

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA21-2013

**Appeal Decision** Appeal Approved.

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

**Hearing Date:** September 12, 2022

**Decision Date:** November 16, 2022

### **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 Appellants appeared at the hearing, which was held by telephone, on September 12, 2022. The record was left open for Appellant to submit additional documents which were submitted. 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 (8-11-22) (2 pages);
- Exhibit 2: Information from Schedule HC TY 2021 (1 page);
- Exhibit 3: Statement of Grounds for Appeal (4-1-22) (with documents) (7 pages);
- Exhibit 4: Additional documents submitted pursuant to open record (4 pages).

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellants, ages 25 and 29 during 2021, filed married filing jointly on the tax return with a family size of 2. (Exhibit 2).
2. One of Appellants had health insurance for January through March through an employer, but then stopped working and did not have health insurance for the rest of 2021. The other Appellant had health insurance but it did not meet minimum creditable coverage. (Appellant's testimony, Exhibits 2, 3, 4). Appellants were married in December 2020, and then Appellant who was not a citizen obtained a green card and was able to work and obtain health insurance again through the employer in 2022. (Testimony).

3. Appellants' Federal Adjusted Gross Income for 2021 was \$61,256.00 (Exhibit 2).
4. The health insurance that did not meet minimum creditable coverage covered all of Appellant's needs. (Appellant's testimony, Exhibit 3, 4).
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. Appellants could not afford health insurance based on the tables in Schedule HC. According to Table 4, the health insurance would cost \$526.00 for coverage. According to Table 3, Appellants were deemed to afford \$388.00.
7. Private insurance was not affordable for the Appellants in 2021. (Schedule HC for 2021).
8. Appellants' AGI was over 300% of the Federal Poverty Level, and Appellants therefore would not have qualified for subsidized health insurance through the Health Connector. (Schedule HC for 2021).
9. Appellants claimed that they should be granted a waiver based on the grounds that they had health insurance that did not meet minimum creditable coverage. (Testimony of Appellant, Exhibit 3).
10. Appellants 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. Appellants did not incur additional expenses as a result of a fire, flood, or other natural or man-made disaster in 2021 (Exhibit 3).
11. Appellants were not homeless, was not thirty days or more behind in rent in 2021, and did not receive eviction notices. Appellants 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.

One of Appellants did have health insurance for January through March of 2021, but not the remaining months. The other Appellant had health insurance but it did not meet minimum creditable coverage. They have been assessed a tax penalty for six months for one of them and twelve months for the other one of them. Appellants 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 Appellants during 2021. According to Tables 3 and 4 of the HC Schedule for 2021, Appellants, with an adjusted gross income of \$61,256.00 were deemed to not have been able to afford health insurance on the private market. According to Table 3, Appellants could have afforded to pay \$388.00 per month; according to Table 4, Appellants, who were 25 and 29 years old in 2021, and filed the 2021 Massachusetts taxes as married filing jointly with a family size of 2, would have had to pay \$526.00 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, Appellants claimed that they had health insurance that did not meet minimum creditable coverage but was what was available through the employer. The other Appellant also claimed that their immigration status impeded their ability to obtain health insurance. Appellants have health insurance through an employer now that meets minimum creditable coverage. 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: 6/12    Number of Months Assessed: 0/0

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: PA21-2014

**Appeal Decision** Appeal Denied.

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

**Hearing Date:** September 12, 2022

**Decision Date:** November 16, 2022

### **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 September 12, 2022. 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 (8-11-22) (2 pages);
- Exhibit 2: Information from Schedule HC TY 2021 (1 page); and
- Exhibit 3: Statement of Grounds for Appeal (4-5-22) (with letter) (4 pages).

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, age 48 during 2021, from Bristol County, filed married filing separately on the tax return with a family size of 1. (Exhibit 2).
2. Appellant did not have health insurance for 2021. (Appellant's testimony, Exhibits 2, 3). Appellant stated that they had a religious objection to having health insurance, but had not claimed a religious exemption when filing the tax return. (Exhibit 3, Testimony).
3. Appellant's Federal Adjusted Gross Income for 2021 was \$101,509.00 (Exhibit 2).
4. 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.

5. Appellant could afford health insurance based on the tables in Schedule HC. According to Table 4, the health insurance would cost \$336.00 for coverage. According to Table 3, Appellant was deemed to afford \$676.00.
6. Private insurance was affordable for the Appellant in 2021. (Schedule HC for 2021).
7. 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).
8. Appellant claimed that they should be granted a waiver based on the grounds that they had a religious objection to having health insurance, but they did not claim a religious exemption on the Schedule HC. (Testimony of Appellant, Exhibit 3).
9. 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).
10. 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 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 \$101,509.00 was deemed to have been able to afford health insurance on the private market. According to Table 3, Appellant could have afforded to pay \$676.00 per month; according to Table 4, Appellant, who was 48 years old in 2021, from Bristol County, and filed the 2021 Massachusetts taxes as married filing separately with a family size of 1, would have had to pay \$336.00 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 they had a religious objection to having health insurance. However, Appellant did not claim a religious exemption on the Schedule HC as would have been required. Appellant would need to file an amended return in order to do so. For these reasons, the waiver of the penalty is denied.

**PENALTY ASSESSED**

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

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: PA21-2015

**Appeal Decision** Appeal Approved.

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

**Hearing Date:** September 12, 2022

**Decision Date:** November 17, 2022

### **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 September 12, 2022. 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 (8-11-22) (2 pages);
- Exhibit 2: Information from Schedule HC TY 2021 (1 page); and
- Exhibit 3: Statement of Grounds for Appeal (1 page).

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, age 53 during 2021, from Worcester County, filed Head of Household on the tax return with a family size of 2. (Exhibit 2).
2. Appellant did have health insurance for 2021 but it did not meet minimum creditable coverage. (Appellant's testimony, Exhibits 2). Appellant's spouse had passed away, and the health insurance Appellant could get when Appellant started working did not meet minimum creditable coverage. (Testimony).
3. Appellant's Federal Adjusted Gross Income for 2021 was \$33,508.00 (Exhibit 2).
4. Appellant did obtain health insurance that met minimum creditable coverage in January 2022 when their hours were increased so that Appellant qualified. (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 \$928.00 for coverage. According to Table 3, Appellant was deemed to afford \$120.00.
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 thought they had sufficient insurance. (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 not have health insurance for 2021 that met minimum creditable coverage, but did have health insurance during 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 \$33,508.00 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 \$120.00 per month; according to Table 4, Appellant, who was 53 years old in 2021, from Worcester County, and filed the 2021 Massachusetts taxes as Head of Household with a family size of 2, would have had to pay \$928.00 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 they had health insurance that did not meet minimum creditable coverage because that is what the Appellant was able to obtain based on the number of hours worked. Appellant's spouse had passed away and Appellant was working part time. Appellant has been able to obtain full health insurance as of January 2022 based on working 40 hours per week. For these reasons, the waiver of the penalty is allowed.

Appellant 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: PA21-2016

**Appeal Decision** Appeal Approved.

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

**Hearing Date:** September 12, 2022

**Decision Date:** November 17, 2022

### **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's representative, appeared at the hearing, which was held by telephone, on September 12, 2022. The hearing record consists of the Appellant's representative's testimony, and the following documents which were admitted into evidence without objection by Appellant:

- Exhibit 1: Notice of Hearing (8-11-22) (2 pages);
- Exhibit 2: Information from Schedule HC TY 2021 (1 page);
- Exhibit 3: Statement of Grounds for Appeal (4-9-22) (with letter and documents) (7 pages);
- Exhibit 4: Final Appeal Decision TY2018 (7-25-19) (4 pages).

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, age 31 during 2021, from Middlesex County, filed single on the tax return with a family size of 1. (Exhibit 2).
2. Appellant did not have health insurance for 2021, but Appellant did have Health Safety Net and thought that qualified as insurance. (Testimony, Exhibits 2, 3). Appellant had only sporadic work. Appellant's expenses for food, shelter, clothing and other necessities used most of the income. The expenses totaled approximately \$3,653 per month, or \$43,836 per year. (Testimony).
3. Appellant's Federal Adjusted Gross Income for 2021 was \$50,786.00 (Exhibit 2).

4. Appellant did obtain health insurance that met minimum creditable coverage in April 2022 through the Health Connector. (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 afford health insurance based on the tables in Schedule HC. According to Table 4, the health insurance would cost \$268.00 for coverage. According to Table 3, Appellant was deemed to afford \$321.00.
7. Private insurance was affordable for the Appellant in 2021. (Schedule HC for 2021).
8. 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).
9. Appellant claimed that they should be granted a waiver based on the grounds that they thought they had sufficient insurance. (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 not have health insurance for 2021 that met minimum creditable coverage, but did have Health Safety Net during 2021, and believed that met the requirements. 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 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 \$50,786.00 was deemed to have been able to afford health insurance on the private market. According to Table 3, Appellant could have afforded to pay \$321.00 per month; according to Table 4, Appellant, who was 31 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 \$268.00 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 they had health insurance that did not meet minimum creditable coverage but believed that they had sufficient coverage. Appellant also claimed that paying for health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities. Appellant has obtained health insurance through the Health Connector as of April 2022. For these reasons, the waiver of the penalty is allowed.

Appellant 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: PA21-2046

**Appeal Decision** Appeal Approved.

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

**Hearing Date:** September 12, 2022

**Decision Date:** November 16, 2022

### **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 September 12, 2022. 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 (8-18-22) (2 pages);
- Exhibit 2: Information from Schedule HC TY 2021 (1 page); and
- Exhibit 3: Statement of Grounds for Appeal (4-6-22) (with letter and documents) (13 pages).

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, age 32 during 2021, filed married filing separately on the tax return with a family size of 2. (Exhibit 2).
2. Appellant did not have health insurance for 2021. (Appellant's testimony, Exhibits 2, 3). Appellant was laid off in October 2020, and did not find employment again until after 2021. Appellant's immigration status was such that Appellant could not be without employment for more than sixty days. Appellant obtained their green card again in September 2021, and could find employment which Appellant did early in 2022.
3. Appellant's spouse's Federal Adjusted Gross Income for 2021 was \$113,912.00 (Exhibit 2). Appellant's only income during 2021 was a few hundred dollars. Appellant and Appellant's

spouse had separate accounts. It is not clear why Appellant listed the spouse's income on their taxes if they were filing married filing separately. (Testimony).

4. Appellant had health insurance again as of March 2022. (Appellant's testimony, Exhibit 3).
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 afford health insurance based on the tables in Schedule HC if Appellant's spouse's income is taken into account. According to Table 4, the health insurance would cost \$268.00 for coverage. According to Table 3, Appellant was deemed to afford \$759.00.
7. Private insurance was affordable for the Appellant in 2021. (Schedule HC for 2021).
8. 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).
9. 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).
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 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 affordable for the Appellant during 2021 based on income that was reported for the tax return. According to Tables 3 and 4 of the HC Schedule for 2021, Appellant, with an adjusted gross income of \$113,912.00 was deemed to have been able to afford health insurance on the private market. According to Table 3, Appellant could have afforded to pay \$759.00 per month; according to Table 4, Appellant, who was 32 years old in 2021, and filed the 2021 Massachusetts taxes as married filing separately with a family size of 1, would have had to pay \$268.00 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 had no income during 2021, and Appellant and Appellant's spouse had separate accounts. Appellant also was not eligible to work until September 2021 based on immigration status. Appellant has health insurance again as of March 2022. For these reasons, the waiver of the penalty is approved.

Appellant 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: PA211965

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

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

**Hearing Date:** August 23, 2022

**Decision Date:** October 29, 2022

### **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 August 23, 2022. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

Exhibit 1: Statement of Grounds for Appeal 2021 signed and dated by Appellants on March 28, 2022 with letter attached

Exhibit 2: Appeal Case Information from Schedule HC 2021

Exhibit 3: Notice of Hearing sent to Appellant dated July 15, 2022 for August 23, 2022 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 47 and 43 years old in 2021 (Exhibit 2, Testimony of Appellant).
2. Appellants lived in Middlesex County in 2021. In the fall, the couple separated (Exhibit 2, Testimony of Appellant).
3. Appellants' Federal Adjusted Gross Income for 2021 was \$105,743 (Exhibit 2, Testimony of Appellant).
4. One of the appellants had been employed full-time at a store for eighteen years. Appellant had a medical condition which interfered with his ability to continue working and the appellant lost his job in April, 2021. Appellant was unemployed until the summer, collecting unemployment compensation. He then obtained work, lost that job, found another, lost the second job, and finally found a third one. Appellant was in and out of rehab during 2021 because of his medical condition (Testimony of Appellant).
5. The other appellant worked full-time all of 2021. This appellant earned about \$60,000 during the year. Appellant also took \$20,000 out of her (and her spouse's) 401k in order to pay off credit card debt. The rest of the couple's income came from the other appellant's work and unemployment compensation



(Testimony of Appellant).

6. Neither appellant had health insurance which met the Commonwealth's minimum creditable coverage standards. In the past, the couple had health insurance through one of the appellant's job (the appellant who lost his employment in 2021). This coverage was offered by a union. Once the appellant lost his full-time job, he did not work enough to be eligible for coverage again (Testimony of Appellant).
7. After the couple lost their coverage, the appellant who was still employed tried to obtain coverage through her job, but she was told that she had to wait until the next open enrollment period in the fall and would be eligible for coverage as of January 1, 2022 (Testimony of Appellant).
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 \$105,743 could afford to pay \$704 per month for health insurance. According to Table 4, Appellants, 47 and 43 years old and living in Middlesex County, could have purchased insurance for \$671 per month for a plan. Coverage through the individual market was, therefore, affordable for the appellants in 2021 (Schedule HC for 2021, Exhibit 2).
10. According to Table 2 of Schedule HC for 2021, Appellants, with no dependents, earning more than \$51,720, the income limit for a family of two, would have been ineligible for the ConnectorCare program based upon income (Exhibit 2, Table 2 of Schedule HC-2021, 956 CMR 12.00 et. seq.).
11. 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).
12. Appellants did not fall more than thirty days behind in rent payments in 2021. Once the appellants separated in the fall, one of the appellants became homeless, often sleeping in his car, other times moving from friend to friend (Testimony of Appellant).
13. Appellants received a shut-off notice for electricity during 2021 (Testimony of Appellant).
14. Appellants had the following monthly expenses for basic necessities in 2021: rent-\$1,100; electricity-\$80 to \$200; heat-\$200; gas-\$40; telephone-\$250; internet-\$70; food, personal care items, household items-\$540; clothing-\$45; car insurance-\$245; gas-\$140. The couple also had to pay off \$14,000 in credit card debt. These expenses do not include any that the spouse who left the home may have had (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. Neither appellant had health insurance which met the Commonwealth's minimum creditable coverage standards all year. They have each 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 appellants 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 no dependents claimed with an adjusted gross income of \$105,743 could afford to pay \$704 per month for health insurance. According to Table 4, Appellants, 47 and 43 years old and living in Middlesex County, could have purchased insurance for \$671 per month for a plan. Coverage through the individual market was, therefore, affordable for the appellants in 2021. See Schedule HC for 2021, Tables 3 and 4, and Exhibit 2.

In the past, the couple had health insurance through one of the appellant’s job (the appellant who lost his employment in 2021). This coverage was offered by a union. Once the appellant lost his full-time job, he did not work enough to be eligible for coverage again. After the couple lost their coverage, the appellant who was still employed tried to obtain coverage through her job, but she was told that she had to wait until the next open enrollment period in the fall and would be eligible for coverage as of January 1, 2022. See the testimony of the appellant which I find to be credible. Health insurance through employment was unavailable to the appellants in 2021.

According to Table 2 of Schedule HC for 2021, Appellants, with no dependents, earning more than \$51,720, the income limit for a family of two, would have been ineligible for the ConnectorCare program based upon income. See Exhibit 2, Table 2 of Schedule HC-2021, 956 CMR 12.00 et. seq. There is no evidence in the record that Appellants were eligible for any other government-sponsored plan.

Since Appellants had access to affordable insurance through the individual market, 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, medical, and employment problems. One appellant lost his job and never managed to obtain and retain work for any significant period of time after March. He collected unemployment compensation for some period. The couple eventually separated and the appellant who had lost work became homeless, often sleeping in his car. Before the separation, the appellants received a shut-off notice for their electricity. They had significant credit card debt and had to take \$20,000 out of their retirement account in order to pay off the debt.

Base upon the facts summarized above, I determine that the penalty assessed should be waived. Receipt of a shut-off notice for a basic utility and homelessness both constitute financial hardships. See 956 CMR 6.08(1)(a) and (b). In addition, pursuant to 956 CMR 6.08(3), consideration is given to the couple’s need to withdraw money from their retirement account to pay off debt.

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:   24                        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

## FINAL APPEAL DECISION: PA21-1992

**Appeal Decision:** Appeal Approved

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

**Hearing Date:** August 30, 2022

**Decision Date:** November 8, 2022

### **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 August 30, 2022. 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: 3/18/22 Appeal (16 pages)
- Exhibit 3: 7/27/22 Hearing Notice (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 \$35,796. The Appellant turned fifty-eight years old in 2021. The Appellant resided in Hampshire County in 2021. (Exhibit 1)
2. The Appellant appealed from the assessment of a twelve-month penalty on her 2021 income tax return, checking off that purchasing health insurance coverage would have caused her a serious deprivation of basic necessities. (Exhibit 2)
3. The Appellant's monthly expenses for basic necessities in 2021 included: phone, \$45; chickens for food and eggs, \$104; service dogs, \$100; rent, \$1,100; electricity, \$275; heat/hot water, \$250; cable/Internet, \$220; groceries, \$350; gas for car/truck, \$260; car insurance, \$50; and, car maintenance and repair, \$50, for a total of \$2,804/monthly and \$33,648 for the year. (Exhibit 2; Appellant's testimony)
4. According to Table 2 of the 2021 Schedule HC, the Appellant was eligible for government-subsidized health insurance coverage as her 2021 federal AGI was below \$38,280 for a family size of one.

5. According to Table 3 of the 2021 Schedule HC, the Appellant could have afforded to pay up to \$303 for health insurance coverage in 2021.
6. According to Table 4 of the 2021 Schedule HC, the Appellant could have purchased health insurance coverage in the private market in 2021 for a monthly premium of \$425.

**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.

At issue here is the Appellant’s failure to have coverage throughout 2021.

The Appellant has provided substantial evidence through testimony and documentation that she could not have afforded to purchase health insurance coverage in 2021. While the Appellant qualified for government-subsidized health insurance coverage in 2021 for a monthly premium of \$303, the Appellant could not have afforded to pay this much for coverage in 2021. Purchasing this coverage would have cost the Appellant over \$3,600 in 2021, well over the amount of income the Appellant had remaining after paying for basic necessities in 2021.

Accordingly, the Appellant’s twelve-month penalty for 2021 shall be waived in full.

**PENALTY ASSESSED**

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 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: PA212039

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

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

**Hearing Date:** September 19, 2022

**Decision Date:** October 28, 2022

### **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 September 19, 2022. The procedures to be followed during the hearing were reviewed with Appellant. Appellant 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 Appellant on April 10, 2022, with Appellant's college transcript, June, 2021, and letter from university attached
- Exhibit 2: Appeal Case Information from Schedule HC 2021
- Exhibit 3: Notice of Hearing sent to Appellant dated August 15, 2022 for September 19, 2022 hearing

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, who filed a 2021 Massachusetts tax return as a single person with no dependents claimed, was 23 years old in 2021 (Exhibit 2, Testimony of Appellant).
2. Appellant resided in Middlesex County in 2021. From January through August, Appellant was out of the Commonwealth, attending school in another state (Testimony of Appellant, Exhibit 2).
3. Appellant had a Federal Adjusted Income of \$33,992 in 2021 (Testimony of Appellant, Exhibit 2).
4. Appellant was a student in 2021. He earned a small amount as a teaching assistant, but was otherwise unemployed all year. His income came from investments which varied from month to month (Testimony of Appellant).
5. Appellant had health insurance which met the Commonwealth's minimum creditable coverage standards from January through July through the school he attended. When Appellant moved back to the Commonwealth in September, he had no coverage. He tried to get coverage in November through the Connector and did obtain coverage effective January 1, 2022. As of the date of this hearing, Appellant was still insured (Testimony of Appellant).

6. Appellant had no health insurance for five months in 2021. Appellant has been assessed a tax penalty for two months, November and December, 2021. The appellant has appealed this assessment, (Testimony of Appellant Exhibits 1 and 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 appellant with no dependents claimed with an adjusted gross income of \$33,992 could afford to pay \$141 per month for health insurance. According to Table 4, Appellant, 23 years old and living in Middlesex County, could have purchased insurance for \$263 per month for a plan for an individual. Insurance on the individual market was unaffordable for the appellant (Schedule HC for 2021 Tables 3 and 4, Exhibit 2).

9. According to Table 2 of Schedule HC for 2021, Appellant, who earned less than \$38,280 per year, the income level for an individual, would have been eligible for the ConnectorCare program based upon income (Table 2 of Schedule HC-2021, and Exhibit 2).

10. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member, or a natural or human-caused event which caused substantial personal damage in 2021 (Testimony of Appellant).

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

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

13. Appellant had the following monthly expenses for basic necessities in 2021 after he returned to Massachusetts: rent-\$1,000; food- \$860; internet and telephone-\$175; transportation-\$140; clothing-\$170. During the year, Appellant also had to spend \$4,000 on computer equipment for school and work and had some moving expenses.

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

cial 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.

Appellant was assessed a tax penalty November and December of 2021 because he had no health insurance coverage during those months. He had insurance from January through July and was granted a three-month grace period after losing his coverage. Appellant has appealed the assessment. See Exhibits 1 and 2, Massachusetts General Laws, Chapter 111M, Section 2.

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

According to Table 3 of Schedule HC for 2021, the appellant with no dependents claimed with an adjusted gross income of \$33,992 could afford to pay \$141 per month for health insurance. According to Table 4, Appellant, 23 years old and living in Middlesex County, could have purchased insurance for \$263 per month for a plan for an individual. Insurance on the individual market was unaffordable for the appellant. See Schedule HC for 2021 Tables 3 and 4, and Exhibit 2.

Appellant was eligible for affordable coverage through the ConnectorCare program. The appellant's annual Federal Adjusted Income was \$33,992, less than the income limit for one person (\$38,280). See 956 CMR 12.00 et. seq., Exhibit 2, and Table 2 of Schedule HC 2021. See also the testimony of the appellant which I find to be credible.

Appellant was unemployed after he left school and returned to the Commonwealth. He had no access to health insurance through employment. See the testimony of the appellant which I find to be credible.

Since the appellant could have obtained affordable health insurance which met Commonwealth standards through the ConnectorCare program, we need to determine if Appellant had a financial hardship during the remainder of the year such that the cost of purchasing health insurance would have caused Appellant to experience a serious deprivation of basic necessities or some other financial hardship as defined in 956 CMR 6.08 (a), (b), (d), and or (e), and 6.08(3).

Appellant had the following monthly expenses for basic necessities after he returned to Massachusetts: rent-\$1,000; food- \$860; internet and telephone-\$175; transportation-\$140; clothing-\$170. During the year, Appellant also had to spend \$4,000 on computer equipment for school and work and had some moving expenses. His income during November and December came from investments which varied from month to month. Appellant was unemployed during these months.

Based upon the facts summarized above, I determine that the appellant experienced a financial hardship in 2021. His income was not guaranteed, but his expenses were fixed. A significant portion of his earnings from earlier in the year went towards purchasing a computer which he needed for school and some moving expenses. I also note that Appellant had Covid after he returned to the Commonwealth in the fall. See 956 CMR 6.08(3) which allows the consideration of financial issues raised by the appellant at hearing.

The penalty is waived because of financial hardship. I also note that Appellant obtained health insurance as of January 1, 2022 and still had coverage as of the date of this hearing.



Appellant's penalty is waived in its entirety. Appellant 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 Appellant be assessed a penalty in the future.

**PENALTY ASSESSED**

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

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

## FINAL APPEAL DECISION: PA21-2065

**Appeal Decision:** Appeal Approved.

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

**Hearing Date:** October 14, 2022

**Decision Date:** November 3, 2022

### **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 telephonically on October 14, 2022. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated September 15, 2022.
- Exhibit 2: Appeal Case Information from Schedule HC 2021.
- Exhibit 3: Statement of Grounds for Appeal signed by the Appellant on March 21, 2022, with attachments.
- Exhibit 4: A copy of the Summary of Benefits for an Aetna health Insurance policy.
- Exhibit 5: Health Connector Appeals Unit Open Record Form dated October 14, 2022.
- Exhibit 6: Additional information submitted by the Appellant on November 2, 2022.

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant, age 26 in July 2021, filed their 2021 Federal Income Tax return as a single person with no dependents claimed (Exhibit 2).
2. The Appellant was a resident of Essex County in 2021 (Exhibit 2).
3. According to the information on the Appellant's Schedule HC 2021, the Appellant did not have health insurance that met Massachusetts Minimum Creditable Coverage (MCC) standards for any months in tax year 2021 (Exhibit 2).
4. The Appellant has been assessed a twelve-month tax penalty. The Appellant filed an appeal of the assessment in March 2022 (Exhibits 2, 3, 4).

5. The Appellant's Federal Adjusted Gross Income for 2021 was \$29,892 (Exhibit 2).
6. The Appellant testified that they had health insurance through their parent's employer for the period of January through July in tax year 2021. The Appellant said that their parent is employed as a police officer and the insurance provided covered the family. The Appellant said that when they turned 26, they were employed and had health insurance through their employer for the period of August through December in tax year 2021. The Appellant had submitted information regarding their employer's health insurance provided by Aetna verifying that the insurance met Massachusetts requirements, but the information did not verify the Appellant's dates of coverage (Exhibits 3, 4).
7. The record was left open until October 31, 2022 to allow the Appellant to submit documentation verifying their health insurance coverage for tax year 2021 (Exhibit 5).
8. On November 2, 2022 the Appellant submitted documentation from their parent's employer verifying that the Appellant had Harvard Pilgrim Health insurance for the period of 7/1/17- 7/31/21. The Appellant also submitted a copy of the Appellant's Tax Form 1095-B for 2021 verifying the Appellant had health insurance through their employer for the period of August through December 2021 (Exhibit 6).

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

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

The Appellant filed their 2021 income tax return as a single person with no dependents. According to the information in the Appellant's Schedule HC 2021, the Appellant did not have health insurance for any months of tax year 2021. The Appellant was assessed a twelve-month penalty. The Appellant filed an appeal of the penalty in March 2022.

The Appellant testified that they were covered under a parent's employer sponsored health insurance for the period of January through July in tax year 2021, The Appellant turned 26 in July and was covered by employer sponsored health insurance beginning in August. The Appellant had submitted information with their appeal regarding their employer sponsored health insurance for the last six months of the year but did not submit documentation verifying their dates of enrollment. The record was left open to allow the Appellant to submit documentation verifying their health insurance coverage for tax year 2021. The Appellant submitted documentation from their parent's employer verifying their Harvard Pilgrim coverage for the period of January through July 2021. The Appellant also submitted a copy of the Appellant's Form 1095-B 2021 verifying that the Appellant had health insurance that met MCC standards for the period of August through December in tax year 2021. The Appellant should not be subject to a tax penalty for tax year 2021.

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**

Appellant: 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: PA21-2071

**Appeal Decision:** Penalty Overturned in Full

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

**Hearing Date:** October 12, 2022

**Decision Date:** November 16, 2022

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The appellant appeared at the hearing which was held by telephone on October 12, 2022, and testified under oath. The hearing record consists of his testimony and the following documents which were admitted into evidence without objection:

- Ex. 1—Statement of Grounds for Appeal—2021
- Ex. 2—Appeal Case Information from Schedule HC <sup>1</sup>
- Ex. 3—Notice of Hearing

The record was held open at the close of the hearing for documentation requested by the hearing officer. The documentation was submitted in a timely manner and was marked as follows:

- Ex. 4—2021 Form 1099-HC
- Ex. 5—2020 W-2 Wage and Tax Statement
- Ex. 6—2020 Form 1099-G

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The appellant is 61-years-old, is single and does not have children. In 2021, he had minimum creditable coverage (MCC) health insurance from January through April. He resided in Bristol County, MA in 2021. (Testimony, Ex. 2)

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<sup>1</sup> Ex. 2 is a computer printout that extracts information submitted by the appellant on Schedule HC as part of his 2021 Massachusetts income tax return. It also contains information about prior appeals, if any.

2. The appellant was employed from January through April, 2021, during which time he had employer health insurance. He left that job and subsequently held three additional jobs during the year, none of which offered health insurance. (Testimony, Ex. 4)
3. After leaving his job, the appellant investigated his eligibility for health insurance through the Health Connector, but was unable to shop because the open enrollment period had closed. (Testimony)
4. The appellant began a new job in 2022 and has been enrolled in employer health insurance since March. (Testimony)
5. The appellant had a good job for several years prior to the pandemic and was enrolled in employer health insurance throughout his employment. He lost that job during the pandemic and made less money in 2021 than he earned in 2020. (Testimony, Ex. 5)
6. The appellant prepared his own tax returns in 2021 and inadvertently indicated on his Schedule HC that he was uninsured for the whole year. (Testimony)
7. The appellant lived with his girlfriend in 2021 and shared some household expenses with her including rent. (Testimony)
8. The appellant reported an adjusted gross income of \$28,914.00 on his 2021 federal tax return, and reported that he was single with no dependents. (Ex. 2)
9. In 2021, the appellant had regular monthly expenses of approximately \$2285.00 for his portion of the rent which included heat and electricity (\$900.00), cell phone (\$50.00), automobile and motorcycle loan (\$555.00), automobile insurance (\$100.00), gasoline (\$200.00) and food (\$480.00). In addition, the appellant had a personal loan for which he paid \$424.00/month and credit card debt for which he paid approximately \$250.00/month. (Testimony, Ex. 1)

In addition to the foregoing, I take administrative notice of the 2021 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov.dor/docs/dor/health-care/2021>, and in particular, Tables 1-6 which include the Affordability Schedule and other financial information used in making 2021 individual mandate tax penalty determinations.

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

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

The appellant submitted a statement of grounds for appeal (Ex. 1), claiming that the individual mandate did not apply to him during 2021 because the expense of purchasing health insurance would have caused a serious deprivation of food, clothing, shelter or other necessities. He also submitted a letter with his statement in which he stated in part that after he left his job in March, 2021, he held a succession of jobs in which health insurance was not offered. He further stated that he made \$20,000.00 less in 2021 than in 2020, and could barely afford to cover his basic monthly expenses.

The appellant had MCC insurance from January through April, 2021, but indicated on his Schedule HC that he was uninsured for the whole year. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a tax penalty; for Tax Year 2021, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Since the appellant indicated that he did not have insurance for the year, he was assessed and is appealing a penalty of twelve months. (In fact, since the appellant had insurance for four months, he should have only been assessed a penalty of five months-i.e.-the months of uninsurance less the gap period of three months.)

The appellant testified credibly that he had employer health insurance for the first four months of 2021 and then worked in three different jobs where no health insurance was offered. He testified that he investigated options through the Health Connector, but could not proceed because the open enrollment period had closed. Finally, he testified that he had health insurance for several years prior to 2020, and got a new job in 2022 with employer health insurance.

The evidence provided by the appellant established that his income for 2021, \$28,914.00, was less than 300% of the federal poverty level (FPL), which for 2021 was \$38,280.00 for an individual. Table 3 of the Affordability Schedule indicates that an individual filing separately with a federal adjusted gross income between \$25,521.00 and \$31,900.00 is deemed to be able to afford a monthly premium of \$101.19 (4.20% of \$28,914.00/12). Table 4 of the Premium Schedule indicates that a 60-year-old individual (the age of the appellant in 2021) in Bristol County (where the appellant resided in 2021) could have purchased private health insurance for \$401.00 per month, more than the monthly amount deemed affordable from Table 3. Thus, according to the foregoing analysis, the appellant could not have purchased affordable private health insurance in 2021.

Since the appellant's income was within 300% of the FPL, the appellant should have qualified for subsidized health insurance through the Health Connector, assuming he met all other eligibility criteria, and for which he would have been subject to a subsidized premium of approximately \$101.19 per month, pursuant to the aforementioned Affordability Schedule in Table 3.

Even though subsidized health insurance may have been affordable to the appellant under the law, he may nevertheless not be subject to a penalty for failing to get health insurance for the months in question if he can show that he experienced a hardship during 2021.<sup>2</sup> Examples of hardships include being homeless or overdue in rent or mortgage payments, receiving a shut-off notice for utilities, or incurring unexpected increases in basic living expenses due to domestic violence, death of a family member, sudden responsibility for providing care for a family member or fire, flood or natural disaster. In addition, the appellant's tax penalty for 2021 could be waived if he experienced financial circumstances such that the expense of purchasing health insurance would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08.

The evidence presented by the appellant in this case is sufficient to establish that he experienced a financial hardship as defined by law so as to waive his penalty for the months in question. The appellant testified that in 2021, he incurred basic monthly expenses of approximately \$2959.00, including payments of his personal loan and credit card debt. Those expenses were more than his regular monthly pre-tax income of approximately \$2410.00, thereby making a monthly payment of \$101.19 for subsidized health insurance unmanageable. Hence,

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<sup>2</sup> Since the appellant testified that he was outside the open enrollment period when he investigated insurance options, he could not have obtained insurance even if it was affordable. However, he filed an appeal of the penalty based on financial hardship and the affordability analysis will be considered notwithstanding the fact that he was not eligible to obtain insurance according to his testimony.

it is concluded that the totality of the evidence presented by the appellant established that he experienced financial circumstances such that the expense of purchasing health insurance that met minimum creditable coverage standards would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08 (1)(e).

Based on the foregoing, the appellant's request for a waiver from the penalty is **granted** for the months for which he was assessed. The determination that the appellant is eligible for a hardship waiver is with respect to 2021 only and is based upon the extent of information submitted in this appeal.

**PENALTY ASSESSED**

Number of Months Appealed:   12  

Number of Months Assessed:   0  

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

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: PA21-2090

**Appeal Decision:** Penalty Overturned in Part

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

**Hearing Date:** October 19, 2022

**Decision Date:** November 17, 2022

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The appellant appeared at the hearing which was held by telephone on October 19, 2022, and testified under oath. The hearing record consists of his testimony and the following documents which were admitted into evidence without objection:

- Ex. 1—Statement of Grounds for Appeal—2021
- Ex. 2—Appeal Case Information from Schedule HC <sup>1</sup>
- Ex. 3—Notice of Hearing

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The appellant is 37-years-old, is single and does not have children. He did not have health insurance in 2021. He resided in Norfolk County in 2021. (Testimony, Ex. 2)
2. Prior to 2021, the appellant last had health insurance in 2011. He believes that he has paid a penalty for not having health insurance for every year since 2014. (Testimony)
3. The appellant was employed in 2021. The employer did not offer health insurance. He investigated health insurance options on the Health Connector website and determined that a monthly premium would cost approximately \$380.00 which he could not afford. (Testimony)

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<sup>1</sup> Ex. 2 is a computer printout that extracts information submitted by the appellant on Schedule HC as part of his 2021 Massachusetts income tax return. It also contains information about prior appeals, if any.

4. The appellant has been employed in 2022 and has not enrolled in health insurance. He visited the Health Connector website to consider his options, and created a profile, but was unable to shop. It is not known why he could not shop. (Testimony)
5. The appellant reported an adjusted gross income of \$36,658.00 on his 2021 federal tax return, and reported that he was single with no dependents. (Testimony, Ex. 2)
6. In 2021, the appellant had regular monthly expenses of approximately \$1681.00 for rent (\$733.00), heat (\$50.00), electricity (\$100.00), automobile insurance (\$78.00), gasoline (\$120.00) and food (\$600.00). In addition, he paid \$350.00/month for a student loan. (Testimony)

In addition to the foregoing, I take administrative notice of the 2021 schedule HC Instructions and Worksheets, available at [http://www.mass.gov.dor/docs/dor/health-care/2021](http://www.mass.gov/dor/docs/dor/health-care/2021), and in particular, Tables 1-6 which include the Affordability Schedule and other financial information used in making 2021 individual mandate tax penalty determinations.

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

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

The appellant submitted a statement of grounds for appeal (Ex. 1), claiming that the individual mandate did not apply to him during 2021 because the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a tax penalty; for Tax Year 2021, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Since the appellant was uninsured for the entire year, he was assessed and is appealing a penalty of twelve months.

The appellant testified credibly that the last time he had health insurance prior to 2021 was in 2011. He testified that he has paid a penalty for not having insurance for every year since 2014. He testified that he was employed in 2021, but the employer did not provide health insurance. He testified that he investigated health insurance options through the Health Connector and determined that a monthly premium would have cost approximately \$380.00 which he could not afford. Finally, he testified that he has not been enrolled in health insurance in 2022.

The evidence provided by the appellant established that his income for 2021, \$36,658.00, was less than 300% of the federal poverty level (FPL), which for 2021 was \$38,280.00 for an individual. Table 3 of the Affordability Schedule indicates that an individual filing separately with a federal adjusted gross income between \$31,901.00 and \$38,280.00 is deemed to be able to afford a monthly premium of \$152.74 (5.00% of \$36,658.00/12). Table 4 of the Premium Schedule indicates that a 36-year-old individual (the age of the appellant in 2021) in Norfolk County (where the appellant resided in 2021) could have purchased private health insurance for \$275.00 per month, more than the monthly amount deemed affordable from Table 3. Thus, according to the foregoing analysis, the appellant could not have purchased affordable private health insurance in 2021.

Since the appellant’s income was within 300% of the FPL, the appellant should have qualified for subsidized health insurance through the Health Connector, assuming he met all other eligibility criteria, and for which he would

have been subject to a subsidized premium of approximately \$152.74 per month, pursuant to the aforementioned Affordability Schedule in Table 3.

Even though subsidized health insurance may have been affordable to the appellant under the law, he may nevertheless not be subject to a penalty for failing to get health insurance for the months in question if he can show that he experienced a hardship during 2021. Examples of hardships include being homeless or overdue in rent or mortgage payments, receiving a shut-off notice for utilities, or incurring unexpected increases in basic living expenses due to domestic violence, death of a family member, sudden responsibility for providing care for a family member or fire, flood or natural disaster. In addition, the appellant's tax penalty for 2021 could be waived if he experienced financial circumstances such that the expense of purchasing health insurance would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08.

The evidence presented by the appellant in this case is insufficient to establish that he experienced a financial hardship as defined by law so as to waive his penalty for the months in question. The appellant testified that in 2021, he incurred basic monthly expenses of approximately \$2031.00 including his student loan repayment. Those expenses were less than his regular monthly pre-tax income of approximately \$3054.00, thereby making a monthly payment of \$152.74 for subsidized health insurance seemingly manageable. While it is recognized that an approximate difference between income and expenses of \$1023.00/month is not a panacea, it does not appear on its face that the payment of \$152.74, for health insurance would have caused an undue hardship.

Based on the foregoing, it is concluded that the appellant could have afforded subsidized health insurance and failed to establish that he experienced a financial hardship that would entitle him to a waiver of the penalty. Notwithstanding this conclusion, the penalty will be reduced to one month in order to mitigate the harshness of a full penalty and perhaps incentivize the appellant to obtain insurance going forward. A reduced penalty makes the point that the appellant is expected to comply with the Legislature's requirement that Massachusetts residents must have compliant health insurance. Additionally, while the foregoing analysis seemingly demonstrates that the appellant could have afforded insurance, the difference of \$1023.00 may not have been an adequate cushion for unexpected expenses which inevitably arise.

Accordingly, based on the totality of the evidence, the appellant's request for a waiver from the penalty is **granted** for eleven of the twelve months in question. The determination that the appellant is eligible for a partial waiver is with respect to 2021, only and is based upon the extent of information submitted by him in this appeal.

**PENALTY ASSESSED**

Number of Months Appealed:   12  

Number of Months Assessed:   1  

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.

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

**ADDENDUM**

The appellant is advised to investigate health insurance options for 2023 during the open enrollment period which runs from November 1, 2022 until January 23, 2023, either through [mahealthconnector.org](https://mahealthconnector.org) or by contacting customer service at 1-877-623-6765 for assistance.

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA21-2092

**Appeal Decision:** Penalty Overturned in Full

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

**Hearing Date:** October 19, 2022

**Decision Date:** November 20, 2022

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The appellant husband appeared at the hearing which was held by telephone on October 19, 2022 and testified under oath. The hearing record consists of his testimony and the following documents which were admitted into evidence without his objection:

Ex. 1—Statement of Grounds for Appeal—2021

Ex. 2—Appeal Case Information from Schedule HC <sup>1</sup>

Ex. 3—Notice of Hearing <sup>2</sup>

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The appellant husband and wife are both 32-years-old and have four children. In 2021, they had health insurance for the entire year. (Testimony, Ex. 2)
2. The appellants had health insurance through the Christian Health Ministries (CHM) in 2021. They have had the same coverage since 2019. They paid \$650.00/month for a plan that covered the whole family. (Testimony, Ex. 1)
3. In 2020, the husband prepared their tax returns using TurboTax software. He used different software in 2021 and indicated on their Schedule HC that they were uninsured for the whole year because the he was unable to find an option for CHM coverage on Schedule HC. (Testimony)

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

<sup>2</sup> The appellant husband testified that he had mailed a package of information to the Appeals Unit which contained details of their insurance coverage in 2021. The package was not located and no additional information regarding their insurance was included in their file.

4. The appellant husband was employed in 2021 and had access to employer health insurance. He declined that coverage because it was much more expensive than what they had under their CHM plan. Additionally, their CHM plan offered broad coverage with which they had no issues in the past. (Testimony)

In addition to the foregoing, I take administrative notice of a 2021 Health Connector Report which contains a summary of information reported to the Health Connector by health arrangements provided by an established religious organization seeking minimum creditable coverage status for 2020 and 2021. The report is located on the following publicly available CCA page listing reports and publications: <https://www.mahealthconnector.org/about/policy-center/reports-publications>.

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

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

The appellants submitted a statement of grounds for appeal (Ex. 1) claiming that the individual mandate did not apply to them during 2021 for “other” reasons. They also submitted a letter with their statement in which they stated in part that they had health insurance through CHM which is an approved alternative to health insurance under the Affordable Care Act (ACA). They further stated that all their medical expenses were covered either by them or by CHM.

Although the appellants had health insurance for the whole year, they indicated on their Schedule HC that they did not have minimum creditable coverage (MCC) for the year. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a tax penalty; for Tax Year 2021, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Since the appellants indicated that they were uninsured, they were assessed and are appealing a penalty of twelve months.

The appellant husband testified credibly that since 2019, they have had health insurance through CHM which provided broad coverage for their family. He testified that he used different tax software in 2021 when he prepared their tax returns and was unable to find an option on Schedule HC for CHM insurance as a result of which he indicated that they were uninsured for the whole year.

Massachusetts requires all health insurance issued in the state to comply with minimum creditable standards (MCC). In general, a health benefit plan must provide core services and a broad range of medical benefits as set forth in 956 CMR 5.03. In 2019, the Health Connector updated its MCC regulations to set certain standards for which kinds of health arrangements, commonly known as health care sharing ministries, or HCSMs, can be used to satisfy the MCC requirement. Pursuant to 956 CMR 5.03(3)(d), any health arrangement provided by an established religious organization comprised of individuals with sincerely held beliefs is deemed to meet MCC standards if it comports with the requirements listed in 5.03(3)(d) 2-6.

As indicated in Footnote 2, there is no documentation in the file regarding the appellants’ CHM insurance. Notwithstanding this lack of information, the appellants offered credible testimony to establish that they were enrolled in insurance issued by CHM throughout 2021 which satisfies the MCC requirements of 956 CMR 5.03.

Based on the totality of the evidence, it is concluded that the appellants' request for a waiver from the penalty is **granted** for the months for which they were assessed. The determination that they are eligible for a waiver is with respect to 2021, only and is based upon the extent of information submitted by them in this appeal.

**PENALTY ASSESSED**

Number of Months Appealed (husband):   12  

Number of Months Assessed (husband):   0  

Number of Months Appealed (wife):   12  

Number of Months Assessed (wife):   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.

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

**ADDENDUM**

If the appellants are enrolled in health insurance through CHM in 2022, when they fill out their 2022 Schedule HC, they are advised to review the Line 4a note concerning health arrangements provided by established religious organizations on what will be p. HC-3 of the 2022 MA Schedule HC Instructions.

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA21-2093

**Appeal Decision:** Penalty Overturned in Full

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

**Hearing Date:** October 19, 2022

**Decision Date:** November 19, 2022

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The appellant appeared at the hearing which was held by telephone on October 19, 2022, and testified under oath. The hearing record consists of his testimony and the following documents which were admitted into evidence without objection:

Ex. 1—Statement of Grounds for Appeal—2021

Ex. 2—Appeal Case Information from Schedule HC <sup>1</sup>

Ex. 3—Notice of Hearing

The record was held open at the conclusion of the hearing for documentation requested by the hearing officer. The documentation was submitted in a timely manner and was marked as follows:

Ex. 4—2021 Form 1095-B

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The appellant is 53-years-old, is married and has no dependents. In 2021, he had minimum creditable coverage (MCC) health insurance from January through August. (Testimony, Ex. 4)
2. The appellant's wife had employer-sponsored health insurance for all of 2021. The appellant was enrolled in insurance coverage under her plan from January through June, 2021. (Testimony, Ex.4)
3. The appellant began a new job in July and remained employed until the end of August. His employer was based in Illinois and offered health insurance. He enrolled for both months of employment and received a

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<sup>1</sup> Ex. 2 is a computer printout that extracts information submitted by the appellant on Schedule HC as part of his 2021 Massachusetts income tax return. It also contains information about prior appeals, if any.



Form 1095-C which indicated that he was enrolled in insurance for July and August and paid a monthly premium of \$102.00. (Testimony, Ex. 1)

4. The appellant commenced a new job in September and had a 90-day waiting period before he was able to enroll in employer health insurance. He has been enrolled since January 1, 2022. (Testimony)
5. The appellant inquired whether he could re-enroll in his wife's employer coverage for the remainder of the year, but was unable to do so due to a closed open enrollment period. (Testimony)
6. The appellant prepared his own tax returns for 2021 and mistakenly indicated on his Schedule HC that he was uninsured for the whole year. (Testimony, Ex. 2)

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

The appellant submitted a statement of grounds for appeal (Ex. 1) claiming that the individual mandate did not apply to him in 2021 for "other" reasons. He also submitted a letter with his statement in which he stated in part that he had insurance from January through June through his wife, and was in a waiting period for insurance after he started a new job in September.

Although the appellant was insured from January through August, he indicated on his Schedule HC that he was uninsured for the whole year. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a tax penalty; for Tax Year 2021, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Since the appellant indicated that he did not have insurance for any part of the year, he was assessed and is appealing a penalty of twelve months.

The appellant testified credibly that he was enrolled in health insurance under his wife's employer insurance from January through June. He testified that he then started a new job which lasted from July through August and was enrolled in employer health insurance for that period of time. He testified that he subsequently started another job in September and had a 90-day waiting period before he could enroll in health insurance. He testified that he has been enrolled since January 1, 2022. Finally, he testified that he prepared his 2021 tax returns and mistakenly indicated on his Schedule HC that he was uninsured for the entire year.

With regard to the months of January through June, the appellant submitted a Form 1095-B which indicates coverage for the months of January through June issued by Harvard Pilgrim which is based in Massachusetts. The form also indicates that his wife worked for a Massachusetts-based employer. The form in question is used to report certain information to the Internal Revenue Service (IRS) and to taxpayers about individuals who are covered by minimum essential coverage (MEC). On its own, the form does not establish that the appellant was enrolled in minimum creditable coverage (MCC) insurance, the standard required by the state for all residents who obtain health insurance. Insurance that meets MEC standards under the Affordable Care Act does not necessarily meet with MCC standards. However, information on the form establishes that the insurance was issued by a state insurer and that the employer is based in the state. As such, since most state insurers issue plans in compliance with MCC standards, it is almost certain that his insurance complied with state requirements.

Hence, it is concluded that the appellant provided substantial and credible evidence which established that he was enrolled in MCC health insurance for the months of January through June.

With regard to the months of July and August, the appellant submitted a Form 1095-C as proof of coverage. This form is provided by large scale employers to the Internal Revenue Service (IRS) and to taxpayers with information about health insurance offered to employees, including details about that coverage. Like the aforementioned Form 1095-B, the form does not establish that the appellant was enrolled in MCC insurance. Since the employer is based in Illinois, it is unlikely that the insurance met Massachusetts standards. Nonetheless, at the very least the appellant complied with the spirit of the mandate by enrolling in insurance for which he paid a premium of \$102.00/month, and it would be unnecessarily harsh to penalize him for having insurance that may not have met state requirements for those two months.

As for the months of September through November, since the appellant was in a 90-day waiting period for employer health insurance for which he ultimately enrolled in January, 2022, those months should not be considered in the calculation of the penalty. Finally, in light of the foregoing conclusion that the appellant had insurance from January through August, the appellant is entitled to the application of the aforementioned three-month gap for the month of December.

Based on the totality of the evidence, it is concluded that since the appellant was enrolled in insurance from January through August, and was in a waiting period from September through November, he is not subject to a penalty for any part of the year. His request for a waiver from the penalty is **granted** for the months for which he was assessed. The determination that the appellant is eligible for a waiver is with respect to 2021, only and is based upon the extent of information submitted by him in this appeal.

**PENALTY ASSESSED**

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

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

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: PA21-2094

**Appeal Decision:** Penalty Overturned in Full

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

**Hearing Date:** October 19, 2022

**Decision Date:** November 18, 2022

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The appellant appeared at the hearing which was held by telephone on October 19, 2022, and testified under oath. The hearing record consists of her testimony and the following documents which were admitted into evidence without objection:

- Ex. 1—Statement of Grounds for Appeal—2021
- Ex. 2—Appeal Case Information from Schedule HC <sup>1</sup>
- Ex. 3—Notice of Hearing

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The appellant is 44-years-old, is single and does not have children. She did not have health insurance in 2021. She resided in Barnstable County, MA in 2021. (Testimony, Ex. 2)
2. The appellant moved to Massachusetts in or around April, 2020, and did not have health insurance for the remainder of the year. She was not subject to a penalty for failure to obtain insurance. (Testimony)
3. The appellant was employed in 2021. Her employer did not offer health insurance. As a new resident to the state, she was not familiar with the state health insurance law. She investigated insurance options on the Health Connector website and found it very difficult to navigate. She also received several phone calls from brokers and became overwhelmed by the calls and the process, and did not proceed any further. (Testimony)

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<sup>1</sup> Ex. 2 is a computer printout that extracts information submitted by the appellant on Schedule HC as part of her 2021 Massachusetts income tax return. It also contains information about prior appeals, if any.

4. The appellant took care of her elderly, ill parents in 2021. Her mother had dementia and died in April, 2021. She paid part of the funeral expenses in the amount of \$8090.00. (Testimony, Ex. 1)
5. The appellant has continued to provide care for her father in 2022. She was not planning to stay in the state and did not enroll in insurance for the year. (Testimony)
6. The appellant reported an adjusted gross income of \$40,079.00 on her 2021 federal tax return, and reported that she was single with no dependents. (Testimony, Ex. 2)
7. In 2021, the appellant had regular monthly expenses of approximately \$1545.00 for rent which included heat and electricity (\$850.00), cell phone (\$90.00), automobile loan (\$290.00), automobile insurance (\$35.00), gasoline (\$80.00) and food (\$200.00). (Testimony)

In addition to the foregoing, I take administrative notice of the 2021 schedule HC Instructions and Worksheets, available at <http://www.mass.gov/dor/docs/dor/health-care/2021>, and in particular, Tables 1-6 which include the Affordability Schedule and other financial information used in making 2021 individual mandate tax penalty determinations.

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

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

The appellant submitted a statement of grounds for appeal (Ex. 1), claiming that the individual mandate did not apply to her during 2021 because she incurred a significant, unexpected increase in essential expenses resulting directly from the consequences of the sudden responsibility for providing full care for herself, an aging parent or other family member. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a tax penalty; for Tax Year 2021, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Since the appellant was uninsured for the entire year, she was assessed and is appealing a penalty of twelve months.

The appellant testified credibly that she moved to Massachusetts in April, 2020, and did not have health insurance for the duration of the year. She testified that for 2021 she investigated her health insurance options through the Health Connector and found it difficult to navigate the website. She further testified that she received several phone calls from brokers and became overwhelmed by the process. She testified that she was employed in 2021, but the employer did not offer health insurance. She testified that she took care of her elderly, ill parents during the year. She testified that her mother died of dementia in April, 2021, and she paid part of her funeral expenses. Finally, she testified that she continued to take care of her father in 2022, but did not enroll in health insurance because she was not planning to stay in the state.

With respect to the ground on which she filed her appeal, the appellant did not claim that she provided full care for her parents which was underscored by the fact that she worked on a full-time basis and could not therefore be considered as a full-time caretaker. Second, with the exception of the funeral cost for her mother, she did not argue that she paid any other expenses related to the care of her parents. Accordingly, it is concluded that she failed to establish that she incurred a significant, unexpected increase in essential expenses resulting from having to provide full care for her aging parents. However, since she presented evidence during the hearing of financial

hardship, her appeal will be considered on the ground that the expense of purchasing health insurance in 2021 would have caused a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08.

The evidence provided by the appellant established that her income for 2021, \$40,079.00, was greater than 300% of the federal poverty level (FPL), which for 2021 was \$38,280.00 for an individual. Table 3 of the Affordability Schedule indicates that an individual filing separately with a federal adjusted gross income between \$38,281.00 and \$44,660.00 is deemed to be able to afford a monthly premium of \$248.82 (7.45% of \$40,079.00/12). Table 4 of the Premium Schedule indicates that a 43-year-old individual (the age of the appellant in 2021) in Barnstable County (where the appellant resided in 2021) could have purchased private health insurance for \$294.00 per month, more than the monthly amount deemed affordable from Table 3. Thus, according to the foregoing analysis, the appellant could not have purchased affordable private health insurance in 2021.

In 2021, as a result of the federal American Rescue Plan, there was no upper income limit to be eligible to receive advance premium tax credits (APTC). Any individual who purchased coverage through the Health Connector could have received APTCs, even if his/her income was greater than 400% of the FPL, so long as the annual premium for the second lowest cost silver plan for his/her household exceeded 8.5 percent of his/her annual household income and s/he met other non-income criteria to receive APTCs. Since the appellant never filed an application with the Health Connector to determine whether she was eligible for APTCs, the cost of the second lowest cost silver plan for her household cannot be established. Accordingly, the appellant's potential eligibility for APTCs in 2021 is not known.

Based on the totality of the evidence, it is concluded that 1) the appellant would not have been eligible for subsidized insurance because her income exceeded 300% of the federal poverty level and it cannot be determined whether she would have been eligible for APTCs; 2) health insurance was not available through employment; and 3) she could not have purchased affordable insurance on the private market. Accordingly, her request for a waiver from the penalty is **granted** for the months for which she was assessed. The determination that the appellant is eligible for a waiver is with respect to 2021 only and is based upon the extent of information submitted in this appeal.

**PENALTY ASSESSED**

Number of Months Appealed:   12  

Number of Months Assessed:   0  

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

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

Hearing Officer

Cc: Connector Appeals Unit

**ADDENDUM**

The appellant is advised to investigate health insurance options for 2023 during the open enrollment period which runs from November 1, 2022 until January 23, 2023, either through **mahealthconnector.org** or by contacting customer service at 1-877-623-6765 for assistance.