-08.

To determine if the penalty should be waived in whole or in part, there must be a determination as to whether affordable insurance that met MCC standards was available to the Appellant through employment, through the private insurance market, or through a government-subsidized program. If affordable insurance was available, it must be determined whether such insurance was not in fact affordable to the Appellant because the Appellant experienced a hardship as defined in 956 CMR 6.08. Each of these issues is addressed in turn.

First, I conclude that the Appellant did not have access to affordable insurance on the private market. According to the Schedule HC, the most the Appellant could have afforded to pay for health insurance cost \$72 per month, but the least expensive plan the Appellant could have purchased on the private market cost \$413 per month. Findings of Fact Nos. 9 and 10.

Second, I conclude the Appellant could not have obtained insurance through employment during the months of January through August 2021 because they were not employed at a job that provided health insurance. Finding of Fact No. 11. I further conclude that employer-based health insurance was effectively unavailable to the Appellant in the months of September through December 2021 because the Appellant's mistaken belief that they had employer-based health insurance during these months functioned to block them from actually enrolling in employer-based health insurance. Finding of Fact No. 13.

Third, the Appellant was eligible for government-subsidized health insurance in 2021 (though not necessarily MassHealth) because (1) their AGI was less than 300% of the Federal Poverty Level and (2) they received unemployment compensation. Findings of Fact Nos. 8 and 11. In 2021, persons who received unemployment compensation were eligible for government-subsidized insurance, regardless of their income. 26 U.S.C. § 36B(g). The Appellant testified that they made numerous unsuccessful efforts to enroll in government-subsidized health insurance and that they ceased these efforts when they were re-employed and mistakenly believed they were re-enrolled in employer-based health insurance. Findings of Fact Nos. 12 and 13.

Reviewing the totality of the evidence, I conclude that it is appropriate to waive the Appellant's twelve-month penalty. The Appellant's testimony, which I find credible, demonstrated that the Appellant did not intend to flout the individual mandate, but rather made efforts to obtain government-subsidized health insurance and had a good faith belief that they had health insurance when they were re-employed by their former employer. As a result, I waive the Appellant's twelve-month penalty in its entirety. See G.L. c. 111M, § 2 and 956 CMR 6.07(8) and 6.08(3).

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2021. 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 2021.

**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: PA21-2426

**Appeal Decision:** The tax penalty is overturned.

**Hearing Issue:** Appeal of the 2021 Tax Year Penalty

**Hearing Date:** May 5, 2023

**Decision Date:** May 8, 2023

### **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 Massachusetts General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on May 5, 2023. 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 that were admitted into evidence:

Exhibit 1: Appeal Case Information from Schedule HC 2021 (1 page).

Exhibit 2: The Statement of Grounds for Appeal and supporting documentation (12 pages).

Exhibit 3: Health Connector Appeals Unit Notice of Hearing on May 5, 2023 (2 pages).

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant, who turned age 27 in February 2021, filed their federal income tax return as a single person with no dependents claimed. (Exhibit 1).
2. The Appellant's legal residence was in Middlesex County throughout 2021. (Exhibit 1) and Appellant Testimony.
3. The Appellant's federal Adjusted Gross Income ("AGI") for 2021 was \$28,599. (Exhibit 1).

4. According to the Appellant's Appeal Case Information from Schedule HC, the Appellant did not have health insurance that met Massachusetts minimum creditable coverage (MCC) requirements for the entirety of 2021. The Appellant was assessed a twelve-month tax penalty for 2021. (Exhibit 1).
5. The Appellant filed an appeal of the twelve-month penalty assessment in May 2022. The Appellant checked off the following boxes in the Appellant's Statement of Grounds for Appeal: "During 2021, you purchased health insurance that didn't meet minimum creditable coverage standards because that is what your employer offered, and you felt that your circumstances prevented you from buying other insurance that met the requirements" and "During 2021 other circumstances, such as applying the Affordability Tables in Schedule HC to you is inequitable (for example, because of family size); that you were unable to obtain government-subsidized insurance even though your income qualified you; or that you didn't reside in Massachusetts during your period of uninsurance." (Exhibit 2).
6. A hearing on the Appellant's appeal took place telephonically on May 5, 2023. (Exhibit 3).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the Department of Revenue ("DOR") 2021 Massachusetts Schedule HC Health Care Instruction 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 2021. Table 2 sets forth income at 300% of the federal poverty level, and Tables 5 and 6 set forth tax penalties in effect for 2021.
8. The Appellant's AGI of \$28,599 was less than 300% of the Federal Poverty Level, which was \$38,280 for a household of one in 2021. (See Table 2 of Schedule HC-2021 and 956 CMR 12.04).
9. According to Table 3 of Schedule HC for 2021, the Appellant, who filed their federal tax return as a single person with no dependents and claimed an adjusted gross income of \$28,599, could have afforded to pay \$100 per month for health insurance. The calculation is as follows: Table 3 states that a single individual with no dependents whose 2021 AGI was between \$25,521 and \$31,900 could have spent 4.2% of their earnings on health insurance; 4.2% of \$28,599 is \$1201, and one-twelfth of \$1201 is \$100.
10. According to Table 4 of Schedule HC for 2021, the least expensive health insurance plan meeting Massachusetts' minimum creditable coverage requirements that the Appellant, a single person age 26 living in Middlesex County in January 2021, could have purchased on the private market cost \$263 per month.
11. The Appellant testified that they began working for their current employer in September 2020 and that their entire income from 2021 came from work with this employer and from a second , part-time job at a restaurant at the end of 2021.

12. The Appellant testified that they enrolled in their employer's health insurance plan in February 2021 and that \$73 was deducted from their paycheck every week for this health insurance, which included an indemnity component. The Appellant provided documentation showing such deductions and that their hourly pay rate was \$18.50. (Exhibit 2). The documentation showed that the annual maximum deductible amount for their health insurance plan was \$6,000. (Exhibit 2). I take administrative notice of the fact that the MCC standards for 2021 provided that the annual cap on deductibles for an individual plan should not exceed \$2,700. See 2021 Massachusetts Schedule HC.
13. The Appellant testified that they did not know that their employer's health insurance plan did not meet MCC standards until their employer's open enrollment meeting for health insurance for 2022. The Appellant testified that at that meeting, their employer told employees that their health insurance from 2021 did not meet MCC standards and that employees should file appeals of any tax penalties for tax year 2021.
14. The Appellant testified that because their employer's health insurance did not meet MCC standards in 2021, they enrolled in a health insurance plan through the Health Connector for 2022 and are currently insured.

## **ANALYSIS AND CONCLUSIONS OF LAW**

The case is before me on the Appellant's appeal from the DOR's assessment of a twelve-month tax penalty because the Appellant's tax forms indicated that they did not have health insurance that met minimum creditable coverage ("MCC") standards during any month in 2021. The issue to be decided is whether the tax penalty should be waived in whole or in part.

I begin by summarizing the legal rules underlying this appeal. 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 health 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 ("Connector"). G.L. c. 111M, § 2(a). Any health insurance policy must also satisfy the Massachusetts MCC standards for a taxpayer to avoid the penalty.

If these requirements are not met, a tax penalty is assessed for each of the months that the individual did not have health insurance as required by the individual mandate. There is, however, 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, § 2(b) and Administrative Information Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00 (clarifying that for purposes of penalty calculation, taxpayers will not be subject to penalty if they had lapses in coverage consisting of three or fewer consecutive calendar months). The Connector's regulations also provide for a waiver of the tax penalty in cases of hardship. See 956 CMR 6.07-08.

To determine if the penalty should be waived in whole or in part, there must be a determination as to whether affordable insurance that met MCC standards was available to the Appellant through the



private market, through employment, or through a government-subsidized program. If affordable insurance was available, it must be determined whether such insurance was not in fact affordable to the Appellant because the Appellant experienced a hardship as defined in 956 CMR 6.08. Each of these issues is addressed in turn.

First, I conclude that the Appellant did not have access to affordable health insurance meeting MCC standards on the private market. According to the Schedule HC, the most the Appellant could have afforded to pay each month for health insurance was \$100, but the least expensive plan the Appellant could have purchased on the private market cost \$263 per month. Findings of Fact Nos. 9 and 10.

Second, I conclude the Appellant could not have obtained affordable health insurance that met MCC standards through employment because the health insurance that was offered to the Appellant through their employer – and in which the Appellant enrolled – did not meet MCC standards. Findings of Fact Nos. 12 and 13.

Third, I conclude that government-subsidized health insurance meeting MCC standards was theoretically available to the Appellant because their income was less than 300% of the federal poverty level. Finding of Fact No. 8. However, I conclude that the Appellant was effectively blocked from accessing this government-subsidized insurance because of their mistaken belief that they were enrolled in MCC-compliant insurance through their employer. Finding of Fact No. 13. Because the Appellant believed they were enrolled in MCC-compliant insurance, they had no reason to explore the possibility of government-subsidized insurance. I note that the Appellant paid \$3796 per year for their employer’s health insurance (\$73/week x 52 weeks), or \$316 per month, which is greater than the \$100 per month the Schedule HC said they could afford. Finding of Fact No. 12. The amount of the Appellant’s payments supports the conclusion that the Appellant did not intend to flout the individual mandate, but rather had a good faith but mistaken belief that they had adequate health insurance.

Reviewing the totality of the evidence, I conclude that it is appropriate to waive the Appellant’s twelve-month penalty. As a result, I waive the Appellant’s twelve-month penalty in its entirety. See G.L. c. 111M, § 2 and 956 CMR 6.07(8) and 6.08(2) and (3).

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2021. 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 2021.

**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: PA21-2457

**Appeal Decision** Appeal Allowed

**Hearing Issue:** Appeal of the 2021 Tax Year Penalty

**Hearing Date:** May 15, 2023

**Decision Date:** May 22, 2023

## **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 15, 2023. The procedures to be followed during the hearing were reviewed with the Appellant wife 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: Notice of Hearing dated April 24, 2023
- Exhibit 2: Appeal Case Information from form Schedule HC
- Exhibit 3: Statement of Grounds for Appeal, dated May 14, 2022
- Exhibit 4: Written Statement of Appeal date May 14, 2022

## **FINDINGS OF FACT**

The record shows, and I so find:

1. The appellant is forty-three years old and is married with one child. He lives in Bristol County, Massachusetts.
2. Appellant lost his career in 2017. He went back to school in 2018 and tried to get by in 2019 and 2020. Appellant could not afford insurance in 2021. Appellant finally got a full time job in 2022 and has been insured each year.
3. Appellants did have health insurance in 2022 and 2023.
4. The Appellant's monthly expenses totaled \$2,990.00, consisting of rent \$900.00, heat & light \$400.00, internet & cable \$150.00, cell phone \$100.00, car payment \$150.00, car insurance \$190.00, car gas \$100.00, food \$400.00, credit card \$300.00, clothing \$100.00, entertainment \$350.00, toiletries \$50.00.
5. The Appellant did submit a Statement of Grounds for Appeal-2021 but did not mark a ground, Appellant should have appealed under "During 2021, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities"
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 2021. 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 2021.
7. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant may have been eligible for subsidized health insurance, since Appellant's income of \$64,148.00 was less than \$65,160.00. The monthly premium for health insurance available on the private market in Bristol County for a 41 year old married person with one child was \$736.00. The tables reflect that Appellant could afford \$315.39 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.

Appellant lost his career in 2017. He went back to school in 2018 and tried to get by in 2019 and 2020. Appellant could not afford insurance in 2021. Appellant finally got a full time job in 2022 and has been insured each year.

The Appellant did submit a Statement of Grounds for Appeal-2021 but did not mark a ground, Appellant should have appealed under “During 2021, 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 2021, 150 percent of the FPL was \$32,580.00 for a married 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 2021 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 2021. 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 2021 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$64,148.00 in 2021, and Appellant’s filing status was married 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 2021 Massachusetts Schedule HC, Appellant could afford to pay \$315.39 Table 3. Private insurance would have been available to him from the Premium Tables, at a cost of \$736.00 monthly for coverage. *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 \$315.39 for health insurance coverage because of his income. Private insurance in the market place was \$736.00 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 2021. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that he is exempt from a tax penalty for isr non-compliance with the individual mandate.

Accordingly, Appellant’s appeal is **ALLOWED**, and the 2021 penalty assessed is **OVERTURNED**.

**PENALTY ASSESSED**

Number of Months Appealed:   24   Number of Months Assessed:   0  

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2021 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 2021.

**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: PA21-2469

**Appeal Decision** Appeal Denied

**Hearing Issue:** Appeal of the 2021 Tax Year Penalty

**Hearing Date:** May 18, 2023

**Decision Date:** May 22, 2023

## **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 18, 2023. 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: Notice of Hearing dated April 24, 2023
- Exhibit 2: Appeal Case Information from form Schedule HC
- Exhibit 3: Statement of Grounds for Appeal, dated May 18, 2022
- Exhibit 4: Written Statement of Appeal Dated May 18, 2022

## **FINDINGS OF FACT**

The record shows, and I so find:

1. The appellant is fifty-three years old and is single. She lives in Middlesex County, Massachusetts. Appellant works in the IT business.
2. Appellant stated that she had Tufts health insurance in 2018, 2019 and 2020. Appellant stated that she tried to obtain a personal care physician, but no medical facility would accept her as a patient. Appellant did not call the Health Connector customer service line to discuss her issue.
3. The appellant does not have health insurance in 2023 nor did she have health insurance in 2022.
4. The Appellant did submit a Statement of Grounds for Appeal-2021 but did not select a ground for appeal
5. 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 2021. 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 2021.
6. 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 \$137,838.00 was more than \$38,280.00. The monthly premium for health insurance available on the private market in Middlesex County for a 51 year old single person was \$390.00. The tables reflect that Appellant could afford \$918.92 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.

Appellant stated that she had Tufts health insurance in 2018, 2019 and 2020. Appellant stated that she tried to obtain a personal care physician, but no medical facility would accept her as a patient. Appellant did not call the Health Connector customer service line to discuss her issue. Based on



Appellant's testimony that she could not find a personal care physician within the whole of Tufts medical system, I find that the Appellants testimony is not credible..

The Appellant did submit a Statement of Grounds for Appeal-2021 but did not select a ground for appeal

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 2021, 150 percent of the FPL was \$19,140.00 for a single person . *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 2021 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 2021. 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 2021 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$137,838.00 in 2021, 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 2021 Massachusetts Schedule HC, Appellant could afford to pay \$918.92 monthly for health insurance. See 2021 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 390.00 monthly for coverage. *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 \$918.92 for health insurance coverage because of her income. Private insurance in the marketplace was \$390.00 per month, which is less than she could afford. On these facts, I find that Appellant has not shown that she was precluded from purchasing affordable health

insurance during 2021. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that she is not exempt from a tax penalty for her non-compliance with the individual mandate.

Accordingly, Appellant's appeal is **DENIED**, and the 2021 penalty assessed is **AFFIRMED**.

**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 2021 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 2021.

**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: PA21-2476

**Appeal Decision** Appeal Allowed

**Hearing Issue:** Appeal of the 2021 Tax Year Penalty

**Hearing Date:** May 18, 2023

**Decision Date:** May 22, 2023

## **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 18, 2023. 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: Notice of Hearing dated April 24, 2023

Exhibit 2: Appeal Case Information from form Schedule HC

Exhibit 3: Statement of Grounds for Appeal Dated May 20, 2023

## FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is twenty-eight years old and is single with one dependent. He lives in Berkshire County, Massachusetts.
2. Appellant works as a health aide. Appellant thought he had health insurance in 2021 because his company told him he had health insurance through his union but he did not receive the insurance.
3. Appellant does have health insurance in 2023 with the Health Connector and did have health insurance in 2022.
4. The Appellant's monthly expenses totaled 1,350.00, consisting of rent \$300.00, heat & electricity \$250.00, cell phone \$50.00, internet & cable \$75.00, car insurance \$200.00, food \$400.00, transportation \$80.00, clothing \$100.00 toiletries \$20.00,
5. The Appellant did submit a Statement of Grounds for Appeal-2021 under the grounds for Appeal " During 2021, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities".
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 2021. 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 2021.
7. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant may have been eligible for subsidized health insurance, because Appellant's income of \$32,297.00 was less than \$51,720.00. The monthly premium for health insurance available on the private market in Norfolk County for a 26 year old single person with one dependent was \$271.00. The tables reflect that Appellant could afford \$115.73 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.

Appellant works as a health aide. Appellant thought he had health insurance in 2021 because his company told him he had health insurance through his union but he did not receive the insurance.

The Appellant did submit a Statement of Grounds for Appeal-2021 under the grounds for Appeal “During 2021, 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 2021, 150 percent of the FPL was \$25,860.00 for a single person with one dependent. 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 2021 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 2021. 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 2021 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$32,297.00 in 2021, 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 2021 Massachusetts Schedule HC, Appellant could afford to pay \$115.73 monthly for health insurance. See 2021 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 \$271.00 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).

On these facts, I find that Appellant has shown that he was precluded from purchasing affordable health insurance during 2021. 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 2021 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 2021 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 2021.

**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