

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION

Appeal Decision: Denied

Hearing Issue: 2016 Tax-Year Penalty

Hearing Date: July 19, 2017

Decision Date: September 28, 2017

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 a hardship appeal, pursuant to the provisions of Massachusetts General Laws, Chapter 111M, Section 4, and 956 CMR 6.07.

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on July 17, 2017. The Appellant offered testimony under oath or affirmation.

At the end of the hearing, the record was closed. The hearing record consists of the Appellant's testimony and the following documents which were admitted in evidence:

- Exhibit 1: Appeal Case Information from Schedule HC
- Exhibit 2: 2/24/17 Appeal (6 pages)
- Exhibit 3: 6/15/17 Notice of Hearing (3 pages)

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant appealed from the assessment of a twelve-month penalty against him on his 2016 state income tax return. (Exhibit 1)

Massachusetts Health Connector Appeals Unit

Number of months appealed: 12

Number of months assessed: 12

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

cc. Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

Appeal Decision: xx Penalty Overturned in Full _____Penalty Upheld
 Penalty Overturned in Part

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: July 20, 2017 Decision Date: October 18, 2017

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 July 20, 2017. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2016
- Exhibit 2: Statement of Grounds for Appeal-2016 signed and dated by Appellant on March 20, 2017 with letter in support of appeal attached
- Exhibit 3: Notice of Hearing sent to Appellant dated June 15, 2017 for July 20, 2017 hearing
- Exhibit 4: Two of Appellant's W-2 forms, 2016
- Exhibit 5: U.S. Bankruptcy Court, Chapter 13 Trustee's final report and accounting regarding Appellant's petition for bankruptcy, December 23, 2016
- Exhibit 6: Appellant's miscellaneous bills for monthly expenses, 2016, 2017

CONNECTOR APPEALS UNIT

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2016 Massachusetts tax return as a single person with no dependents claimed, was 43 years old in 2016 (Exhibit 1).
2. Appellant lived in Worcester County, MA in 2016 (Exhibit 1).
3. Appellant's Federal Adjusted Gross Income for 2016 was \$50,717 (Exhibit 1).
4. Appellant had three jobs in 2016. He had one job in January and part of February at which he earned approximately \$22,000 during the two months. He had a second job which lasted until some time in May. He earned \$7,796 at this job; he worked the rest of the year at a job where he earned \$20,626. In between the second and third job, he was unemployed for a few weeks (Testimony of Appellant, Exhibit 4).
5. Appellant did not try to find health insurance through the Connector in 2016. He was offered health insurance at his third job, but he would have had to pay 100% of the cost or about \$130 a week. He was not offered health insurance at the first two jobs he had (Testimony of Appellant).
6. Appellant was uninsured all of 2016. Appellant has been assessed a tax penalty for the year; the appellant has appealed this assessment, claiming that the cost of purchasing health insurance would have caused the appellant to experience a serious deprivation of basic necessities (Exhibits 1, 2, Testimony of Appellant).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
8. According to Table 3 of Schedule HC for 2016, the appellant with no dependents who filed taxes as a single person, with an adjusted gross income of \$50,717 could afford to pay \$343 per month for health insurance. According to Table 4, Appellant, age 43 and living in Worcester County, could have purchased insurance for \$237 per month (Schedule HC, Tables 3 and 4, 2016). However, the appellant earned very different amounts per month during the year, depending upon which of the three jobs he had at the time. For the first two months of the year, Appellant earned over \$10,000 a month and could afford to spend \$813 a month on coverage. At the second job, he

CONNECTOR APPEALS UNIT

earned about \$2,000 a month. During this period, he could afford to spend \$84 a month for health insurance. He was then unemployed for several weeks and during the last six months of the year, earned approximately \$3,300 a month. During these months, he could afford to spend \$244 a month.

9. Private insurance was affordable for the appellant in 2016 except for the period from March through June when insurance was not affordable for the appellant (Schedule HC for 2016).

10. According to Table 2 of Schedule HC for 2016, Appellant would have been ineligible for the Connector Care program because of his income except for the period from March through June when he earned at a rate which was less than \$35,310 per year (Table 2 of Schedule HC-2016).

11. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2016 (Testimony of Appellant).

12. Appellant did not fall more than thirty days behind in rent payments in 2016 (Testimony of Appellant).

13. Appellant did not receive any shut-off notices for basic utilities in 2016 (Testimony of Appellant).

14. Appellant had the following monthly expenses for basic necessities in 2016: rent including heat-\$875; electricity-\$70; telephone and internet-\$90; food-\$360; car and renter's insurance-\$120; gas-\$120; clothing \$20. The appellant had \$1,000 in car repairs during 2016. Appellant paid \$100 a month for credit card debt (Testimony of Appellant, Exhibit 2).

15. Appellant filed for bankruptcy in 2014. The trustee's final report and accounting was issued on December 23, 2016. During 2016, Appellant paid \$421 a month to creditors (Exhibit 5, and Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2016 should be waived, either in whole or in part.

CONNECTOR APPEALS UNIT

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 had no health insurance in 2016. Appellant has been assessed a tax penalty for twelve months. The appellant appealed this assessment. Exhibits 1 and 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 private market, or through a government-sponsored program. If affordable insurance was available, we must determine if such insurance was, in fact, not affordable to the appellant because Appellant experienced a financial hardship as defined in 956 CMR 6.08.

Appellant testified that he had three jobs in 2016. Only the last one which he had from some time in June through December offered health insurance. The cost for coverage was approximately \$520 a month, more than the \$244 could afford to pay. See Table 3 of Schedule HC2016. See the testimony of the appellant which I find credible. Appellant had no access to affordable employer-sponsored insurance in 2016.

According to Table 2 of Schedule HC for 2016, Appellant, whose income varied greatly during the year, would have been ineligible for the Connector Care program for all but the period between March and June when he was either unemployed or was paid at a rate less than \$35,310 a year. See Table 2 of Schedule HC-2016, 956 CMR 12.00 et. seq. and Exhibit 1. There is no evidence in the record that the appellant was eligible for any other government-sponsored plan during other periods in 2106.

According to Table 3 of Schedule HC for 2016, the appellant with no dependents who filed taxes as a single person, with an adjusted gross income of \$50,717 could afford to pay \$343 per month for health insurance. According to Table 4, Appellant, age 43 and living in Worcester County, could have purchased insurance for \$237 per month (Schedule HC, Tables 3 and 4, 2016). However, the appellant earned very different amounts per month during the year, depending upon which of the three jobs he had at the time. For the first two months of the year, Appellant earned over \$10,000 a month. At the second job, he earned about \$2,000 a month. During this period, he could afford to spend \$84 a month for health insurance. He was then unemployed for

CONNECTOR APPEALS UNIT

several weeks and during the last six months of the year, earned approximately \$3,300 a month. During these months, he could afford to spend \$244 a month.

Affordable health insurance was available to the appellant during 2016. In January and February, Appellant could have purchased a Health Connector plan. Once he left his first job and was earning at a rate of about \$24,000 a year, Appellant could have switched to a ConnectorCare plan. Once he no longer qualified for a ConnectorCare plan because of an increase in income (starting some time in June), Appellant would then have been able to obtain an affordable Health Connector plan. As long as he applied for a new plan within 60 days of losing coverage, he would not have had to wait for the next open enrollment period. See 45 CFR 155.410 and 420 which provide for open enrollment periods during which individuals may enroll in health care plans and for special open enrollment periods when individuals may enroll outside of the open enrollment period if they have a qualifying life event.

Because some affordable insurance was available to the appellant throughout the year, we need to determine whether pursuant to 956 Code of Massachusetts Regulations 6.08, a hardship exception is applicable in this matter.

I determine that the cost of purchasing health insurance would have caused the appellant to suffer a serious deprivation of basic necessities from March through December. If we consider the appellant's monthly bills for necessities, car repairs, credit card debt, and bankruptcy payments, the appellant had little or no disposable income left for the purchasing of health insurance. Appellant's monthly bills came to approximately \$2,300. Monthly income, before taxes, was about \$3,200 from some time in June through December. Before that, from March through May, Appellant earned even less and was unemployed for several weeks. Given income and expenses, little or nothing would have been left for basic necessities. See 956 CMR 6.08(1)(e) and 6.08(3). Appellant earned considerable more in January and February, but this job lasted less than two months. Had he enrolled in a Connector Health plan, he would have had to drop coverage almost immediately. Because of this, I determine that his penalty for January and February should be waived also.

Appellant should note that any waiver granted here is for 2016 only and is based upon the specific facts I have found to be true and should not assume that the same determination will be made should Appellant be assessed a penalty in the future.

PENALTY ASSESSED

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

CONNECTOR APPEALS UNIT

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc. Connector Appeals Unit

Addendum: The next open enrollment period starts on November 1, 2017 and ends January 23, 2018. Appellant may wish to apply for coverage for 2018 by applying online at MAhealthconnector.org or by calling Customer Service at 1-877-623-6765 if he does not already have insurance.

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

Appeal Decision: Penalty Overturned in Full Penalty Upheld
 Penalty Overturned in Part

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: July 26, 2017 Decision Date: October 12, 2017

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 July 26, 2017. 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 testimony of the appellant and the following documents which were admitted in evidence:

- Exhibit 1: Appeal Case Information from Schedule HC 2016
- Exhibit 2: Statement of Grounds for Appeal 2016 signed and dated by Appellant on March 1, 2017 with letter in support attached
- Exhibit 3: Notice of Hearing sent to Appellant dated June 27, 2017

FINDINGS OF FACT

CONNECTOR APPEALS UNIT

The record shows, and I so find:

1. Appellant, who turned 35 in June, 2016, filed a 2016 Massachusetts tax return as Head of Household with two dependents claimed (Exhibit 1).
2. Appellant lived in Essex County, MA with Appellant's two minor children, ages 11 and 14, in 2016 (Exhibit 1, Testimony of Appellant).
3. Appellant had a Federal Adjusted Gross Income for 2016 of \$33,368 (Exhibit 1, Testimony of Appellant).
4. Appellant has been employed at the same job since 2014. Appellant was covered by MassHealth and ConnectorCare in the past. She lost her ConnectorCare coverage because of a missed payment in 2015 (Testimony of Appellant).
5. Appellant was offered health insurance through employment. When she lost coverage through the Connector, Appellant applied for health insurance through her job. She had to wait until the next open enrollment period. She obtained coverage as of October 1, 2016. Appellant paid \$234.50 every two weeks for this coverage (Testimony of Appellant, Exhibits 1 and 2).
5. In 2016, Appellant's children were covered by MassHealth (Testimony of Appellant).
6. In 2016, Appellant had health insurance from October through the end of December. She still has coverage through her job (Exhibit 1, Testimony of Appellant).
7. Appellant has been assessed a penalty for six months, January through June, 2016. Appellant appealed this assessment (Exhibits 1, 2).
8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
9. According to Table 3 of Schedule HC for 2016, Appellant, filing as head of household with two dependents claimed with an adjusted gross income of \$33,368 could afford to pay \$95 per month for health insurance. According to Table 4, Appellant, age 35 and living in Essex County, could have purchased insurance for \$221 per month for a plan for an individual. Insurance on the private market would not have been affordable for the appellant during 2016 (Schedule HC for 2016).

CONNECTOR APPEALS UNIT

10. During 2016, the appellant would have been income eligible for Connector Care coverage. According to Table 2 of Schedule HC for 2016, an individual with two dependents and earning less than \$60,270 a year would have met the income eligibility guidelines for the program (Table 2 of Schedule HC-2016; Exhibit 1, Testimony of Appellant).

11. Appellant received no shut-off notices for basic utilities in 2016 (Testimony of Appellant).

12. Appellant did not fall more than thirty days behind in rent payments in 2016 (Testimony of Appellant).

13. In 2016, Appellant did not incur significant and unexpected increase 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 fire, flood, natural disaster, or other unexpected natural or human-caused event (Testimony of Appellant).

14. In 2016, Appellant had the following monthly expenses for basic necessities: rent including heat-\$900; electricity-\$60 on average; food-\$500; clothing-about \$20; telephone: \$120; car insurance-\$120; gas-\$130. In addition, Appellant paid \$1,500 for tuition for her children's schooling (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2016 should be waived 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

CONNECTOR APPEALS UNIT

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. An individual who is covered by a ConnectorCare plan who misses a payment and is dis-enrolled because of non-payment may be reinstated in the plan if the missed payment and the next month's payment are made in full within 30 days of the termination of coverage. See 956 CMR 12.12 (4).

Appellant had no health insurance for the first nine months of 2016. Appellant has been assessed a penalty for six months only, from January through June because she is entitled to a three-month grace period prior to her obtaining coverage as of October 1, 2016. Appellant has appealed this assessment. See Exhibits 1, 2.

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

Appellant would not have been able to afford health insurance through the private market. According to Table 3 of Schedule HC for 2016, Appellant, filing as head of household with two dependents claimed with an adjusted gross income of \$33,368 could afford to pay \$95 per month for insurance. According to Table 4, Appellant, age 35 and living in Essex County, could have purchased insurance for \$221 per month for a plan for an individual. See 956 CMR 6.05 (1)(2), Schedule HC Tables 3 and 4, Exhibit 1.

In 2016, Appellant had access to employer-sponsored health insurance coverage, but not until the open enrollment period. She obtained coverage as soon as she could with an effective start date of October 1, 2016. The coverage was not available to the appellant for the first six months of the year. It was also not affordable for the appellant. Since she enrolled, she has been paying \$243 every two weeks, or approximately \$500 a month, considerably more than the amount affordable for her. See Table 3 of the 2016 Schedule HC (Appellant was deemed able to afford \$95 a month. Under the Affordable Care Act, the appellant was deemed able to afford more, or approximately 0.0966% of her income or about \$270 a month).

Appellant's income was less than \$60,270, the eligibility income cap for a household of three in 2016. Since the cost of her coverage through employment was considered unaffordable under the Patient Protection and Affordable Care Act (see above), the appellant would have been eligible for ConnectorCare coverage despite the availability of employer-sponsored coverage. See 26 CFR 1.36B-2(a)(1) and (2). See 956 CMR 12.00 et. seq. for eligibility requirements. Since Appellant had had ConnectorCare coverage

CONNECTOR APPEALS UNIT

in the past and was dis-enrolled for non-payment, Appellant would have had to pay arrearages in order to enroll. She would have been eligible to enroll during the 2016 open enrollment period.

Since the appellant had access to affordable health insurance in 2016 through the ConnectorCare program, we need to consider whether a financial hardship made insurance unaffordable for the appellant. See 956 Code of Massachusetts Regulations 6.08.

Appellant testified that Appellant had the following expenses for basic necessities in 2016: rent including heat-\$900; electricity-\$60 on average; food-\$500; clothing-about \$20; telephone: \$120; car insurance-\$120; gas-\$130. In addition, Appellant paid \$1,500 for tuition for her children's schooling. I find Appellant's testimony to be credible.

Appellant had monthly income before taxes of about \$2,500. Her expenses, including her children's school tuition, amounted to about \$1,900. After taxes, we can assume the appellant did not have enough money to meet her basic monthly expenses. For example, I note that despite having two minor children, Appellant spent virtually nothing on clothing for her and the children. Based upon these facts, I find that the appellant would have suffered a serious deprivation of basic necessities if she had purchased health insurance, and that health insurance was not affordable for her. See 956 CMR 6.08 (1)(e) and 956 CMR 6.08(3).

Appellant should note that the waiver of the penalty is based upon the facts that I have determined to be true in 2016. Appellant should not assume that a similar determination will be made in the future should the appellant again be assessed a penalty for failure to have health insurance.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COUR

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.

CONNECTOR APPEALS UNIT

Hearing Officer

Cc. Connector Appeals Unit

FINAL APPEAL DECISION

Appeal Decision: xx Penalty Overturned in Full _____Penalty Upheld
 Penalty Overturned in Part

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: July 26, 2017 Decision Date: October 22, 2017

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 July 26, 2017. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2016
- Exhibit 2: Statement of Grounds for Appeal-2016 signed and dated by Appellant on March 31, 2017
- Exhibit 3: Notice of Hearing sent to Appellant dated June 27, 2017 for July 26, 2017 hearing
- Exhibit 4: August 15, 2016 letter sent to Appellant by employer regarding enrollment in health insurance plan

FINDINGS OF FACT

Health Connector Appeals Unit

The record shows, and I so find:

1. Appellant, who filed a 2016 Massachusetts tax return as a single person with one dependent, her minor child, claimed, was 32 years old in 2016 (Exhibit 1).
2. Appellant lived in Worcester County, MA in 2016 (Exhibit 1).
3. Appellant's Federal Adjusted Gross Income for 2016 was \$33,316 (Exhibit 1).
4. Appellant had the same full-time job for five years. She had health insurance through her employment (Testimony of Appellant).
5. At some point in the spring of 2016, Appellant went part-time. She was no longer eligible for insurance. In June, she went back to full-time work, but did not obtain insurance. This may have been due to a clerical error or it may have been due to Appellant's failure to complete paperwork (Testimony of Appellant, Exhibits 1, 4).
6. Appellant had no health insurance from June through December, 2016. She finally obtained insurance through her job as of July 1, 2017. She enrolled during the open enrollment period. She is paying \$115 week for the coverage (Testimony of Appellant).
7. Appellant has been assessed a tax penalty for four months, September through December. The appellant has appealed this assessment (Exhibits 1, 2).
8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
9. According to Table 3 of Schedule HC for 2016, the appellant with one dependent claimed, and with an adjusted gross income of \$33,316 could afford to pay \$172 per month for health insurance. According to Table 4, Appellant, age 32 and living in Worcester County, could have purchased insurance for \$216 per month.
10. Private insurance was unaffordable for the appellant in 2016 (Schedule HC for 2015).
11. According to Table 2 of Schedule HC for 2016, Appellant, earning less than \$47,790 (the income limit for a household of two) per year would have been eligible for the Connector Care program (Table 2 of Schedule HC-2016).

Health Connector Appeals Unit

12. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2016. Two of family members died during 2016 and Appellant gave her relatives \$400 in July and September to help pay for funeral expenses (Testimony of Appellant).

13. Appellant fell more than thirty days behind in rent payments in 2016. She fell behind during the period from August through November (Testimony of Appellant).

14. Appellant did not receive shut-off notices for any utility during 2016 (Testimony of Appellant).

15. Appellant had the following monthly expenses for basic necessities in 2016: rent-\$700; electricity-\$90; heat-\$130; telephone-\$120; food-\$560; gas for car-\$240; car insurance-\$130; student loan payments-\$25; clothing-\$90. Appellant also had \$400 of car repairs in 2016 (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2016 should be waived, either in whole or in part.

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

Appellant had no health insurance from June through December in 2016. Appellant has been assessed a tax penalty for four months only since Appellant is entitled to a three-month grace period after losing coverage. The appellant appealed this assessment. Exhibits 1 and 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

Health Connector Appeals Unit

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

According to Table 3 of Schedule HC for 2016, appellant with one dependent claimed, and with an adjusted gross income of \$33,316 could afford to pay \$172 per month for health insurance. According to Table 4, Appellant, age 32 and living in Worcester County, could have purchased insurance for \$216 per month. See 956 CMR 6.05 (1)(2), Schedule HC Tables 3 and 4, and Exhibit 1. Private insurance was not affordable for the appellant.

Appellant had insurance through her job from January through May. When she changed from full-time to part-time, she lost her coverage. It is unclear from the record whether Appellant lost her coverage because of a clerical error or because of an error by Appellant (not filing the necessary forms in a timely fashion). See Exhibit 4 and the testimony of the appellant. Appellant was not able to obtain insurance through work until the next open enrollment period in 2017. Appellant, as of the date of this hearing, was insured. See the testimony of the appellant which I find credible.

According to Table 2 of Schedule HC for 2016, Appellant, earning less than \$47,790 per year (the limit for a household of two) and having no access to employer-sponsored coverage, would have been eligible for the Connector Care program. See Exhibit 4, Table 2 of Schedule HC-2016 and 956 Code of Massachusetts Regulations 12.00 et. seq.

Since affordable health insurance was available to the appellant, we need to determine whether pursuant to 956 Code of Massachusetts Regulations 6.08, a hardship exception is applicable in this matter.

Appellant had the following monthly expenses for basic necessities in 2016: rent-\$700; electricity-\$90; heat-\$130; telephone-\$120; food-\$560; gas for car-\$240; car insurance-\$130; student loan payments-\$25; clothing-\$90. Appellant also had \$400 of car repairs in 2016. See the testimony of the appellant which I find to be credible.

Appellant's expenses came to approximately \$2,100, without considering car repairs and the money Appellant gave to relatives to cover funeral expenses. If we consider these additional expenses, Appellant's expenses came to almost \$2,200 a month leaving the appellant about \$500 to pay taxes and the cost health insurance. When you consider these expenses, Appellant would have been left with almost no disposable income.

Based upon the facts summarized above, I determine that the appellant had a financial hardship such that the cost of purchasing health insurance would have caused a serious deprivation of basic necessities. See 956 CMR 6.08(1)(a) and (e) and 6.08 (3)

Health Connector Appeals Unit

which allows the Connector to consider other issues raised by the appellant when determining hardship.

In addition, Appellant fell more than 30 days behind in her rent payments from August through November, 2016. See the testimony of the appellant which I find to be credible. Pursuant to 956 CMR 6.08(1)(a), an individual who fell more than 30 days behind in rent payments is deemed to have experienced a financial hardship such that insurance was not affordable for the individual. I determine that the appellant experienced a financial hardship pursuant to 956 CMR 6.08(1)(a) such that health insurance was not affordable for the appellant.

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

Appellant should note that any waiver granted here is for 2016 only and is based upon the specific facts I have found to be true and should not assume that the same determination will be made should Appellant be assessed a penalty in the future.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc. Connector Appeals Unit

Addendum: If the appellant is still paying \$115 a week for health insurance through her employment, she may wish to check with the Connector to find out if she is eligible for less expensive insurance. She can contact the Connector at MAhealthconnector.org or by calling Customer Service at 1-877-623-6765.

CONNECTOR APPEALS UNIT

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant is 52 years old and is Married. Appellant's wife is 44 years old. Appellants live in Norfolk County.
2. Appellants' do have health insurance in 2017.
3. Appellant's wife's mother lives in South Korea. She became ill in 2016 and Appellant's wife traveled to South Korea in 2016 two separate times to care for her mother. Once from January 2016 thru June 2017 and once in November and December 2016. Appellants wife was covered for insurance during these periods of time by the national insurance of South Korea. Appellant discontinued wife's insurance while she was in South Korea. When his wife returned to Massachusetts Appellant tried to reinstate his wife's insurance but was unable to do so.
4. The Appellant's monthly expenses totaled \$2,755.00, consisting of rent \$500.00, 2 cell phones \$200.00, car payment \$270.00, car insurance \$120.00, car gas \$130.00, food \$5200.00, clothing \$75.00, entertainment \$100.00, toiletries \$40.00, credit card \$750.00, dog \$75.00, train transportation \$75.00.
5. The Appellants submitted a Statement of Grounds for Appeal-2016 dated March 28, 2017, stating as grounds for appeal " During 2016 you incurred a significant expense resulting directly from the sudden responsibility for providing full care for an aging parent" but should have appealed under "During 2016, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities." I will hear the Appeal under both grounds.
6. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2016. Table 1 sets forth the income eligibility standards for various family sizes at 150% of the federal poverty level and Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard for the government-subsidized health insurance program. See Mass. G.L. c. 118H, s.3(a)(1). Tables 5 and 6 set forth the tax penalties for 2016.

CONNECTOR APPEALS UNIT

7. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant may have been eligible for subsidized health insurance, since Appellants income of \$44,958.00 was less than \$47,790.00. The monthly premium for health insurance available on the private market in Norfolk County for a 51 year old married couple was \$628.00. The tables reflect that Appellants could afford \$277.24. This is more than what the appellants are deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions)

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellants submitted a Statement of Grounds for Appeal-2016 dated March 28, 2017, stating as grounds for appeal " During 2016 you incurred a significant expense resulting directly from the sudden responsibility for providing full care for an aging parent" but should have appealed under "During 2016, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities." I will hear the Appeal under both grounds.

The Health Care Reform Act of 2006 requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage "so long as it is deemed affordable" under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). However, individuals with incomes up to 150 percent of the Federal Poverty Level ("FPL") are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release ("TIR") 13-1, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2013-releases/tir-13-1.html>. For 2016, 150 percent of the FPL was \$23,595.00 for a married couple. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www>.

CONNECTOR APPEALS UNIT

mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf; *see also* 830 Mass. Code Regs. 111M.2.1(5)(c) (2008). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months. *Id.*

Since Appellants' 2016 income was more than 150 percent of the FPL, making them potentially subject to an individual mandate penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to them in 2016. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and second to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. *See* 2016 Schedule HC Instructions and Worksheets, *supra*.

Appellants reported a federal AGI of \$44,958.00 in 2016, and Appellant's filing status was married. EX 2. According to the Affordability Schedule established by the Connector's board and included in the Instructions and Worksheets of the 2016 Massachusetts Schedule HC, Appellants could afford to pay \$277.24 monthly for health insurance. *See* 2016 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to them from the Premium Tables, at a cost of \$628.00 monthly for coverage. *Id.* at Table 4.

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

On these facts, I find that Appellants have shown that they were precluded from purchasing affordable health insurance during 2016. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that they are exempt from a tax penalty for their non-compliance with the individual mandate.

Accordingly, Appellant's appeal is ALLOWED, and the 2016 penalty assessed is OVERTURNED.

PENALTY ASSESSED

Number of Months Appealed: 8 Number of Months Assessed: 0

CONNECTOR APPEALS UNIT

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

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CONNECTOR APPEALS UNIT

1. Appellant, age 27 during 2016, from Barnstable County, filed single on the tax return with a family size of one.
2. The federal AGI was \$32,771.00.
3. Appellant had two employers. One of the employers offered health insurance, but it was not affordable to Appellant. The employer's insurance would have been \$298.00 per month.
4. Appellant could afford \$136 per month based on the tables in Schedule HC, and the cost would be \$232 based upon those tables.
5. Appellant's expenses for food, shelter, clothing, and transportation used most of the income.

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply to him.

Appellant had two employers, and although there was health insurance available through one of them, it was not affordable. Further, Appellant could not afford health insurance based on the tables in Schedule HC. Appellant's expenses for food, shelter, clothing and transportation used most of the income. Paying for health insurance would have caused a serious deprivation of food, shelter, clothing and transportation.

PENALTY ASSESSED

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

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

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

CONNECTOR APPEALS UNIT

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

CONNECTOR APPEALS UNIT

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant is 31 years old and is now married but was single in 2016. Appellant lives in Suffolk County.
2. Appellant is employed in the medical field.
3. Appellant was going to start a PHD program in Florida and was going to relocate but changed his mind but was in Florida most of the time in January 2016. Appellant applied for and received his work and travel authorization permit in April, 2016. Prior to that date he was unable to work or to apply for health insurance. Appellant then applied for and received a job in New York and was going to relocate but the company rescinded the offer but during this time Appellant had health insurance. Appellant finally received his green card in January 2017 and is now insured (Appellant testimony, Exhibit 4).
4. Appellant does have health insurance in 2017.
5. The Appellant's monthly expenses totaled \$2,787.00, consisting of rent \$1,366.00, internet & cable \$80.00, cell phone \$135.00, transportation \$90.00, credit card \$500.00, clothing \$200.00, student loan \$333.00, moving expense \$83.00.
6. The Appellant submitted a written Statement of Appeal dated March 13, 2017, r "During 2015, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities." .
7. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2016. Table 1 sets forth the income eligibility standards for various family sizes at 150% of the federal poverty level and Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard for the government-subsidized health insurance program. See Mass. G.L. c. 118H, s.3(a)(1). Tables 5 and 6 set forth the tax penalties for 2015.
8. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant would not have been eligible for subsidized health

CONNECTOR APPEALS UNIT

insurance, since Appellants income of \$36,731.00 was more than \$35,310.00. The monthly premium for health insurance available on the private market in Suffolk County for a 30 year old single person with zero dependents was \$143.00. The tables reflect that Appellant could afford \$226.50. This is less than what the appellant is deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions)

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellant submitted a written Statement of Appeal dated March 13, 2017, “During 2015, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities.”

The Health Care Reform Act of 2006 requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage “so long as it is deemed affordable” under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). However, individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”) are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 13-1, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2013-releases/tir-13-1.html>. For 2016, 150 percent of the FPL was \$17,655.00 for a single person with zero dependents. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf>; see also 830 Mass. Code Regs. 111M.2.1(5)(c) (2008). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months. *Id.*

CONNECTOR APPEALS UNIT

Since Appellant's 2016 income was more than 150 percent of the FPL, making her potentially subject to an individual mandate penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to him in 2016. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and second to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2016 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$36,731.00 in 2016, and Appellant's filing status was single with no dependents. EX 2. According to the Affordability Schedule established by the Connector's board and included in the Instructions and Worksheets of the 2016 Massachusetts Schedule HC, Appellant could afford to pay \$226.50 monthly for health insurance. See 2016 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to him from the Premium Tables, at a cost of \$143.00 monthly for coverage with zero dependents *Id.* at Table 4.

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

Appellant is deemed to afford \$226.50 for health insurance coverage because of his income. Private insurance in the market place was \$143.00 per month. However, Appellant did not have the opportunity to apply for health insurance because of his legal status. In addition, Appellant moved once and then was moving again, which also impeded his status to apply for health insurance. Appellant obtained health insurance as soon as his legal status allowed him to do so. On these facts, I find that Appellant has shown that he was precluded from purchasing affordable health insurance during 2016. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that he is exempt from a tax penalty for his non-compliance with the individual mandate.

Accordingly, Appellant's appeal is ALLOWED, and the 2016 penalty assessed is OVERTURNED.

PENALTY ASSESSED

CONNECTOR APPEALS UNIT

Number of Months Appealed: ____3____ Number of Months Assessed: ____0____

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

Appeal Decision: ___ Penalty Overturned in Full ___ Penalty Upheld
___x_ Penalty Overturned in Part

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: August 16, 2017

Decision Date: September 17, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant and her husband appeared at the hearing which was held by telephone on August 16, 2016, and testified under oath. The hearing record consists of their testimony and the following documents which were admitted into evidence without her objection:

- Ex. 1—Statement of Grounds for Appeal—2016
- Ex. 1A—Letter from the appellant, undated
- Ex. 2—Appeal Case Information from Schedule HC ¹
- Ex. 3—Notice of Hearing

FINDINGS OF FACT

¹ Ex. 2 is a computer printout that extracts information submitted by the appellant on Schedule HC as part of her 2016 Massachusetts joint income tax return. It also contains information about prior appeals, if any.

CONNECTOR APPEALS UNIT

The record shows, and I so find:

1. The appellant is 30-years-old and her husband is 35-years-old. They do not have children. She resided in Norfolk County, MA in 2016. The appellant did not have health insurance in 2016. Her husband had insurance for the whole year. (Testimony, Ex. 2)
2. The appellant last had health insurance with MassHealth until July, 2015. Thereafter, she had benefits under Health Safety Net until the beginning of 2016. She was not subject to a penalty for the portion of 2015 for which she was uninsured. (Testimony)
3. The appellant was employed in 2016 and her employer did not offer health insurance. (Testimony)
4. The appellant got married on December 29, 2016, and has been enrolled in her husband's employer provided health insurance since that time. (Testimony, Ex. 1A)
5. The appellant investigated health insurance options through the Health Connector and determined that the lowest monthly premium for an individual plan would have cost approximately \$250.00/month (with a \$5000.00 deductible) which she could not afford. (Testimony)
6. The appellant reported an adjusted gross income of \$169,967.00 on her jointly filed 2016 federal tax return, and reported that she was married with no dependents. Of that amount, the appellant estimated that she earned approximately \$44,000.00. (Testimony, Ex. 2)
7. The appellant lived with her fiancé/husband in 2016 and shared most of the household expenses. (Testimony)
8. In 2016, the appellant had regular monthly expenses of approximately \$2155.00 for her rent (\$1250.00), automobile insurance (\$60.00), gasoline (\$40.00), food (\$600.00), credit card debt (\$150.00), student loan debt (\$40.00) and public transportation (\$15.00). (Testimony)

In addition to the foregoing, I take administrative notice of the 2016 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov/dor/docs/dor/health-care/2016>, and in particular, Tables 1-6 which, as discussed below, include the Affordability Schedule and other financial information used in making 2016 individual mandate tax penalty determinations.

CONNECTOR APPEALS UNIT

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 does not apply to her because during 2016, “other” circumstances prevented her from obtaining insurance. She also submitted a letter with her statement (Ex. 1A) in which she stated in part that the cheapest health insurance options had high deductibles which she could not afford. She further stated that she enrolled in her husband’s insurance after they got married.

The appellant did not have insurance from January through December. 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 2016, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, 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 had health insurance with MassHealth until approximately July, 2015. She testified that she was not subject to a penalty for the months during which she did not have insurance in 2015. She testified that she was employed in 2016, but her employer did not offer insurance. She testified that she investigated her health insurance options through the Health Connector and determined that the cheapest plan would have cost approximately \$250.00/month which she could not afford. Finally, she testified that she got married at the end of December and enrolled in her husband’s employer provided insurance.

The appellant got married on December 29, 2016, and filed a joint tax return for 2016. A typical tax penalty determination requires consideration of an appellant’s adjusted gross income and filing status for the year in question. In this particular matter, because the appellant was technically unmarried for all but two days of 2016, it is not unreasonable, albeit unconventional, to use her individual income of approximately \$44,000.00, and not her joint income of \$169,967.00, to determine whether insurance was affordable for her. It is also noted that although there is no independent documentation to establish what the appellant’s income was in 2016, her estimate of \$44,000.00 was accepted for purposes of this analysis.

CONNECTOR APPEALS UNIT

The evidence provided by the appellant established that her income for 2016, \$44,000.00, was greater than 300% of the federal poverty level, which for 2016 was \$35,310.00 for a single person. Pursuant to the Code of Massachusetts Regulations, 956 CMR 6.05(1), the Connector has established an affordability schedule that sets forth the percentage of an individual's adjusted gross income which s/he can be expected to contribute toward the cost of private health insurance that meets minimum creditable coverage standards. Table 3 of the Affordability Schedule indicates that an individual filing separately with no dependents with a federal adjusted gross income between \$41,196.00 and \$47,080.00 is deemed to be able to afford a monthly premium of \$279.00 (7.60% of \$44,000.00). Table 4 of the Premium Schedule indicates that a 29-year-old individual (the appellant's age in 2016) in Norfolk County (where the appellant resided in 2016) could have purchased private health insurance for \$143.00 per month, less than the monthly amount deemed affordable from Table 3. Thus, according to the foregoing analysis, the appellant could have purchased affordable private health insurance in 2016.

Even though employer health insurance may have been affordable to the appellant under the law, she may nevertheless not be subject to a penalty for failing to get health insurance for the months in question if she can show that she experienced a hardship during 2016. 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 2016 could be waived if she experienced financial circumstances such that the expense of purchasing health insurance would have caused her 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 she experienced a financial hardship as defined by law so as to waive her penalty for the months in question. The appellant testified that in 2016 she incurred basic monthly expenses of approximately \$2155.00. Those expenses were less than her regular monthly pre-tax income of approximately \$3667.00, thereby making a monthly health insurance premium of \$143.00/month manageable. While it is recognized that an approximate difference of \$1512.00 per month is not a panacea, it does not appear on its face that the payment of \$143.00/month for health insurance would have caused an undue hardship.

Based on the totality of the evidence, it is concluded that the appellant could have afforded subsidized health insurance, and she failed to establish that she experienced a financial hardship that would entitle her to a complete waiver of the penalty. Notwithstanding this conclusion, the penalty will be reduced to two months in order to mitigate the harshness of a full twelve-month penalty. In addition, the appellant enrolled in her husband's insurance after their marriage, thereby demonstrating that the mandate to obtain insurance was not lost on her.

CONNECTOR APPEALS UNIT

Therefore, based upon the foregoing, the appellant's request for a waiver from the penalty is granted for ten of the twelve months in question. The determination that the appellant is eligible for a partial waiver is with respect to 2016, only and is based upon the extent of information submitted by the appellant in this appeal.

PENALTY ASSESSED

Number of Months Appealed: 12 Number of Months Assessed: 2

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is 51-years-old, is single, and does not have children. In 2016, he resided in Hampshire County. He had health insurance in December, 2016. (Testimony, Ex. 3)
2. The appellant was employed for approximately one-and-a-half years until October, 2016, when he left his job. The employer offered health insurance which cost approximately \$280.00/month for an individual plan. The appellant never enrolled because the cost was unaffordable. (Testimony)
3. The appellant started a new job almost immediately after he left his position in October, 2016. The employer offered health insurance for which he became eligible after a 90-day waiting period. He enrolled effective February 1, 2017, and pays a monthly premium of \$160.00. (Testimony)
4. While the appellant was in his waiting period, he investigated his eligibility for subsidized health insurance and was determined eligible for MassHealth for the month of December, 2016. At the beginning of 2016, he researched his insurance options on the Health Connector website, but was determined ineligible for subsidized insurance due to his access to employer health insurance. (Testimony, Ex. 3)
5. Prior to 2016, the appellant paid a penalty for several years for failure to obtain health insurance. Beginning with the 2013 tax year, he found the cost of the penalty too high and filed an appeal. By decision dated May 30, 2014, the hearing officer overturned the 12-month penalty he was assessed and concluded that the cost of private insurance and employer insurance was not affordable. She further concluded that he would not have been eligible for subsidized insurance due to his access to employer insurance. (Testimony, Ex. 2) ²
6. The appellant reported an adjusted gross income of \$25,129.00 on his 2016 federal tax return, and reported that he was single with no dependents. (Ex. 3)
7. In 2016, the appellant had regular monthly expenses of approximately \$1367.00 for rent, heat and electricity (\$800.00), car insurance (\$67.00), gasoline (\$200.00), and food (\$300.00). He also incurred approximately \$980.00 for car repairs. (Testimony)

² Although the appellant testified that he stopped paying the penalty beginning with the 2013 tax year, there is no indication in the record that he filed an appeal for the 2014 and 2015 tax years.

CONNECTOR APPEALS UNIT

In addition to the foregoing, I take administrative notice of the 2016 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov.dor/docs/dor/health-care/2016>, and in particular, Tables 1-6 which, as discussed below, include the Affordability Schedule and other financial information used in making 2016 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 does not apply to him because during 2016, the expense of purchasing insurance would have caused a serious deprivation of food, shelter, clothing or other necessities.

The appellant did not have insurance from January through November. 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 2016, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, 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 eleven months, he was assessed and is appealing a penalty of eight months (i.e. the number of months of uninsurance less the gap period of three months).

The appellant testified credibly that although he was employed and eligible for employer health insurance until October, 2016, he never enrolled because he could not afford the monthly premium of approximately \$280.00. He testified that he found a new job shortly after leaving his old position, and after a 90-day waiting period, he enrolled in employer insurance effective February, 2017, for which he pays \$160.00/month. He testified that while in his waiting period, he applied for subsidized health insurance and was determined eligible for MassHealth for the month of December. Finally, he testified that he had paid a penalty for failure to obtain insurance for several years until the 2013 tax year when he appealed and the penalty was overturned.

CONNECTOR APPEALS UNIT

The evidence provided by the appellant established that his income for 2016, \$25,129.00, was within 300% of the federal poverty level, which for 2016 was \$35,310.00 for a single person. Therefore, in 2016, in the absence of employer health insurance and assuming he met all other eligibility criteria, the appellant should have qualified for subsidized health insurance through the Health Connector, and for which he would have been subject to a subsidized premium of approximately \$88.00 per month (\$1055.00/12), based on his income. The premium is determined by calculating 4.20% of income pursuant to the Affordability Schedule in Table 3 referenced in the final paragraph of the Findings.

The issue to be determined is whether the appellant would have been eligible for subsidized insurance through the Health Connector in 2016 in light of his access to employer health insurance. Pursuant to 26 IRC section 36B and 45 CFR section 155.305(f), applicants are eligible for an Advanced Premium Tax Credit (APTC) if they meet qualifying income levels and other eligibility requirements. Massachusetts residents may also be eligible for additional state premium assistance through the Health Connector's ConnectorCare program if: a) their household income does not exceed 300 percent of the Federal Poverty Level (FPL) and b) they are eligible for an APTC. 956 CMR 12.09(1) An applicant who has access to other qualifying health insurance, including insurance through an employer, will be blocked from eligibility for an APTC if the coverage is affordable and meets minimum value standards, as those terms are defined by the law. See 26 CFR section 1.36B-2(c)(3). Coverage for plan year 2016 is considered to be affordable if the employee's contribution for an individual plan is 9.66 percent or less of the employee's projected household modified adjusted income (MAGI). The coverage is considered to meet minimum value standards if it has an actuarial value of at least 60 percent.

In this case, the appellant testified that the monthly cost for an individual plan was approximately \$280.00. That cost is more than 9.66 percent of the appellant's projected household MAGI for 2016 (i.e.—9.66 percent of \$25,129.00 is \$2427.00 or \$202.00/month).³ Hence, since the coverage offered through the employer is significantly higher than \$202.00, he is not considered to have had access to qualifying health insurance and might have been eligible for subsidized insurance through the Connector. See 956 CMR 12.05 and 45 CFR section 155.305 (f)(1)(ii)(B).

Even though subsidized health insurance through the Connector may have been affordable to the appellant under the law, he may nevertheless not be subject to a

³ A MAGI figure was not obtained at the hearing and the record was not held open for documentation to make that calculation. It is recognized that the federal adjusted gross income (AGI) is not the same number as MAGI since the latter number starts with AGI and then adds in certain income sources such as tax-exempt interest, taxable social security and foreign earned income. See 26 USC section 36B(d)(2)(b) and 956 CMR 12.04. Notwithstanding this discrepancy, based on the appellant's testimony, the two numbers were probably very close, if not the same, in which case it is not unreasonable to use the AGI number for purposes of this calculation.

CONNECTOR APPEALS UNIT

penalty for failing to get health insurance for the months in question if he can show that he experienced a hardship during 2016. 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 2016 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 period in question. The appellant testified that in 2016 he incurred basic monthly expenses of approximately \$1367.00. Those expenses were less than his regular monthly pre-tax income of approximately \$2094.00, thereby making a subsidized health insurance premium through the Health Connector of approximately \$88.00/month seemingly manageable. While it is recognized that an approximate difference between income and expenses of \$727.00 per month is not a panacea, it does not appear on its face that the payment of \$88.00/month for health insurance would have caused an undue hardship.

Notwithstanding the foregoing analysis, the penalty will be waived for the following reasons. The appellant offered credible testimony that he incurred a large car repair expense which would have made a monthly premium of \$88.00 challenging. In all likelihood, there were probably other miscellaneous unforeseen expenses that impacted his income. In addition to the foregoing circumstances, the appellant enrolled in employer insurance following his 90-day waiting period, thereby demonstrating that the mandate to obtain insurance was not lost on him. Hence, 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).

Therefore, based upon the foregoing, since the cost of both subsidized health insurance and employer health insurance was not affordable, the appellant's request for a waiver from the penalty is granted for the eight months for which he was assessed. The determination that the appellant is eligible for a hardship waiver is with respect to 2016 only and is based upon the extent of information submitted in this appeal.

CONNECTOR APPEALS UNIT

PENALTY ASSESSED

Number of Months Appealed: 8 Number of Months Assessed: 0

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

Ex. 4—2016 Internal Revenue Service Form 1095-B

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is 27-years-old, is single and has no children. (Testimony)
2. The appellant turned 26-years-old on March 25, 2016. Until March 31, 2016, he had health insurance coverage under his father's plan. (Testimony, Ex. 1A) ²
3. The appellant was a full-time graduate student in 2016. In anticipation of turning 26 and losing his coverage under his father's plan, he made arrangements with the university and filed the requisite forms to enroll in student health insurance effective April 1, 2016. At some point after April 1st, he attempted to use student health services and was advised that he was not insured. He determined that the university had failed to enroll him in insurance, and immediately paid the full enrollment fee for the spring and fall semester. (Testimony, Ex. 1A)
4. Subsequent to the hearing, the appellant obtained a 2016 Form 1095-B indicating that he had health insurance coverage for the months of April-December. (Ex. 4)

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 2016 due to "other" circumstances. He also

² The appellant submitted a letter from Cigna Healthcare which indicated that he had continuous coverage from January 1, 2013 through March 31, 2016. (Ex. 1A) However, the information contained in Ex. 2 does not show that he had insurance from January-March, 2016. For purposes of this analysis, the information from Cigna is deemed reliable and the appellant is considered to have been insured for the period in question.

CONNECTOR APPEALS UNIT

submitted a letter with his appeal (Ex. 1A) in which he stated in part that he was insured for the full year, first under his father's plan, and then under his university's student health insurance plan. He further stated that the information on his 1095-HC was incorrect. 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 2016, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, 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 on his Schedule HC that he had health insurance from July through December, he was assessed a penalty of three months (i.e. the months of uninsurance less the gap period of three months).

The appellant provided credible evidence to establish that he was insured for all of 2016. His testimony was corroborated by a letter from the insurer indicating that he was insured through March 31, 2016, and a Form 1095-B showing coverage for the months of April through December. Accordingly, he should not have been assessed a penalty for any part of the year.

Based upon the totality of the evidence, it is concluded that since the appellant had coverage for all of 2016, his request for a waiver from the penalty for the months in question is granted. The determination that the appellant is eligible for a waiver is with respect to 2016, only and is based upon the extent of information submitted in this appeal.

PENALTY ASSESSED

Number of Months Appealed: 3

Number of Months Assessed: 0

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

CONNECTOR APPEALS UNIT

Hearing Officer

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

1. Appellant, age 53 during 2016, from Norfolk County, filed single on the tax return with a family size of one.
2. The federal AGI was \$47,957.00.
3. Appellant had been residing in California, but could not find work and moved to Massachusetts in April 2016. He found a job and had been promised health insurance, but was laid off before he obtained it.
4. Appellant could afford \$324 per month based on the tables in Schedule HC, and the cost would be \$314 based upon those tables. However, Appellant had incurred significant debts for his move from California and also due to a period of unemployment.
5. Appellant's expenses for food, shelter, clothing, and transportation used most of the income.
6. Appellant has obtained health insurance as of the date of the hearing.

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply to him.

Appellant's employment situation was unstable, and Appellant moved to Massachusetts from California in order to find work in April 2016. Appellant found employment and was promised health insurance but was laid off prior to receiving health insurance. Appellant also incurred significant expenses for his move. Appellant's expenses for food, shelter, clothing and transportation used most of the income. Paying for health insurance would have caused a serious deprivation of food, shelter, clothing and transportation.

PENALTY ASSESSED

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

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

CONNECTOR APPEALS UNIT

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

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CONNECTOR APPEALS UNIT

1. Appellant, age 21 during 2016, from Worcester County, filed single on the tax return with a family size of one.
2. The federal AGI was \$18,750.00.
3. Appellant did not have health insurance available to him through employment, and believed he was not eligible for subsidized health insurance.
4. Appellant could afford \$45 per month based on the tables in Schedule HC, and the cost would be \$143 based upon those tables. Therefore, Appellant could not afford health insurance based upon those tables.
5. Appellant's expenses for food, shelter, clothing, and transportation used all of the income.
6. Appellant has obtained health insurance as of the date of the hearing through his employment.

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply to him.

Appellant's employment situation was unstable, and Appellant could not afford health insurance based on the tables in Schedule HC. Appellant's expenses for food, shelter, clothing and transportation used all of the income. Paying for health insurance would have caused a serious deprivation of food, shelter, clothing and transportation.

PENALTY ASSESSED

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

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

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

CONNECTOR APPEALS UNIT

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

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CONNECTOR APPEALS UNIT

1. Appellants, ages 41 and 42 during 2016, from Essex County, filed married filing jointly on the tax return with a family size of four.
2. The federal AGI was \$93,250.00.
3. Appellants had health insurance through one of their employers for January through June, but lost the employment and the insurance as of July 2016, and did not have health insurance for the remaining months of 2016.
4. Appellants could afford \$632 per month based on the tables in Schedule HC, and the cost would be \$593 based upon those tables. Therefore, Appellant could afford health insurance based upon those tables. However, if the income for the months they did not have health insurance is used, they could not afford it.
5. Appellants filed for bankruptcy in October 2016, due to the reduced income.
6. The Appellant who had lost the job is now employed and the family has health insurance through the employment
7. Appellants' expenses for food, shelter, clothing, and transportation used all of the income during the months they did not have health insurance.

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellants submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply to them.

One of the Appellant's employment terminated in July 2016, and the family lost the health insurance. In addition, the income was drastically reduced. Using only the income from the months that Appellants did not have health insurance, they could not afford health insurance based on the tables in Schedule HC. Appellants' expenses for food, shelter, clothing and transportation used all of the income during that period. Paying for health insurance would have caused a serious deprivation of food, shelter, clothing and transportation.

PENALTY ASSESSED

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2016 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have

CONNECTOR APPEALS UNIT

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 2016.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

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CONNECTOR APPEALS UNIT

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, age 47 during 2016, from Suffolk County, filed single on the tax return with a family size of one.
2. The federal AGI was \$46,673.00.
3. Appellant did not have health insurance for 2016. Insurance was available to her through the employer, however, Appellant believed that it was too expensive, and the deductible was too high. The deductible was \$2,000.00 and the monthly premium would have been \$243.00.
4. Appellant could afford \$295 per month based on the tables in Schedule HC, and the cost would be \$270 based upon those tables. Therefore, Appellant could afford health insurance based upon those tables.
5. Appellant's expenses for food, shelter, clothing, and transportation used most of the income.

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply to her.

Appellant had health insurance available through employment, and the premiums were affordable based upon the tables in Schedule HC. The deductible was within the required limits, but would have been a financial strain on the Appellant. Appellants' expenses for food, shelter, clothing and transportation used most of the income. Paying for health insurance would have caused a serious deprivation of food, shelter, clothing and transportation.

PENALTY ASSESSED

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2016 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have

CONNECTOR APPEALS UNIT

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 2016.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

1. Appellant, age 38 during 2016, from Suffolk County, filed single on the tax return with a family size of one.
2. The federal AGI was \$29,912.00.
3. Appellant did not have health insurance for 2016. Insurance was not available through the employer. When insurance became available through the employer, Appellant signed up and has health insurance since January 2017.
4. Appellant could afford \$125 per month based on the tables in Schedule HC, and the cost would be \$221 based upon those tables. Therefore, Appellant could not afford health insurance based upon those tables.
5. Appellant's expenses for food, shelter, clothing, and transportation used most of the income.

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply to him.

Appellant did not have health insurance available through employment. When health insurance became available to him, he enrolled effective January 2017. His employment was unstable. Appellant's expenses for food, shelter, clothing and transportation used most of the income. Paying for health insurance would have caused a serious deprivation of food, shelter, clothing and transportation.

PENALTY ASSESSED

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

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

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

CONNECTOR APPEALS UNIT

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

CONNECTOR APPEALS UNIT

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant is 32 years old and is single. Appellant lives in Middlesex County.
2. Appellant does have health insurance in 2017.
3. Appellant works in the drug insurance industry. Appellant indicated that she is a new immigrant to this country and didn't realize that it was mandatory to have health insurance. Appellant initially had health insurance in Massachusetts but had to cancel it due to the economic circumstances that her family developed. In addition, her family suffered an economic hardship in 2016 and she had to send money to her family to help them and also do to her father's poor health due to a heart ailment. She further took out a loan of \$10,000.00 to help pay her family's bills in 2016.
4. The Appellant's monthly expenses totaled \$2,815.00, consisting of rent \$1,100.00, heat and electric \$180.00, internet and cable \$30.00, cell phone \$35.00, food \$200.00, credit card \$200.00, toiletries \$20.00, clothing, \$50.00, Loan \$500.00, family help \$500.00.
5. The Appellant submitted a written Statement of Appeal dated May 9, 2017, stating "During 2016, you incurred a significant unexpected increase in essential expenses resulting directly from the consequences the sudden responsibility for providing full care for an aging parent or other family member" but should have also filed under "During 2016, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities."
6. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2016. Table 1 sets forth the income eligibility standards for various family sizes at 150% of the federal poverty level and Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard

CONNECTOR APPEALS UNIT

for the government-subsidized health insurance program. See Mass. G.L. c. 118H, s.3(a)(1). Tables 5 and 6 set forth the tax penalties for 2016.

7. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant would not have been eligible for subsidized health insurance, since Appellant's income of \$40,993.00 was more than \$35,310.00. The monthly premium for health insurance available on the private market in Middlesex County for a 21 year old single person was \$216.00. The tables reflect that Appellant could afford \$252.81. This is less than what the appellant is deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions)

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellant submitted a written Statement of Appeal dated May 9, 2017, stating "During 2016, you incurred a significant unexpected increase in essential expenses resulting directly from the consequences the sudden responsibility for providing full care for an aging parent or other family member" but should have also filed under "During 2016, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities."

The Health Care Reform Act of 2006 requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage "so long as it is deemed affordable" under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). However, individuals with incomes up to 150 percent of the Federal Poverty Level ("FPL") are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release ("TIR") 13-1, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2013-releases/tir-13-1.html>. For 2016, 150 percent of the FPL was \$17,655.00 for a single person.

CONNECTOR APPEALS UNIT

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

Since Appellants' 2016 income was more than 150 percent of the FPL, making her potentially subject to an individual mandate penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to her in 2016. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and second to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2016 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$40,993.00 in 2016, and Appellant's filing status was single with a dependent. EX 2. According to the Affordability Schedule established by the Connector's board and included in the Instructions and Worksheets of the 2016 Massachusetts Schedule HC, Appellant could afford to pay \$252.81 monthly for health insurance. See 2016 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to her from the Premium Tables, at a cost of \$216.00 monthly for coverage. *Id.* at Table 4.

Appellants are subject to the tax penalty unless appellants demonstrate a hardship. 956 Mass. Code Regs. 6.07(1) (2008). To prevail on a hardship appeal, an appellant must establish that "based on all his circumstances, minimum creditable coverage was not affordable to him[er] because [s]he experienced a hardship." *Id.* at 6.08(1). Appellant had to help her family out due to an economic crisis in her home country. She sent all available income to her family and took out a loan of \$10,000.00 to pay off her loan. In addition, as a new immigrant to this country, she was not aware of the mandatory requirement of health insurance.

On these facts, I find that Appellant has shown that she was precluded from purchasing affordable health insurance during 2016. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that she is exempt from a tax penalty for her non-compliance with the individual mandate.

CONNECTOR APPEALS UNIT

Accordingly, Appellant's appeal is ALLOWED, and the 2016 penalty assessed is OVERTURNED.

PENALTY ASSESSED

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant is 43 years old and is single with one dependent. Appellant lives in Suffolk County.
2. Appellant does not have health insurance in 2017.
3. Appellant works in the child care industry and her employer does not offer health insurance. Appellant indicated that she did not purchase health insurance because she does not remember receiving any bill for health insurance from the Connector and her mother had paid her previous health insurance bills.
4. The Appellant's monthly expenses totaled \$1,397.00, consisting of rent \$400.00, cell phone \$130.00, car insurance \$177.00, car gas \$40.00, food \$200.00, credit card \$50.00, toiletries \$100.00, clothing \$100.00, entertainment \$200.00.
5. The Appellant submitted a written Statement of Appeal dated April 29, 2017, "During 2016, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities."
6. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2016. Table 1 sets forth the income eligibility standards for various family sizes at 150% of the federal poverty level and Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard for the government-subsidized health insurance program. See Mass. G.L. c. 118H, s.3(a)(1). Tables 5 and 6 set forth the tax penalties for 2016.
7. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant would have been eligible for subsidized health insurance, since Appellant's income of \$23,759.00 was less than \$35,310.00. The monthly premium for health insurance available on the private market in

CONNECTOR APPEALS UNIT

Suffolk County for a 42 year old single person \$237.00. The tables reflect that Appellant could afford \$83.12. This is more than what the appellant is deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions)

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellant submitted a written Statement of Appeal dated April 29, 2017, “During 2016, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities.”

The Health Care Reform Act of 2006 requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage “so long as it is deemed affordable” under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). However, individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”) are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 13-1, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2013-releases/tir-13-1.html>. For 2016, 150 percent of the FPL was \$17,655.00 for a single person. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf>; see also 830 Mass. Code Regs. 111M.2.1(5)(c) (2008). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months. *Id.*

Since Appellants’ 2016 income was more than 150 percent of the FPL, making them potentially subject to an individual mandate penalty, the threshold issue

CONNECTOR APPEALS UNIT

to be addressed is whether creditable health insurance coverage was affordable to her in 2016. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and second to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. *See* 2016 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$23,759.00 in 2016, and Appellant's filing status was single. EX 2. According to the Affordability Schedule established by the Connector's board and included in the Instructions and Worksheets of the 2016 Massachusetts Schedule HC, Appellant could afford to pay \$83.12 monthly for health insurance. *See* 2016 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to her from the Premium Tables, at a cost of \$237.00 monthly for coverage. *Id.* at Table 4.

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

On these facts, I find that Appellant has shown that she was precluded from purchasing affordable health insurance during 2016. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that she is exempt from a tax penalty for her non-compliance with the individual mandate.

Accordingly, Appellant's appeal is ALLOWED, and the 2016 penalty assessed is OVERTURNED.

PENALTY ASSESSED

Number of Months Appealed: 12 Number of Months Assessed: 0
The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2016 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

CONNECTOR APPEALS UNIT

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

Exhibit 5: Prior Notice of Hearing Dated August 9, 2017

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant is 41 years old and is married with two dependents. Appellant lives in Bristol County.
2. Appellant does not have health insurance in 2017.
3. Appellant works in the food industry. Her husband works in the shipping industry. Appellant indicated that she did not purchase health insurance because it was too expensive and because her husband's employer's insurance was too expensive.
4. Appellant's home suffered water damage in 2016, of which Appellant had to pay \$4,000.00.
5. The Appellant's monthly expenses totaled \$4,743.00, consisting of mortgage \$1,493.00, heat and electric \$400.00, internet and cable \$260.00, cell phone \$190.00, car payment \$450.00 car insurance \$130.00, car gas \$200.00, food \$800.00, credit card \$400.00, toiletries \$20.00, clothing \$200.00, entertainment \$200.00, water damage \$333.00.
6. The Appellant submitted a written Statement of Appeal dated May 8, 2017, stating "During 2016, you incurred a fire, flood, natural disaster or other unexpected natural or human-caused event causing substantial household or personal damage to/for you" but should also have filed under "During 2016, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities." I will hear the Appeal under both grounds.
7. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2016. Table 1 sets forth the income eligibility standards for various family sizes at 150% of the federal poverty level

CONNECTOR APPEALS UNIT

and Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard for the government-subsidized health insurance program. See Mass. G.L. c. 118H, s.3(a)(1). Tables 5 and 6 set forth the tax penalties for 2016.

8. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant may have been eligible for subsidized health insurance, since Appellant's income of \$54,921.00 was less than \$72,750.00. The monthly premium for health insurance available on the private market in Bristol County for a 40 year old married person with two dependents was \$593.00. The tables reflect that Appellants could afford \$270.02. Appellant's employer offered health insurance at a premium of \$600.00 a month. This is more than what the appellants are deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions)

ANALYSIS AND CONCLUSIONS OF LAW

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

9. The Appellant submitted a written Statement of Appeal dated May 8, 2017, stating "During 2016, you incurred a fire, flood, natural disaster or other unexpected natural or human-caused event causing substantial household or personal damage to/for you" but should also have filed under "During 2016, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities." I will hear the Appeal under both grounds.

The Health Care Reform Act of 2006 requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage "so long as it is deemed affordable" under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). However, individuals with incomes up to 150 percent of the Federal Poverty Level ("FPL") are not subject to any penalty for non-compliance with the individual mandate.

CONNECTOR APPEALS UNIT

See Massachusetts Department of Revenue Technical Information Release (“TIR”) 13-1, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2013-releases/tir-13-1.html>. For 2016, 150 percent of the FPL was \$36,375.00 for a married couple with two dependents. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf>; see also 830 Mass. Code Regs. 111M.2.1(5)(c) (2008). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months. *Id.*

Since Appellants’ 2016 income was more than 150 percent of the FPL, making them potentially subject to an individual mandate penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to them in 2016. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and second to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2016 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$54,921.00 in 2016, and Appellant’s filing status was married with two dependents. EX 2. According to the Affordability Schedule established by the Connector’s board and included in the Instructions and Worksheets of the 2016 Massachusetts Schedule HC, Appellant could afford to pay \$270.02 monthly for health insurance. See 2016 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to them from the Premium Tables, at a cost of \$593.00 monthly for coverage and her husband’s employer offered coverage at \$600.00 per month. *Id.* at Table 4.

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

On these facts, I find that Appellants have shown that they were precluded from purchasing affordable health insurance during 2016. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that they are exempt from a tax penalty for their non-compliance with the individual mandate.

CONNECTOR APPEALS UNIT

Accordingly, Appellant's appeal is ALLOWED, and the 2016 penalty assessed is OVERTURNED.

PENALTY ASSESSED

Number of Months Appealed: 12 Number of Months Assessed: 0
The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2016 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

Appeal Decision: ___ Penalty Overturned in Full Penalty Upheld
 ___ Penalty Overturned in Part

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date:
September 27, 2017

Decision Date:
September 29, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellants appeared at the hearing, which was held by telephone on September 27, 2017

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

Exhibit 1: Notice of Hearing dated September 6, 2017

Exhibit 2: Appeal Case Information from form Schedule HC

Exhibit 3: Statement of Grounds for Appeal-2016 dated March 16, 2017

Exhibit 4: Prior Health Insurance History

Exhibit 5: Prior Notice of Hearing Dated August 9, 2017

CONNECTOR APPEALS UNIT

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant is 58 years old and is single. Appellant lives in Essex County.
2. Appellant does have health insurance in 2017.
3. Appellant works in the health industry. Appellant indicated that she did not purchase health insurance because it was too expensive.
4. The Appellant's monthly expenses totaled \$2,916.00, consisting of mortgage \$1,001.00, condo fee \$458.00, internet and cable \$72.00, cell phone \$150.00, car insurance \$160.00, car gas \$100.00, food \$550.00, credit card \$300.00, clothing \$100.00, toiletries \$25.00.
5. The Appellant submitted a written Statement of Appeal dated March 16, 2017, "During 2016, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities."
6. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2016. Table 1 sets forth the income eligibility standards for various family sizes at 150% of the federal poverty level and Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard for the government-subsidized health insurance program. See Mass. G.L. c. 118H, s.3(a)(1). Tables 5 and 6 set forth the tax penalties for 2016.
7. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant would not have been eligible for subsidized health insurance, since Appellant's income of \$73,061.00 was more than \$35,310.00. The monthly premium for health insurance available on the private market in Essex County for a 57 year old single person was \$323.00. The tables reflect that Appellant could afford \$494.98. This is less than what the appellant is deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions)

CONNECTOR APPEALS UNIT

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellant submitted a written Statement of Appeal dated March 16, 2017, “During 2016, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities.”

The Health Care Reform Act of 2006 requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage “so long as it is deemed affordable” under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). However, individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”) are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 13-1, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2013-releases/tir-13-1.html>. For 2016, 150 percent of the FPL was \$17,655.00 for a single person. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%20Care%20Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf>; see also 830 Mass. Code Regs. 111M.2.1(5)(c) (2008). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months. *Id.*

Since Appellants’ 2016 income was more than 150 percent of the FPL, making her potentially subject to an individual mandate penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to her in 2016. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance

CONNECTOR APPEALS UNIT

premiums under the Affordability Schedule and second to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. *See* 2016 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$73,061.00 in 2016, and Appellant's filing status was single. EX 2. According to the Affordability Schedule established by the Connector's board and included in the Instructions and Worksheets of the 2016 Massachusetts Schedule HC, Appellant could afford to pay \$494.98 monthly for health insurance. *See* 2016 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to her from the Premium Tables, at a cost of \$323.00 monthly for coverage. *Id.* at Table 4.

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

On these facts, I find that Appellant has not shown that she was precluded from purchasing affordable health insurance during 2016. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that she is not exempt from a tax penalty for her non-compliance with the individual mandate.

Accordingly, Appellant's appeal is DENIED, and the 2016 penalty assessed is UPHeld.

PENALTY ASSESSED

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

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

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

CONNECTOR APPEALS UNIT

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

CONNECTOR APPEALS UNIT

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant is 41 years old and is married with two dependents. Appellant lives in Bristol County.
2. Appellant does not have health insurance in 2017.
3. Appellant works in the food industry. Her husband works in the shipping industry. Appellant indicated that she did not purchase health insurance because it was too expensive and because her husband's employer's insurance was too expensive.
4. Appellant's home suffered water damage in 2016, of which Appellant had to pay \$4,000.00.
5. The Appellant's monthly expenses totaled \$4,743.00, consisting of mortgage \$1,493.00, heat and electric \$400.00, internet and cable \$260.00, cell phone \$190.00, car payment \$450.00 car insurance \$130.00, car gas \$200.00, food \$800.00, credit card \$400.00, toiletries \$20.00, clothing \$200.00, entertainment \$200.00, water damage \$333.00.
6. The Appellant submitted a written Statement of Appeal dated May 8, 2017, stating "During 2016, you incurred a fire, flood, natural disaster or other unexpected natural or human-caused event causing substantial household or personal damage to/for you" but should also have filed under "During 2016, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities." I will hear the Appeal under both grounds.
7. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2016. Table 1 sets forth the income eligibility standards for various family sizes at 150% of the federal poverty level and Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard

CONNECTOR APPEALS UNIT

for the government-subsidized health insurance program. See Mass. G.L. c. 118H, s.3(a)(1). Tables 5 and 6 set forth the tax penalties for 2016.

8. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant may have been eligible for subsidized health insurance, since Appellant's income of \$54,921.00 was less than \$72,750.00. The monthly premium for health insurance available on the private market in Bristol County for a 40 year old married person with two dependents was \$593.00. The tables reflect that Appellants could afford \$270.02. Appellant's employer offered health insurance at a premium of \$600.00 a month. This is more than what the appellants are deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions)

ANALYSIS AND CONCLUSIONS OF LAW

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

9. The Appellant submitted a written Statement of Appeal dated May 8, 2017, stating "During 2016, you incurred a fire, flood, natural disaster or other unexpected natural or human-caused event causing substantial household or personal damage to/for you" but should also have filed under "During 2016, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities." I will hear the Appeal under both grounds.

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

CONNECTOR APPEALS UNIT

help-and-resources/legal-library/tirs/tirs-by-years/2013-releases/tir-13-1.html. For 2016, 150 percent of the FPL was \$36,375.00 for a married couple with two dependents. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. *See* Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf>; *see also* 830 Mass. Code Regs. 111M.2.1(5)(c) (2008). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months. *Id.*

Since Appellants' 2016 income was more than 150 percent of the FPL, making them potentially subject to an individual mandate penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to them in 2016. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and second to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. *See* 2016 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$54,921.00 in 2016, and Appellant's filing status was married with two dependents. EX 2. According to the Affordability Schedule established by the Connector's board and included in the Instructions and Worksheets of the 2016 Massachusetts Schedule HC, Appellant could afford to pay \$270.02 monthly for health insurance. *See* 2016 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to them from the Premium Tables, at a cost of \$593.00 monthly for coverage and her husband's employer offered coverage at \$600.00 per month. *Id.* at Table 4.

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

On these facts, I find that Appellants have shown that they were precluded from purchasing affordable health insurance during 2016. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that they are exempt from a tax penalty for their non-compliance with the individual mandate.

Accordingly, Appellant's appeal is ALLOWED, and the 2016 penalty assessed is OVERTURNED.

CONNECTOR APPEALS UNIT

PENALTY ASSESSED

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

Appeal Decision: X Penalty Overturned in Full _____Penalty Upheld
Penalty Overturned in Part

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: September 7, 2017 Decision Date: October 10, 2017

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 on September 7, 2017. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

- Exhibit 1: Notice of Hearing sent to Appellant dated August 10, 2017
- Exhibit 2: Appeal Case Information Sheet from Schedule HC 2016
- Exhibit 3: Statement of Grounds for Appeal 2016 signed by Appellant on May 2, 2017

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 24 years old in 2016 and filed a 2016 Massachusetts tax return as single, with no dependents claimed (Exhibit 2).
2. Appellant lived in Suffolk County, MA in 2016 (Exhibit 2).
3. Appellant's Adjusted Gross Income for 2016 was \$31,757 (Exhibit 2).
4. In previous years, Appellant had employer sponsored health insurance (Testimony of Appellant)

CONNECTOR APPEALS UNIT

5. In 2016, Appellant went to school full-time and Appellant began working two different part-time jobs (Testimony of Appellant).
6. Neither of Appellant's part-time jobs offered employer sponsored health insurance (Testimony of Appellant).
7. Appellant did explore health insurance through the Health Connector but did not sign up as Appellant was concerned about meeting the expenses of education as well as living expenses (Testimony of Appellant).
8. In 2017, Appellant stopped attending school, became a full time employee and began coverage under employer sponsored health insurance (Testimony of Appellant).
9. Appellant was assessed a penalty of twelve months and Appellant filed an appeal on May 2, 2017 (Exhibit 2).
10. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
11. According to Table 3 of Schedule HC for 2016 a single person with no dependents with an adjusted gross income of \$31,757 could afford to pay \$132 per month for private insurance. According to Table 4, Appellant, aged 24 and living in Suffolk County could have purchased private insurance for \$143 per month.
12. Private insurance was not considered to be affordable for Appellant in 2016 (Schedule HC for 2016).
13. According to Table 2 of Schedule HC for 2016, Appellant, earning less than \$35,310, would have met the income eligibility guidelines for government subsidized insurance.
14. Appellant was not homeless during 2016. Appellant did not fall behind in rent payments nor receive any shut-off notices (Testimony of Appellant).
15. Appellant did not incur a significant and unexpected increase 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 fire, flood, natural disaster, or other unexpected natural or human-caused event (Testimony of Appellant).
16. Appellant had the following monthly expenses for basic necessities during 2016: rent \$600; telephone \$100; food \$606; supplies \$100; clothing \$100; public transportation \$60; dental insurance \$20; school expenses \$477. These expenses totaled approximately \$2,063 per month (Testimony of Appellant).

CONNECTOR APPEALS UNIT

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2016 should be waived, either in whole or in part.

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

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

Employer sponsored health insurance was not available through either of Appellant’s jobs. Appellant did explore health insurance through the Health Connector but did not sign up. According to Tables 3 and 4 of Schedule HC for 2016 private insurance was not considered affordable for Appellant. Appellant was income eligible for government subsidized health insurance, but did not sign up for such insurance. Since Appellant potentially had access to affordable insurance, we need to consider whether Appellant experienced a financial hardship as defined by 956 CMR 6.08.

In previous years, Appellant worked full-time and was covered by employer sponsored health insurance. In 2016, Appellant was a full-time student had to leave a job that had provided employer sponsored health insurance. Appellant began working two part-time jobs while attending school. Although Appellant may have been income eligible for government subsidized health insurance, Appellant did not sign up for it as Appellant was concerned about meeting all of the expenses while attending school. See Testimony of Appellant, which I find to be credible.

Given Appellant’s circumstances, I find that the penalty should be waived in full. See Testimony of Appellant, which I find to be credible and 956 CMR 6.08 (3).

PENALTY ASSESSED

Number of Months Appealed: 12

Number of Months Assessed: 0

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

CONNECTOR APPEALS UNIT

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

ADDENDUM: Appellant should note that this decision is based upon the facts as I have found them for 2016. Appellant should note that that a similar decision may not be made if Appellant fails to be covered by health insurance in the future.

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

Appeal Decision: xx Penalty Overturned in Full _____ Penalty Upheld
____ Penalty Overturned in Part

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: September 7, 2017

Decision Date: October 10, 2017

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 7, 2017. Appellant also appeared for Appellant Spouse. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified. The record was left open so that Appellant could submit further documents. Appellant did submit a further document and the document has been admitted as Exhibit 5.

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

- Exhibit 1: Notice of Hearing sent to Appellants dated August 10, 2017
- Exhibit 2: Appeal Case Information from Schedule HC 2016
- Exhibit 3: Statement of Grounds for Appeal 2016 signed by Appellant on May 1, 2017
- Exhibit 4: Statement of Appellant in support of the appeal
- Exhibit 5: Document about Appellant's health insurance in 2016

CONNECTOR APPEALS UNIT

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant and Appellant spouse were ages 33 and 34 in 2016. They filed their Massachusetts 2016 tax return married filing jointly, with no dependents claimed (Exhibit 2).
2. Appellants resided in Suffolk County, MA in 2016 (Exhibit 2).
3. Appellants had an Adjusted Gross Income for 2016 of \$120,520.00 (Exhibit 2).
4. Appellant Spouse was covered by health insurance that met Massachusetts minimum creditable standards for the entire year of 2016 (Exhibit 2)
5. In 2016, Appellant was covered by employer sponsored health insurance that did not meet Massachusetts Minimum Creditable Coverage (MCC) standards (Exhibit 2 and Testimony of Appellant).
6. Appellant had had the same employer sponsored health insurance for six years and had always received a 1099HC form stating that the insurance met the MCC standards (Testimony of Appellant).
7. 2016 was the first year that Appellant did not receive a 1099HC form (Testimony of Appellant).
8. Appellant contacted the employer when Appellant learned that the health insurance policy was not MCC compliant in 2016 (Testimony of Appellant)
9. Appellant's employer investigated the issue and told Appellant that the policy no longer met the MCC standards because the policy had raised the deductible amount during 2016 to be \$2,500 (Testimony of Appellant).
10. Appellant's employer was based in Pennsylvania and Appellant is the only employee in Massachusetts (Exhibit 4).
11. The health insurance offered by Appellant's employer did offer a broad range of comprehensive medical benefits. There were no caps on total benefits for a particular illness or for a single year, no caps on prescription drug benefits and preventive care was covered without a deductible (Exhibit 5).

CONNECTOR APPEALS UNIT

12. Appellants no longer live in Massachusetts (Testimony of Appellant).
13. Appellant has been assessed a penalty for twelve months for 2016. Appellant spouse has not been assessed a penalty. (Exhibits 2 and 3).
14. Appellants filed a Health Care Appeal form dated May 1, 2017 appealing the assessment of the penalty. Appellant claimed that Appellant purchased employer sponsored health insurance that did not meet MCC standards as that is what offered by the employer and that the insurance Appellant purchased was close to or substantially met MCC standards (Exhibit 3).

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellant was covered by employer sponsored health insurance from Appellant’s employer. The issue to be decided is whether the policy met the Massachusetts minimum creditable coverage standards and whether Appellant should be assessed a penalty for the months that Appellant was covered by the employer sponsored plan.

Appellant worked in Massachusetts for a company based in Pennsylvania. Appellant had been covered by the same employer sponsored health insurance for six years. Appellant’s health insurance in the past met the MCC standards. In 2016, there was a change to the insurance and the deductible for an individual plan was raised to \$2,500. Appellant’s insurance offered a broad range of comprehensive medical

CONNECTOR APPEALS UNIT

benefits. There were no caps on total benefits and preventive care was covered without a deductible. The deductible of \$2,500 was higher than allowed under the Massachusetts standards. See Schedule HC and Exhibits 3, 4 and Testimony of Appellant, which I find to be credible.

Since Appellant did have comprehensive health insurance through the Appellant's employer that substantially met the Massachusetts standards 956 CMR 6.08 (2)(d) I find the penalty should be waived in its entirety for 2016.

PENALTY ASSESSED

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

ADDENDUM

Appellants have moved out of state. If Appellants move back to Massachusetts, they should check to see if their health insurance meets the Minimum creditable coverage standards.

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

Appeal Decision: X Penalty Overturned in Full _____Penalty Upheld
Penalty Overturned in Part

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: September 22, 2017 Decision Date: October 23, 2017

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 on September 22, 2017. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

- Exhibit 1: Notice of Hearing sent to Appellant dated August 29, 2017
- Exhibit 2: Appeal Case Information Sheet from Schedule HC 2016
- Exhibit 3: Statement of Grounds for Appeal 2016 signed by Appellant on April 19, 2017
- Exhibit 4: Statement in Support of Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 63 years old in 2016 and filed a 2016 Massachusetts tax return as single, with no dependents claimed (Exhibit 2).
2. Appellant lived in Plymouth County, MA in 2016 (Exhibit 2).
3. Appellant's Adjusted Gross Income for 2016 was \$53,688 (Exhibit 2).

CONNECTOR APPEALS UNIT

4. Appellant retired in 2015 (Testimony of Appellant).
5. Appellant's 2016 income included \$27,000 from an IRA withdrawal and \$26,688 from social security and a part-time job (Testimony of Appellant).
6. Employer sponsored health insurance was not available to Appellant in 2016 (Testimony of Appellant).
7. Appellant applied for government subsidized health insurance in early 2016 and was told that Appellant did not qualify due to income (Testimony of Appellant).
8. Appellant applied again later in 2016 for government subsidized health insurance (Testimony of Appellant).
9. Appellant began coverage under government subsidized health insurance in August 2016 (Exhibit 2 and Testimony of Appellant).
10. Appellant was assessed a penalty of four months (Exhibit 2).
11. On April 19, 2017, Appellant filed an Appeal, claiming that during 2016, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities (Exhibit 3)
12. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
13. According to Table 3 of Schedule HC for 2016 a single person with no dependents with an adjusted gross income of \$53,688 could afford to pay \$363 per month for private insurance. According to Table 4, Appellant, aged 63 and living in Plymouth County could have purchased private insurance for \$384 per month.
14. Private insurance was not considered to be affordable for Appellant in 2016 (Schedule HC for 2016).
15. According to Table 2 of Schedule HC for 2016, Appellant, earning more than \$35,010, would not have met the income eligibility guidelines for government subsidized insurance.
16. Appellant had the following monthly expenses for basic necessities during 2016: mortgage (with PIT) \$1,277; electricity \$ 95; water and sewer \$65; telephone \$95; food \$400; car payment \$650; car insurance \$90; gasoline \$100; dental work \$214; house maintenance \$279. These expenses totaled approximately \$3,265 per month (Testimony of Appellant).

CONNECTOR APPEALS UNIT

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2016 should be waived, either in whole or in part.

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

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

In 2016, Appellant worked a part-time job and also received social security. Appellant’s modified gross income of \$53,688 also included a \$27,000 withdrawal from Appellant’s IRA. Employer sponsored health insurance was not available to Appellant. According to Tables 3 and 4 of Schedule HC for 2016, private insurance was not considered affordable for Appellant. When Appellant applied for government subsidized health insurance in early 2016, Appellant was not found eligible. However, Appellant applied for government subsidized health insurance later in 2016 and began coverage in August, 2017. See Testimony of Appellant, which I find to be credible Schedule HC for 2016.

I find that from January through July 2016, affordable health insurance that met minimum creditable coverage standards was not available to Appellant. See 956 CMR 6. I find that the penalty assessed against Appellant for 2016 should be waived in its entirety

PENALTY ASSESSED

I find that the penalty assessed against Appellant for 2016 should be waived in its entirety.

PENALTY ASSESSED

Number of Months Appealed: 4

Number of Months Assessed: 0

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

CONNECTOR APPEALS UNIT

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

Appeal Decision: X Penalty Overturned in Full _____Penalty Upheld
Penalty Overturned in Part

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: September 22, 2017 Decision Date: October 24, 2017

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 on September 22, 2017. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

- Exhibit 1: Notice of Hearing sent to Appellant dated August 29, 2017
- Exhibit 2: Appeal Case Information Sheet from Schedule HC 2016
- Exhibit 3: Statement of Grounds for Appeal 2016 signed by Appellant on April 24, 2017
- Exhibit 4: Statement in Support of Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 36 years old in 2016 and filed a 2016 Massachusetts tax return as single, with no dependents claimed (Exhibit 2).
2. Appellant lived in Middlesex County, MA in 2016 (Exhibit 2).
3. Appellant's Adjusted Gross Income for 2016 was \$37,222 (Exhibit 2).

CONNECTOR APPEALS UNIT

4. From January through April, 2016, Appellant worked and had insurance through employer sponsored health insurance (Exhibit 2 and Testimony of Appellant).
5. In May 2016, Appellant's job ended and Appellant was no longer covered by employer sponsored health insurance (Testimony of Appellant).
6. Appellant was unemployed from May through November, 2016 and Appellant did not have health insurance during this time (Exhibit 2 and Testimony of Appellant).
7. Appellant began a new job in November 2016, and began coverage under employer sponsored health insurance in December 2016 (Exhibit 2 and Testimony of Appellant).
8. During May through November, Appellant received unemployment compensation, but had difficulty paying essential expenses (Testimony of Appellant).
9. Appellant did not apply for private or government subsidized health insurance in 2016 (Testimony of Appellant).
10. Appellant was assessed a penalty of four months (Exhibit 2).
11. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
12. According to Table 3 of Schedule HC for 2016 a single person with no dependents with an adjusted gross income of \$37,222 could afford to pay \$230 per month for private insurance. According to Table 4, Appellant, aged 36 and living in Middlesex County could have purchased private insurance for \$221 per month.
13. Private insurance was considered to be affordable for Appellant in 2016 (Schedule HC for 2016).
14. According to Table 2 of Schedule HC for 2016, Appellant, earning more than \$35,010, would not have met the income eligibility guidelines for government subsidized insurance.
15. Appellant was not homeless during 2016. Appellant did not fall behind in rent payments nor receive any shut-off notices (Testimony of Appellant).
16. Appellant did not incur a significant and unexpected increase 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 fire, flood, natural disaster, or other unexpected natural or human-caused event (Testimony of Appellant).
17. Appellant had the following monthly expenses for basic necessities during 2016: rent \$1,000; utilities \$200; telephone \$85; food \$433; supplies \$100; clothing \$83; car payment \$350; car insurance \$125; gasoline \$120; car maintenance \$83; medical expenses \$305. These expenses totaled approximately \$2,884 per month (Testimony of Appellant).

CONNECTOR APPEALS UNIT

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2016 should be waived, either in whole or in part.

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

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

During January through April, Appellant was covered by employer sponsored health insurance. Appellant’s job ended and Appellant was unemployed from May through November, 2017 and Appellant was no longer covered by employer sponsored health insurance. Appellant began employer sponsored health insurance through a new job in December 2016. According to Tables 3 and 4 of Schedule HC for 2016 private insurance was considered affordable for Appellant, based upon Appellant’s modified adjusted gross income but Appellant did not apply for private insurance. Appellant may have been eligible for government subsidized insurance during the time of unemployment, but Appellant did not apply for government subsidized health insurance. See Schedule HC for 2016 and Testimony of Appellant, which I find to be credible. Since Appellant potentially had access to affordable insurance, we need to consider whether Appellant experienced a financial hardship as defined by 956 CMR 6.08.

Appellant was not homeless during 2016. Appellant did not fall behind in rent payments nor receive any shut-off notices. Appellant did not incur a significant and unexpected increase 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 fire, flood, natural disaster, or other unexpected natural or human-caused event. Appellant did not earn any income from February through July. Appellant’s basic monthly expenses were \$2,884. Appellant’s average monthly income was \$3,101, but the income was less during the months of Appellant’s unemployment. Given Appellant’s circumstances, I find that the penalty should be waived in full. See Testimony of Appellant, which I find to be credible and 956 CMR 6.08 (1)(e).

I find that the penalty assessed against Appellant for 2016 should be waived in its entirety.

CONNECTOR APPEALS UNIT

PENALTY ASSESSED

Number of Months Appealed: 4

Number of Months Assessed: 0

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

Appeal Decision: X Penalty Overturned in Full _____Penalty Upheld
Penalty Overturned in Part

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: September 22, 2017 Decision Date: October 20, 2017

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 on September 22, 2017. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

- Exhibit 1: Notice of Hearing sent to Appellant dated August 29, 2017
- Exhibit 2: Appeal Case Information Sheet from Schedule HC 2016
- Exhibit 3: Statement of Grounds for Appeal 2016 signed by Appellant on April 28, 2017
- Exhibit 4: Statement in Support of Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 29 years old in 2016 and filed a 2016 Massachusetts tax return as single, with no dependents claimed (Exhibit 2).
2. Appellant lived in Middlesex County, MA in 2016 (Exhibit 2).
3. Appellant's Adjusted Gross Income for 2016 was \$38,946 (Exhibit 2).

CONNECTOR APPEALS UNIT

4. From 2015 through January 2016, Appellant worked and had insurance through employer sponsored health insurance (Exhibit 2 and Testimony of Appellant).
5. In January 2016, Appellant's job ended and Appellant was no longer covered by employer sponsored health insurance (Testimony of Appellant).
6. Appellant was unemployed from February through July, 2016 and Appellant did not have health insurance during this time (Exhibit 2 and Testimony of Appellant).
7. During February through July, Appellant's support for basic expenses came from Appellant's savings (Testimony of Appellant).
8. Appellant began a new job in July 2016 and had coverage under employer sponsored health insurance from August through December 2016 (Exhibit 2 and Testimony of Appellant).
9. Appellant did not apply for private or government subsidized health insurance in 2016 (Testimony of Appellant).
10. Appellant was assessed a penalty of three months (Exhibit 2).
11. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
12. According to Table 3 of Schedule HC for 2016 a single person with no dependents with an adjusted gross income of \$38,946 could afford to pay \$240 per month for private insurance. According to Table 4, Appellant, aged 29 and living in Middlesex County could have purchased private insurance for \$143 per month.
13. Private insurance was considered to be affordable for Appellant in 2016 (Schedule HC for 2016).
14. According to Table 2 of Schedule HC for 2016, Appellant, earning more than \$35,010, would not have met the income eligibility guidelines for government subsidized insurance.
15. Appellant was not homeless during 2016. Appellant did not fall behind in rent payments nor receive any shut-off notices (Testimony of Appellant).
16. Appellant did not incur a significant and unexpected increase 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 fire, flood, natural disaster, or other unexpected natural or human-caused event (Testimony of Appellant).
17. Appellant had the following monthly expenses for basic necessities during 2016: rent \$2,180; utilities \$100; telephone \$119; food \$680; supplies \$120; clothing \$100; car payment \$650; car insurance \$126 and gasoline \$220. These expenses totaled approximately \$4,295 per month (Testimony of Appellant).

CONNECTOR APPEALS UNIT

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2016 should be waived, either in whole or in part.

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

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

In January, Appellant was covered by employer sponsored health insurance. Appellant’s job ended and Appellant was unemployed from February through July, 2017 and Appellant was no longer covered by employer sponsored health insurance. According to Tables 3 and 4 of Schedule HC for 2016 private insurance was considered affordable for Appellant, based upon Appellant’s modified adjusted gross income but Appellant did not apply for private insurance. Appellant also did not apply for government subsidized health insurance when Appellant became unemployed. See Schedule HC for 2016 and Testimony of Appellant, which I find to be credible. Since Appellant potentially had access to affordable insurance, we need to consider whether Appellant experienced a financial hardship as defined by 956 CMR 6.08.

Appellant was not homeless during 2016. Appellant did not fall behind in rent payments nor receive any shut-off notices. Appellant did not incur a significant and unexpected increase 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 fire, flood, natural disaster, or other unexpected natural or human-caused event. Appellant did not earn any income from February through July. Appellant’s basic monthly expenses were \$4,295. Appellant’s average monthly income was \$3,245, but the income was zero during the months that Appellant did not have insurance. Given Appellant’s circumstances, I find that the penalty should be waived in full. See Testimony of Appellant, which I find to be credible and 956 CMR 6.08 (1)(e).

I find that the penalty assessed against Appellant for 2016 should be waived in its entirety.

PENALTY ASSESSED

Number of Months Appealed: 3

Number of Months Assessed: 0

CONNECTOR APPEALS UNIT

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

Appeal Decision: Penalty Overturned in Full Penalty Upheld
 Penalty Overturned in Part

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: September 22, 2017

Decision Date: October 19, 2017

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 Mass. Code Regs. 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. Gen. Laws ch. 111M, Section 4 and 956 Mass. Code Regs. 6.07. Appellants, a married couple who filed a resident tax return in Massachusetts for 2016, appeal the assessment of a 2016 tax penalty for failure to comply with the individual health insurance mandate of Mass. Gen. Laws ch. 111M, § 2.

HEARING RECORD

Appellants appeared at the hearing which was conducted by telephone on September 22, 2016.¹ The hearing record consists of testimony heard from Appellants and the following documents which were admitted into evidence:

Exhibit 1: Appeal dated May 4, 2017;

Exhibit 2: Notice of Hearing dated August 30, 2017; and

Exhibit 3: Appeal Case Information print-out dated August 30, 2017 generated from Appellants' 2016 Massachusetts Schedule HC.

¹ Appellants had requested assistance of a French language interpreter in their appeal. Exhibit 1 at 2. An interpreter was offered at the hearing, but Appellants withdrew their request, and the hearing was conducted in English.

CONNECTOR APPEALS UNIT

FINDINGS OF FACT

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

1. Appellants were married in November of 2016. Testimony.
2. Appellant Wife, a foreign national, was not a lawful, permanent resident of the United States until her marriage provided her with lawful status. Testimony.
3. Upon her marriage, Appellant Wife applied for and received a Social Security number. Testimony; Exhibit 3.
4. Appellants filed a joint Massachusetts Resident Income Tax Return for 2016 as a married couple, reporting a Federal Adjusted Gross Income of \$63,618.00. Exhibit 3. The Schedule HC filed with the return reported no health insurance coverage for Appellant Wife for the period of January – December 2016 that met minimum creditable coverage (“MCC”) requirements. *Id.*
5. Based on Appellants’ 2016 Schedule HC, the Department of Revenue assessed a 12-month tax penalty which Appellants appeal. Exhibit 3.

In addition to the foregoing facts, I take administrative notice of the 2016 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov/dor/docs/dor/health-care/2016/hc-instructions.pdf>, and in particular Tables 1 – 6 which, as will be discussed below, include the Affordability Schedule and other financial information used in making 2016 individual mandate tax penalty determinations.

ANALYSIS AND CONCLUSIONS OF LAW

The Health Care Reform Act of 2006 (the “HCRA”) requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage “so long as it is deemed affordable” under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). For part-year residents, the individual health insurance mandate applies beginning on the first day of third month following the month in which the individual became a resident of Massachusetts. *See* 2016 Schedule HC Instructions and Worksheets, *supra* at HC-2.

CONNECTOR APPEALS UNIT

Appellant Wife first became a lawful resident of Massachusetts in November of 2016 when she married a United States citizen. Therefore the individual mandate did not apply until the first day of the third month following commencement of residency which was February 1, 2017. Accordingly, no penalty for non-compliance with the individual mandate is due for any month in 2016.

Accordingly, Appellants' appeal is ALLOWED, and the 2016 penalty assessed is OVERTURNED.

PENALTY ASSESSED

Number of Months Appealed: 12

Number of Months Assessed: 0

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

Appeal Decision: Penalty Overturned in Full Penalty Upheld
 Penalty Overturned in Part

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: September 22, 2017

Decision Date: October 19, 2017

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 Mass. Code Regs. 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. Gen. Laws ch. 111M, Section 4 and 956 Mass. Code Regs. 6.07. Appellants, a married couple who filed a resident tax return in Massachusetts for 2016, appeal the assessment of a 2016 tax penalty for failure to comply with the individual health insurance mandate of Mass. Gen. Laws ch. 111M, § 2.

HEARING RECORD

Appellant Wife appeared at the hearing which was conducted by telephone on September 22, 2016. The hearing record consists of testimony heard from Appellant Wife and the following documents which were admitted into evidence:

Exhibit 1: Appeal dated April 24, 2017;

Exhibit 2: Notice of Hearing dated August 30, 2017; and

Exhibit 3: Appeal Case Information print-out dated August 30, 2017 generated from Appellants' 2016 Massachusetts Schedule HC.

FINDINGS OF FACT

CONNECTOR APPEALS UNIT

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

1. Appellants were married in November of 2016. Testimony.
2. Appellant Husband, a foreign national, was not a lawful, permanent resident of the United States until his marriage to U.S. Citizen provided him with lawful status. Testimony.
3. Upon his marriage, Appellant Husband applied for and received a Social Security number. Testimony; Exhibit 3.
4. Appellants filed a joint Massachusetts Resident Income Tax Return for 2016 as a married couple, reporting a Federal Adjusted Gross Income of \$63,618.00. Exhibit 3. The Schedule HC filed with the return reported no health insurance coverage for Appellant Husband for the period of January – December 2016 that met minimum creditable coverage (“MCC”) requirements. *Id.*
5. Based on Appellants’ 2016 Schedule HC, the Department of Revenue assessed a 12-month tax penalty which Appellants appeal. Exhibit 3.

In addition to the foregoing facts, I take administrative notice of the 2016 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov/dor/docs/dor/health-care/2016/hc-instructions.pdf>, and in particular Tables 1 – 6 which, as will be discussed below, include the Affordability Schedule and other financial information used in making 2016 individual mandate tax penalty determinations.

ANALYSIS AND CONCLUSIONS OF LAW

The Health Care Reform Act of 2006 (the “HCRA”) requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage “so long as it is deemed affordable” under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). For part-year residents, the individual health insurance mandate applies beginning on the first day of third month following the month in which the individual became a resident of Massachusetts. *See* 2016 Schedule HC Instructions and Worksheets, *supra* at HC-2.

CONNECTOR APPEALS UNIT

Appellant Husband first became a lawful resident of Massachusetts in November of 2016 when he married a United States citizen. Therefore the individual mandate did not apply until the first day of the third month following commencement of residency which was February 1, 2017. Accordingly, no penalty for non-compliance with the individual mandate is due for any month in 2016.

Accordingly, Appellants' appeal is ALLOWED, and the 2016 penalty assessed is OVERTURNED.

PENALTY ASSESSED

Number of Months Appealed: 12

Number of Months Assessed: 0

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit