

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-139

**Appeal Decision:** Appeal Granted

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** August 15, 2018

**Decision Date:** September 28, 2018

### AUTHORITY

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

### JURISDICTION

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

### HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on August 15, 2018. The Appellant offered testimony under oath or affirmation. At the end of the hearing, the record was left open until August 29, 2018, for the Appellant to submit additional evidence. On August 29, 2018, the Appellant submitted additional evidence, and the record was closed.

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

- Exhibit 1: Appeal Case Information from 2017 Schedule HC
- Exhibit 2: 5/10/18 Appeal (8 pages)
- Exhibit 3: 7/17/18 Hearing Notice (3 pages)
- Exhibit 4: 2/3/18 Health Connector Application Results
- Exhibit 5: Two 5/4/17 Emails from Health Connector, confirming set up online payment of dental premium and health premium and notifying of first account withdrawals within days
- Exhibit 6: 5/8/17 Bank withdrawals for health and dental insurance coverage from Health Connector
- Exhibit 7: 1/13/17 and 1/20/17 Paystubs showing pretax deductions for health insurance premium (2 pages)

### FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant appealed from the assessment of a seven-month penalty on his 2017 state income tax return. (Exhibit 1)
2. The Appellant's filing status in 2017 was Single with no dependents. The Appellant's federal AGI in 2017 was \$48,683. The Appellant resided in Norfolk County in 2017. The Appellant turned twenty-one years old in June 2017. (Exhibit 1)

3. On May 29, 2018, the Appellant appealed his seven-month penalty, checking off “Other,” as the basis for his appeal. (Exhibit 2)
4. The Appellant had employer-sponsored health insurance coverage through January 2017, when he left his employment and began working for another employer. (Appellant’s testimony; Exhibit 7)
5. The Appellant began working his new job at the end of January as a temporary employee. His new employer offered health insurance coverage to regular employees only. The Appellant did not become eligible for his employer’s coverage until October 2017, when he became a regular full-time employee. The Appellant had health insurance coverage through this employer in October, November, and December 2017. (Exhibit 2; Appellant’s testimony)
6. In the spring of 2017, the Appellant applied to the Health Connector for insurance coverage and was approved. On May 4, 2018, the Appellant set up online payment to pay his \$83 monthly premium to the Health Connector. His first online payment was deducted from his bank account on May 8, 2017. (Exhibits 5 and 6; Appellant’s testimony)
7. Months later, the Appellant discovered that he did not have his Health Connector coverage because he had not completed the enrollment process. (Appellant’s testimony)

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

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

In this case, the Appellant had a three-month grace period to obtain new coverage after losing his employer-sponsored coverage at the end of January 2017. While the Appellant should have obtained new coverage by May 2017 and did not obtain new coverage until October 2017, I credit the Appellant’s testimony that he thought that he had coverage beginning in May 2017 and did not discover until months later that he had not completed the process. It was reasonable for him to think that he was enrolled, because he had set up online payment of his premium and the premium had been deducted for the first month of coverage. When he realized that he was mistaken, the Appellant was shortly to become a regular employee and eligible for his employer’s coverage. The Appellant enrolled in his employer’s coverage as soon as he could and had health insurance coverage beginning in October 2017.

Therefore, as the Appellant made a good faith effort to obtain coverage throughout 2017 and reasonably believed that he had succeeded, I conclude that it is not appropriate to assess the Appellant a tax penalty for 2017, under MGL Chapter 11M, Section 2, and 956 CMR 6.08.

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

#### **PENALTY ASSESSED**

Number of MonthsAppealed:   7   Number of Months Assessed:   0  

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

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

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

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-153

**Appeal Decision:** Appeal Granted

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** August 22, 2018

**Decision Date:** September 28, 2018

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on August 22, 2018. The Appellant offered testimony under oath or affirmation. At the end of the hearing, the record was closed.

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

Exhibit 1:       Appeal Case Information from 2017 Schedule HC

Exhibit 2:       5/23/18 Appeal (9 pages)

Exhibit 3:       7/17/18 Hearing Notice (3 pages)

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant appealed from the assessment of a two-month penalty on his 2017 state income tax return. (Exhibit 1)
2. The Appellant's filing status in 2017 was Single with no dependents. The Appellant's household federal AGI in 2017 was \$72,512. The Appellant resided in Norfolk County in 2017. The Appellant turned thirty-four years old in 2017. (Exhibit 1)
3. On May 23, 2018, the Appellant appealed his two-month penalty, checking off that, in 2017, "the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities," as the basis for his appeal. (Exhibit 2)
4. The Appellant had health insurance through his employer in January and February 2017. The coverage ended at the end of February because his employer was relocating his job to Chicago. The Appellant was involved in purchasing a condo at that time and did not want to relocate to Chicago. (Appellant's testimony)

5. In March 2017, the Appellant began working for another employer at a significant cut in pay. The worked on an hourly basis for \$18/hour, 35-40 hours a week. The Appellant's new employer did not offer health insurance. The Appellant continued working for this employer until July 2017. (Appellant's testimony)
6. On April 8, 2017, the Appellant applied to MassHealth and the Health Connector for health insurance coverage. MassHealth denied the Appellant coverage. The Health Connector notified the Appellant that he needed to provide proof of residency and proof of income by July 7, 2017, in order to qualify to purchase a Health Connector plan. (Exhibit 2; Appellant's testimony)
7. In mid-April 2017, the Appellant responded to the Health Connector's request by submitting proof, as requested. (Appellant's testimony)
8. In May 2017, the Appellant called the Health Connector and asked about the status of his application and was told that they were still determining his eligibility. (Appellant's testimony)
9. The Appellant continued looking for a better job. In June 2017, the Appellant was hired by a new employer. The Appellant started working his new job at the beginning of July 2017. His new employer offered health insurance coverage, and the Appellant enrolled in the coverage, beginning in August 2017. (Appellant's testimony; Exhibit 2)
10. The Appellant had health insurance coverage in August 2017 through December 2017. (Exhibit 1; Appellant's testimony)
11. According to Table 2 of the Schedule HC 2017, the Appellant was not eligible for government-subsidized insurance in 2017, since his AGI for 2017 was more than \$35,640 for a family one.
12. According to Table 3, Affordability, of the Schedule HC 2017, the Appellant could have afforded to pay up to 8.16% of his income in 2017 for health insurance coverage. Based on his AGI and Married Filing Joint with no dependents tax filing status, the Appellant could have afforded to pay a monthly premium of up to \$493 for health insurance coverage in 2017.
13. According to Table 4, Premiums, of the Schedule HC 2017, the Appellant could have purchased health insurance in the private market in 2017 at a monthly premium cost of \$249, based on his age and county residence in 2017.

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

In this case, the Appellant had health insurance coverage through his employer during the first two months of 2017, until he lost his job. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a penalty. For Tax Year 2017, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Thus, the appellant had a three-month grace period through May 2017 to obtain new insurance coverage

The Appellant has presented sufficient evidence to support the conclusion that, while unsuccessful, he made a good faith effort to obtain health insurance coverage during the five-month gap in which he was without coverage in 2017, by applying for coverage through MassHealth and the Health Connector and by looking for new employment with an employer who offered health insurance coverage. While the Health Connector asked for documentation to prove his income and residence, the Appellant responded with what he understood would be sufficient documentation. At the same time, however, the Appellant was about to be offered a job that would start at the beginning of July 2017 and would provide him health insurance coverage starting on July 1, 2017.

As the Appellant's application for coverage through the Health Connector was still in limbo in May/June 2017 and the Appellant had a firm offer of employment with employer-sponsored insurance coverage beginning on August 1, 2017, I conclude that the Appellant's actions complied with the purposes of MGL Chapter 11M, Section 2, and 956 CMR 6.08(3) in 2017, and that he should not be assessed any penalty for not having insurance coverage in June and July 2017.

Accordingly, the Appellant's two-month penalty shall be waived in full for 2017.

**PENALTY ASSESSED**

Number of MonthsAppealed:   2   Number of Months Assessed:   0  

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

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

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

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

Hearing Officer

Cc:      Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-249

### **Appeal Decision** Appeal Denied

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** September 28, 2018

**Decision Date:** October 25, 2018

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on September 18, 2018.

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

Exhibit 1: Notice of Hearing dated August 29, 2018

Exhibit 2: Appeal Case Information from form Schedule HC

Exhibit 3: Statement of Grounds for Appeal dated May 23, 2018

Exhibit 4: Open record document Health Insurance Information Document

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The appellant is twenty seven years old and is single. He lives in Worcester County, Massachusetts.
2. Appellant works in Health care.
3. Appellant had health insurance available to him but at a cost of \$360.00 a month. His Health Insurance Form completed by his employer indicated that the cost was \$123.00 per month, which is .039% of his monthly income. This Appellant stated that he was out of state traveling for his job a lot in 2017. However, Appellant did not state that he was a resident of any other state during 2017.
4. Appellant does not have health insurance in 2018.
5. The Appellant's monthly expenses totaled \$2,375.00, consisting of heat and electricity \$300.00, internet & cable \$0.00, cell phone \$85.00, car payment \$360.00 car insurance \$90.00, car gas \$350.00, food \$350.00, credit card \$500.00, Loan \$340.00
6. The appellant did submit a Statement of Grounds for Appeal-2017 under the grounds for Appeal, " Other. During 2017 other circumstances, such as applying the Affordability Tables in Schedule HC to you is inequitable (for example because of family size); or that you did not reside in Massachusetts during your period of uninsurance."
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 2017. 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 2017.
8. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant would not have been eligible for subsidized health insurance, since Appellant's income of \$41,959.00 was more than \$35, 640.00. The monthly premium for health insurance available on the private market in Worcester County for a 26 year old single person was \$150.00. The tables reflect that Appellant could afford \$265.74. This is less than what the appellant is deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions)

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

The appellant did submit a Statement of Grounds for Appeal-2017 under the grounds for Appeal, “Other. During 2017 other circumstances, such as applying the Affordability Tables in Schedule HC to you is inequitable (for example because of family size); or that you did not reside in Massachusetts during your period of uninsurance.”

The Health Care Reform Act of 2006 requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage “so long as it is deemed affordable” under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). However, individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”) are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 13-1, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2013-releases/tir-13-1.html>. For 2017, 150 percent of the FPL was \$17,820.00 for a single person with no dependents. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf>; see also 830 Mass. Code Regs. 111M.2.1(5)(c) (2008). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months. *Id.*

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

Appellant reported a federal AGI of \$41,959.00 in 2017, and Appellant’s filing status was single. EX 2. According to the Affordability Schedule established by the Connector’s board and included in the Instructions and Worksheets of the 2017 Massachusetts Schedule HC, Appellant could afford to pay \$265.74 monthly for health insurance. See 2017 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to him from the Premium Tables, at a cost of \$150.00 monthly for coverage with zero dependents *Id.* at Table 4. Only qualifying coverage that is affordable and meets minimum standards, as those terms are defined in law, will block an employee from being eligible for an advance premium tax credit. See 26 CFR s. 1.36B-2 c (3). Qualifying coverage does not include any group plan offered by an employer to which an employee has access, if the

required employee's contribution for coverage is 9.5% of the employee's projected or actual modified gross income. See 26 CFRs. 1.36B-2 c (3).

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 \$265.74 for health insurance coverage because of his income. Private insurance in the market place was \$150.00 per month and from his employer at the rate of \$123.00 per month. On these facts, I find that Appellant has not shown that he was precluded from purchasing affordable health insurance during 2017. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that he is not exempt from a tax penalty for his non-compliance with the individual mandate.

Accordingly, Appellant's appeal is **DENIED**, and the 2017 penalty assessed is **UPHELD**.

#### **PENALTY ASSESSED**

Number of MonthsAppealed: 12 Number of Months Assessed: 12

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

OR

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

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

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA1759

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

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** August 9, 2018

**Decision Date:** October 11, 2018

### AUTHORITY

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

### JURISDICTION

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

### HEARING RECORD

The appellant appeared at the hearing, which was held by telephone on August 9, 2018. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

Exhibit 1: Appeal Case Information from Schedule HC 2017

Exhibit 2: Statement of Grounds for Appeal 2017 signed and dated by Appellants on April 30, 2018 with letter in support attached

Exhibit 3: Notice of Hearing sent to Appellant dated July 12, 2018 for August 9, 2018 hearing

Exhibit 4: Appellant's Form MA 1099-HC (partial) 2017

Exhibit 5: National Grid Termination Notice dated April 23, 2018 and bill for electricity for March-April, 2018 sent to Appellant

Exhibit 6: Appellant's gas bill for May, 2018

Exhibit 7: Appellant's employers' employee benefit summary, 2018

### FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2017 Massachusetts tax return as Head of Household with one dependent claimed, was 31 years old in 2017 (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Essex County in 2017 with her minor child (Exhibit 1, Testimony of Appellant).
3. Appellant had a Federal adjusted gross income for 2017 of \$33,815 (Exhibit 1 and Testimony of Appellant).
4. Appellant had one job from January through June, 2017. She had health insurance which met the Commonwealth's minimum creditable coverage standards during that period through her job (Testimony of Appellant, Exhibit 4).

5. Appellant changed jobs in June and worked at her new job for the rest of 2017. She earned the same amount at the new job. She was offered health insurance through her new job, but she did not enroll because she felt the coverage was too expensive. The most expensive plan offered would have cost the appellant \$175 a month. There were less expensive plans; the least expensive would have cost the appellant about \$147 per month. Once the appellant did not enroll in June when she started the new job, she would have had to wait until the last quarter of the year to enroll (Testimony of Appellant, Exhibit 7).
6. The appellant has been assessed a tax penalty for all of 2017, despite her having coverage during the first six months of the year (Exhibits 1, 2, 4).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
8. According to Table 3 of Schedule HC for 2017, the appellant with one dependent claimed with an adjusted gross income of \$33,815, could afford to pay \$174 per month for health insurance. According to Table 4, Appellant, 31 years old and living in Essex County, could have purchased insurance for \$249 per month for a plan for an individual. Insurance on the individual market would not have been affordable to the appellant (Schedule HC for 2017, Tables 3 and 4, Exhibit 1).
9. According to Table 2 of Schedule HC for 2017, Appellant with one dependent and earning less than \$48,060 per year, would have been eligible for the ConnectorCare program based upon income (Table 2 of Schedule HC-2017, and Exhibit 1).
10. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2017 (Testimony of Appellant).
11. Appellant did not fall more than thirty days behind in rent payments in 2017 (Testimony of Appellant).
12. Appellant received a termination notice for gas in 2017 (Testimony of Appellant).
13. Appellant had the following monthly expenses for basic necessities in 2017: rent- \$1,100; electricity-about \$70 a month; heat-\$100 during spring, summer, and early fall and \$400 during the winter; telephone -\$85; food- \$480; clothing-\$85; car payments-\$340; car insurance-\$250; gas for the car-\$160. The appellant also spent about \$3,000 on dental care for her minor child during the year (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 2017 should be waived, either in whole or in part.

G.L c. 111M, § 2, also called the “individual mandate,” requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable” under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to

a tax penalty for “each of the months” that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2010, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector’s regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08. Pursuant to 45 CFR 155.305(f), an individual is not eligible for an advance premium tax credit if the individual has access to affordable health insurance which meets minimum essential coverage as defined in the Patient Protection and Affordable Care Act.

The appellant was assessed for a penalty for all of 2017. See Exhibit 1. However, the appellant had health insurance which met the Commonwealth’s minimum creditable coverage standards from January through June, 2017. See Exhibit 4 and the testimony of the appellant which I find to be credible. Since she had coverage for the first six months of the year, the penalty for these months is waived and the penalty for July through September is also waived because Appellant is entitled to a three-month grace period after losing her coverage at the end of June. The appellant has appealed the assessment. Exhibits 1, 2.

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

Appellant would not have been able to afford health insurance through the individual market. According to Table 3 of Schedule HC for 2017, the appellant with one dependent claimed with an adjusted gross income of \$33,815, could afford to pay \$174 per month for health insurance. According to Table 4, Appellant, 31 years old and living in Essex County, could have purchased insurance for \$249 per month for a plan for an individual. Insurance on the individual market would not have been affordable to the appellant. See Schedule HC for 2017, Tables 3 and 4, Exhibit 1.

After Appellant changed jobs at the end of June, 2017, she was offered health insurance through her new job. Appellant chose not to enroll in the offered coverage because she felt it was too expensive. The most expensive plan would have been unaffordable for her. It would have cost \$175 a month; the appellant was deemed able to afford only \$174 a month for coverage. See above. There were however, cheaper plans offered which were affordable for the appellant according to Table 3 of Schedule HC for 2017. See Exhibit 7. There is no evidence in the record regarding the benefits offered and whether the plans met the Commonwealth’s standards.

Appellant was income-eligible for ConnectorCare coverage. The income limit for a household of two was \$48,060. The appellant earned less than the limit. See Exhibit 1, the testimony of the appellant, and Schedule HC. However, the appellant had access to affordable health insurance through her job. If the coverage met the Commonwealth’s standards, then the appellant would not have been eligible for ConnectorCare coverage. See 45 CFR 155.305(f) and 956 CMR 12.05 (1)(b).

Since the appellant may have been eligible for the ConnectorCare program, or may have had access to affordable coverage through her job, we need to determine if she had a financial hardship such the the cost of purchasing health insurance would have caused her to experience a serious deprivation of basic necessities or some other financial hardship as defined in 956 CMR 6.08 (a), (b), (d), and or (e), and 6.08(3).

Appellant had the following monthly expenses for basic necessities in 2017: rent- \$1,100; electricity-about \$70 a month; heat-\$100 during spring, summer, and early fall and \$400 during the winter; telephone -\$85; food-\$480;

clothing-\$85; car payments-\$340; car insurance-\$250; gas for the car-\$160. The appellant also spent about \$3,000 on dental care for her minor child during the year. Appellant earned \$2,800 a month before taxes. Her expenses for basic necessities also amounted to \$2,800, without taking into account the amount she spent on dental care for her child.

Based upon the fact summarized above, I determine that the cost of purchasing health insurance would have caused the appellant to experience a serious deprivation of basic necessities. Pursuant to 956 CMR 6.08 (1)(e), the appellant had a serious financial hardship such that the cost of purchasing health insurance was not affordable for the appellant. I also note that the appellant received a termination notice from her gas company. See 956 CMR 6.08(1)(b).

Appellant's penalty is waived because of financial hardship.

Appellant should note that any waiver granted here is for 2017 only and is based upon the specific facts I have found to be true and should not assume that the same determination will be made should Appellant be assessed a penalty in the future.

#### **PENALTY ASSESSED**

Number of MonthsAppealed: 12 Number of Months Assessed: 0

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

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

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA1765

**Appeal Decision :** Penalty waived in full

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** August 9, 2018

**Decision Date:** October 1, 2018

### AUTHORITY

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

### JURISDICTION

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

### HEARING RECORD

The appellant appeared at the hearing, which was held by telephone on August 9, 2018. The procedures to be followed during the hearing were reviewed with the appellant. The appellant was 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 2017

Exhibit 2: Statement of Grounds for Appeal 2017 signed and dated by Appellant on May 8, 2018 with a copy of Appellant's lease for 2018 attached

Exhibit 3: Notice of Hearing sent to Appellant dated July 12, 2018 for hearing on August 9, 2018

### FINDINGS OF FACT:

The record shows, and I so find:

1. Appellant turned 23 in May, 2017. She filed a 2017 Massachusetts tax return as a single individual with no dependents claimed. She indicated on her return that she was a part year resident (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Dukes County, MA from June through September, 2017. She moved to Massachusetts on June 1, 2017 for employment. At the end of September, she left the Commonwealth, again for employment, and returned on December 29th, 2017. During the year, Appellant lived in four states (Testimony of Appellant).
3. Appellant had a Federal Adjusted Gross Income of \$21,051 in 2017. Though she had several jobs during the year, Appellant earned approximately the same amount each month (Exhibit 1).
4. Appellant had no health insurance all of 2017. During the four months she lived in Massachusetts, she was not offered health insurance through her job. Appellant has been assessed a penalty for four months. She has appealed the assessment (Testimony of Appellant, Exhibits 1 and 2).

5. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
6. According to Table 3 of Schedule HC for 2017, the appellant with no dependents claimed, and with an adjusted gross income of \$21,051 could afford to pay \$50 per month for health insurance. According to Table 4, Appellant, age 23 and living in Dukes County, could have purchased insurance for \$278 per month.
7. According to Table 2 of Schedule HC for 2017, Appellant who earned less than \$35,640 per year would have been eligible for the Connector Care program (Table 2 of Schedule HC-2017, Exhibit 1).
8. In 2017, Appellant had the following monthly expenses for basic necessities: rent-\$75; food-about \$320; electricity and gas-\$0; clothing- about \$80; telephone-\$120; public transportation-\$360; student loans-\$200; car payments and insurance-\$300; gas-\$100 (Testimony of Appellant).
9. 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 2017 (Testimony of Appellant).
10. Appellant did not fall more than thirty days behind in rent payments in 2017, or receive any shut-off notices or have any utilities shut off (Testimony of Appellant).

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

The appellant has been assessed a tax penalty for four months in 2017. The appellant has appealed the penalty. See Exhibits 1 and 2. Appellant moved to Massachusetts at the beginning of June, 2017. She left the Commonwealth at the end of September, 2017 and returned on December 29, 2017. See the testimony of the appellant which I find to be credible and Exhibit 1. She is entitled to a three-month grace period in which to obtain health insurance after moving to the Commonwealth. The grace period for the appellant covers June through August. The penalty should, therefore, only be for the month of September since she lived in another state from October through December. The issue on appeal is whether the tax penalty assessed should be waived, either in whole or in part.

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

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 after moving to Massachusetts, she had a job in Dukes County. She was not offered health insurance through her job. According to Table 3 of Schedule HC for 2017, the appellant with no dependents claimed, and with an adjusted gross income of \$21,051 could afford to pay \$50 per month for health insurance. According to Table 4, Appellant, age 23 and living in Dukes County, could have purchased insurance for \$278 per month. Appellant had no affordable health insurance available to her either through employment or through the individual market.

The appellant would have been eligible for ConnectorCare in 2017. The income limit for an individual for ConnectorCare in 2017 was \$35,640. Appellant's income was under this limit. See Exhibit 1 and Table 2 of Schedule HC for 2017.

Since Appellant had affordable insurance available to her in 2017, we need to determine if Appellant had a financial hardship such that the cost of purchasing would have caused her to experience a serious deprivation of basic necessities. See 956 CMR 6.08(1)(e).

In 2017, Appellant had the following monthly expenses for basic necessities: rent-\$75; food-about \$320; electricity and gas-\$0; clothing- about \$80; telephone-\$120; public transportation-\$360; student loans-\$200; car payments and insurance-\$300; gas-\$100. See the testimony of the appellant which I find to be credible. These expenses amounted to approximately \$1,600. Before taxes, Appellant earned about \$1,750 a month. She was left with virtually no disposable income. Given this, I find that in 2017, the appellant experienced a financial hardship such that health insurance was unaffordable for her. 956 CMR 6.08(1)(e). I also note that she also moved at least three times during the year. By the time she had settled in Massachusetts, she was planning on moving out of the Commonwealth.

Appellant's penalty is waived. There was no affordable insurance available to her because of financial hardship.

Appellant should note that this waiver of the penalty is based upon the facts that I have determined to be true for this 2017 appeal. Appellant should not assume that a similar determination will be made in the future should Appellant again be assessed a penalty for failure to have health insurance.

#### **PENALTY ASSESSED**

Number of MonthsAppealed: 4 Number of Months Assessed: 0

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

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

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-77

**Appeal Decision:** Penalty Overturned in Full

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** August 8, 2018

**Decision Date:** September 29, 2018

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The appellant appeared at the hearing which was held by telephone on August 8, 2018, and testified under oath. The hearing record consists of the appellant's testimony and the following documents which were admitted into evidence without his objection:

Ex. 1—Statement of Grounds for Appeal—2017

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

Ex. 3—Notice of Hearing

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

Ex. 4—Employer Health Insurance Information Form for 2017

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The appellant is 50-years-old, is single, and has a ten-year old child who lives with his ex-wife. He resided in Middlesex County, MA in 2017. He did not have health insurance in 2017. (Testimony, Ex. 2)
2. The appellant has worked for the same employer since 2014 and has been enrolled in employer health insurance on and off. He had insurance for part of 2016, and was subject to a tax penalty for the portion of the year that he was uninsured. (Testimony)

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

3. The appellant did not enroll in employer health insurance in 2017 because the cost was too high. The plan offered by the employer met Minimum Creditable Coverage (MCC) standards.<sup>2</sup> The appellant's share of the premium for the lowest cost plan would have been \$335.56/month, and he could have enrolled in coverage beginning on August 15, 2017. (Testimony, Ex. 4)
4. The appellant investigated health insurance options through the Health Connector and was advised that he did not qualify for subsidized insurance. He also explored private insurance through the Connector and on the open market and determined that the cost would be similar to that of employer insurance. (Testimony)
5. The appellant enrolled in employer health insurance on August 15, 2018, and will pay a monthly premium of approximately \$400.00. (Testimony)
6. The appellant reported an adjusted gross income of \$47,463.00 on his 2017 federal tax return, and reported that he was single with no dependents. (Ex. 2)
7. In 2017, the appellant had regular monthly expenses of approximately \$2628.00 for rent (\$1000.00), electricity (\$55.00), automobile loan (\$200.00), automobile insurance (\$193.00), cell phone (\$100.00), gasoline (\$240.00), food (\$240.00), and credit card debt (\$600.00). In addition, he paid approximately \$600.00/month for child support (Testimony)

In addition to the foregoing, I take administrative notice of the 2017 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov.dor/docs/dor/health-care/2017>, and in particular, Tables 1-6 which, as discussed below, include the Affordability Schedule and other financial information used in making 2017 individual mandate tax penalty determinations.

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

The appellant submitted a statement of grounds for appeal (Ex. 1), claiming that the individual mandate did not apply to him during 2017, but he did not check off a specific reason on the form. He 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 2017, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Since the appellant was uninsured for the entire year, he was assessed and is appealing a penalty of twelve months.

The appellant testified credibly that he has worked for the same employer since 2014 and has been enrolled in employer health insurance on and off. He testified that he had insurance for part of 2016 and paid a tax penalty for the portion of the year during which he was uninsured. He testified that he did not enroll in insurance in 2017 because the cost was too high. He testified that he investigated insurance options with the Health Connector and

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<sup>2</sup> The employer indicated on the Health Insurance Form (Ex. 4) that the plan it offered in 2017 did not meet “minimum value” standards. (Minimum value means that the health insurance plan pays at least 60% of the total costs of the average enrollee.) It is unclear if the employer made a mistake in its answer since it also indicated that its plan met MCC standards set by the state.

was advised that he did not qualify for subsidized insurance. He testified that he also investigated private insurance and determined that the cost was similar to that of employer insurance. Finally, he testified that enrolled in employer insurance in August, 2018, and will pay a monthly premium of approximately \$400.00.

The evidence provided by the appellant established that his income for 2017, \$47,463.00, was greater than 300% of the federal poverty level, which for 2017 was \$35,640.00 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 \$41,581.00 and of \$47,520.00 is deemed to be able to afford a monthly premium of \$300.60 (7.60% of \$47,463.00). Table 4 of the Premium Schedule indicates that a 49-year-old individual (the appellant's age in 2017) in Middlesex County (where the appellant resided in 2017) could have purchased private health insurance for \$313.00 per month, more than the monthly amount deemed affordable from Table 3. Thus, according to the foregoing analysis, the appellant could not have purchased affordable health insurance in 2017.

The next issue to consider is whether the appellant had access to affordable employer health insurance once he became eligible to enroll in August, 2017. The employer provided information which indicated that the cost of an individual plan was \$335.56 per month. 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 2017 is considered to be affordable if the employee's contribution for an individual plan is 9.69 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 monthly cost for an individual plan through the appellant's employer was \$335.56. That cost is less than 9.69 percent of the appellant's projected household MAGI for 2017 (i.e.—9.69 percent of \$47,463.00 is \$4599.16 or \$383.26/month).<sup>3</sup> Hence, since the cost of employer insurance is less than \$383.26/month, he is considered to have had access to qualifying health insurance. See 956 CMR 12.05 and 45 CFR section 155.305 (f)(1)(ii)(B).

Even though employer health insurance may have been affordable to the appellant under the law, he may nevertheless not be subject to a penalty for failing to get health insurance for the months in question if he can show that he experienced a hardship during 2017. 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 2017 could be waived

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<sup>3</sup> 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.

if he experienced financial circumstances such that the expense of purchasing health insurance would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08.

The evidence presented by the appellant in this case is insufficient to establish that he experienced a financial hardship as defined by law so as to waive his penalty for the months in question. The appellant testified that in 2017 he incurred basic monthly expenses of approximately \$2628.00. Those expenses were less than his regular monthly pre-tax income of approximately \$3955.00, thereby making an employer health insurance premium of \$335.56/month manageable, even with the additional child support payment of \$600.00/month factored in. While it is recognized that an approximate difference between income and expenses of \$1327.00 per month is not a panacea, it does not appear on its face that the payment of \$335.56/month for health insurance would have caused an undue hardship.

Based on the foregoing, it is concluded that the appellant could have afforded employer health insurance and failed to establish that he experienced a financial hardship that would entitle him to a waiver of the penalty. Notwithstanding this conclusion, the penalty will be waived for the following reasons. First, while child support payments are not part of the calculation for a financial hardship, it bears consideration that the appellant's monthly obligation is high and leaves him with approximately \$727.00/month once it is subtracted from the difference between income and expenses. That can hardly be deemed a sufficient cushion in light of unforeseeable expenses which inevitably arise. Second, the appellant testified that he has been enrolled in employer insurance on and off since 2014, and re-enrolled in August, 2018, thereby demonstrating that the mandate to obtain insurance has not been lost on him.

Therefore, based upon the totality of the evidence, the appellant's request for a waiver from the penalty is **granted** for the months in question. The determination that the appellant is eligible for a waiver is with respect to 2017, only and is based upon the extent of information submitted by him in this appeal.

#### **PENALTY ASSESSED**

Number of MonthsAppealed: 12 Number of Months Assessed: 0

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

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

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

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

Hearing Officer

Cc: Connector Appeals Unit

**ADDENDUM**

The appellant is advised not to rely on a similar grant of leniency should he be assessed and appeal a penalty for not purchasing health insurance in the future.

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-81

**Appeal Decision:** Penalty Overturned in Full

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** August 8, 2018

**Decision Date:** September 30, 2018

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The appellant appeared at the hearing which was held by telephone on August 8, 2018, and testified under oath. The hearing record consists of the appellant's testimony and the following documents which were admitted into evidence without her objection:

Ex. 1—Statement of Grounds for Appeal—2017

Ex. 1A—Letter from the appellant dated May 8, 2018

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

Ex. 3—Notice of Hearing

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

Ex. 4—2017 Form 1095-A

The appellant did not submit the documentation requested of her by the filing deadline, and the record was subsequently closed.

### **FINDINGS OF FACT**

The record shows, and I so find:

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

1. The appellant is 27-years-old, is single, and has no children. She resided in Middlesex County, MA in 2017. In 2017, she had health insurance from January through July, and from November through December. (Testimony, Exs. 2,4)
2. The appellant turned 26-years-old on July 19, 2017. She was insured under her parents' health insurance plan from January 1, 2017 through July 31, 2017. (Testimony, Ex. 2)
3. When the appellant turned 26, she did not have a job. She contacted MassHealth and was advised that she was eligible for coverage. She received an identification number, but subsequently learned that she was not insured when she picked up a prescription at the pharmacy. She called MassHealth and was advised that the identification number would work the next time she filled her prescription. (Testimony, Ex. 1A)
4. The appellant got a job in September, 2017, but the employer did not offer health insurance. She called MassHealth to provide an update of her information. She was transferred to the Health Connector and enrolled in a plan with coverage beginning on November 1, 2017 through the remainder of the year. (Testimony, Ex. 4)
5. The appellant reported an adjusted gross income of \$27,787.00 on her 2017 federal tax return, and reported that she was single with no dependents. (Ex. 2)

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

The appellant submitted a statement of grounds for appeal (Ex. 1), claiming that the individual mandate did not apply to her during 2017 for "other" reasons such as being a non-resident of the state or not qualifying for government subsidized insurance. She also submitted a letter (Ex. 1A) with her statement in which she stated in part that when she turned 26-years-old and did not have a job, she contacted MassHealth and was advised that she qualified for insurance. She further stated that found out she did not have insurance when she tried to fill a prescription at the pharmacy. She stated that she called MassHealth and eventually enrolled in insurance through the Health Connector which was supposed to start on October 1, 2017.

The appellant did not have insurance from August through October. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a tax penalty; for Tax Year 2017, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Although the appellant was uninsured for three months, she evidently indicated on her Schedule HC that she also did not have insurance for the months of November and December. As such, she was assessed and is appealing a penalty of two months (i.e. the months of uninsurance less the gap period of three months).

The appellant testified credibly that she had health insurance under her parents' plan from January through July, 2017, when she turned 26-years-old. She testified that she was unemployed at the time and contacted MassHealth about coverage. She testified that she was told that she was eligible for insurance and was given an identification number. She testified that she could not use that number when she filled a prescription at the pharmacy. She testified that she got a job in September, 2017, and when she called MassHealth to update her

information, she was transferred to the Health Connector. Finally, she testified that she enrolled in a plan with coverage beginning on November 1<sup>st</sup> through the remainder of the year.

The Connector submitted evidence which established that the appellant had health insurance coverage from November 1, 2017 through December 31, 2017. Accordingly, regardless of what happened with MassHealth, she is entitled to a gap period of three months from August through October. Hence, with the exception of those three months, she had insurance for the rest of the year and is not subject to a penalty.

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

**PENALTY ASSESSED**

Number of MonthsAppealed: 2 Number of Months Assessed: 0

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

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

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

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-39

**Appeal Decision:** Appeal Approved

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** August 13, 2018

**Decision Date:** October 15, 2018

### AUTHORITY

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

### JURISDICTION

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

### HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on August 13, 2018. Also present was a duly sworn interpreter. 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 July 17, 2018

Exhibit 2: Appeal Case Information Sheet from Schedule HC 2017

Exhibit 3: Statement of Grounds for Appeal 2017, dated May 9, 2018, signed by Appellant

Exhibit 4: Statement in Support of Appeal

### FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 58 years old in 2017 and filed a 2017 Massachusetts tax return as single, with no dependents claimed (Exhibit 2).
2. Appellant lived in Essex County, MA in 2017 (Exhibit 2).
3. Appellant's Adjusted Gross Income for 2017 was \$36,162 (Exhibit 2).
4. From January through April 2017, Appellant worked in a position where employer sponsored health insurance was only offered to employees that worked for the employer for one year. Appellant left the position before one year (Testimony of Appellant).

5. From mid-June through December 31, 2017, Appellant worked in a position where there was a waiting period of six months before employees were eligible for employer sponsored health insurance (Testimony of Appellant).
6. Appellant did not apply for subsidized or unsubsidized health insurance through the Health Connector (Testimony of Appellant).
7. Appellant does not believe in traditional medical care and only used alternative medical care (Testimony of Appellant).
8. Appellant did not use traditional medical care in 2017 (Testimony of Appellant).
9. Appellant did not know how to file taxes so Appellant went to an organization that helped low income people to file taxes (Testimony of Appellant).
10. Appellant told the tax preparer that Appellant wanted to apply for a religious exemption based on a sincerely-held religious belief that caused Appellant to object to substantially all forms of treatment covered by health insurance (Testimony of Appellant).
11. Appellant's tax preparer did not apply for the religious exemption, despite the request by Appellant (Testimony of Appellant).
12. Appellant was assessed a penalty for twelve months for 2017 (Exhibit 2).
13. Appellant filed an appeal in May, 2018, claiming that Appellant wanted to claim the religious exemption due to strong religious beliefs about alternative medicine (Exhibit 3).
14. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
15. According to Table 3 of Schedule HC for 2017 a person filing as single, with no dependents claimed and with a Federal Adjusted Gross Income of \$36,162 could afford to pay \$223 per month for health insurance. According to Table 4, Appellant, age 58 and living in Essex County, could have purchased private insurance for \$374 per month. Private insurance was not affordable for Appellant in 2017.
16. According to Table 2 of Schedule HC for 2017, Appellant, earning more than \$35,640 would not have met the income eligibility guidelines for government subsidized insurance. .

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

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2017 should be waived, either in whole or in part.

G.L.c. 111M, § 2, also called the “individual mandate,” requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable” under the schedule set by the board of directors for the

Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for “each of the months” that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2017, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector’s regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

Appellant has been assessed a tax penalty for twelve months. Appellant seeks to appeal the penalty by asking for a religious exemption. A claim for a religious exemption can be claimed on the Massachusetts tax return and is not an issue that can be raised during a hardship appeal. The proper procedure would be for Appellant to file a revised tax return to claim the exemption. However, this appeal will be examined as a hardship appeal since Appellant received a penalty for twelve months. To determine if the penalty should be waived in whole or in part, we must consider whether affordable insurance was available to Appellant before we consider whether Appellant suffered a financial hardship such that the purchase of insurance which met minimum creditable coverage standards would have caused Appellant to experience a serious deprivation of basic necessities. See 956 CMR 6.

Appellant worked at two different jobs during 2017. Employer sponsored health insurance was not available to Appellant since Appellant did not work at either job past the waiting periods for 2017 coverage. According to Table 3 of Schedule HC for 2017, Appellant, who filed taxes as a single person with no dependents could afford to pay \$223 per month for health insurance. Private insurance would have cost Appellant \$374 per month and was not considered affordable. Government subsidized health insurance was not available to Appellant since Appellant earned more than \$35,640. See Schedule HC for Healthcare, Tables 2, 3 and 4, Exhibits 2, 3 and 4, and Testimony of Appellant, which I find to be credible.

I find that for 2017, the purchase of affordable health insurance that met minimum creditable coverage standards was not available to Appellant. See 956 CR 6.00.

I find that the penalty assessed against Appellant for 2017 should be waived in its entirety. **Appellant should note that this decision is based upon the facts as I have found them for 2017, and that Appellant may be subject to a penalty in the future.**

## **PENALTY ASSESSED**

Number of MonthsAppealed: 12

Number of Months Assessed: 0

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

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

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

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

**ADDENDUM:** Appellant should be aware that if Appellant seeks a Religious Exemption for a future year, Appellant must meet certain requirements AND Appellant must claim the exemption at the time of filing of the Massachusetts tax return or a revised tax return.

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17134

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

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** August 13, 2018

**Decision Date:** October 22, 2018

### AUTHORITY

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

### JURISDICTION

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

### HEARING RECORD

The appellant appeared at the hearing, which was held by telephone on August 13, 2018. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

Exhibit 1: Appeal Case Information from Schedule HC 2017

Exhibit 2: Statement of Grounds for Appeal 2017 signed and dated by Appellants on May 21, 2018 with letter in support attached

Exhibit 3: Notice of Hearing sent to Appellant dated July 17, 2018 for August 13, 2018 hearing

Exhibit 4: Appellant's National Grid bill for June, 2017

Exhibit 5: Appellant's car payment bill, February, 2017

Exhibit 6: Appellant's pay stub, December, 2017

Exhibit 7: Appellant's gas bill, 2018

Exhibit 8: Appellant's car insurance payments, 2017

Exhibit 9: Appellant's rent payment, 2017

Exhibit 10: Appellant's history of bank withdrawals for rent, 2017

Exhibit 11: Appellant's history of bank withdrawals for car payments, 2017

### FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2017 Massachusetts tax return as a single individual with no dependents claimed, was 55 years old in 2017 (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Middlesex County in 2017 (Exhibit 1, Testimony of Appellant).
3. Appellant had a Federal adjusted gross income for 2017 of \$31,890 (Exhibit 1 and Testimony of Appellant).

4. Appellant had a job in a mental health residential placement in 2017. At the beginning of the year, he earned \$13.25 an hour and worked 40 hours or more each week. Some weeks, he earned overtime pay, but some weeks, he did not. He could not count on the overtime pay when budgeting his finances. In June, 2017, a new vendor took over the residence and Appellant's hours were cut to 35 a week (Testimony of Appellant, Exhibit 2 attachment, Exhibit 6).
5. Appellant was offered health insurance through his job. He felt he could not afford the coverage. He already had coverage through the ConnectorCare program. He had the ConnectorCare coverage from January through April, 2017. At the end of April, Appellant dropped the coverage he had because he felt he could not afford the premium any longer (Testimony of Appellant).
6. The appellant has been assessed a tax penalty for August through December, 2017. Appellant has appealed the assessment (Exhibits 1 and 2).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
8. According to Table 3 of Schedule HC for 2017, the appellant with no dependents claimed with an adjusted gross income of \$31,890, could afford to pay \$132 per month for health insurance. According to Table 4, Appellant, 55 years old and living in Middlesex County, could have purchased insurance for \$363 per month for a plan for an individual. Insurance on the individual market would not have been affordable to the appellant (Schedule HC for 2017, Tables 3 and 4, Exhibit 1).
9. According to Table 2 of Schedule HC for 2017, Appellant earning less than \$35,640 per year, would have been eligible for the ConnectorCare program based upon income (Table 2 of Schedule HC-2017, and Exhibit 1).
10. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2017 (Testimony of Appellant).
11. Appellant did not fall more than thirty days behind in rent payments in 2017 (Testimony of Appellant).
12. Appellant did not receive a termination notice for any utility in 2017 (Testimony of Appellant).
13. Appellant had the following monthly expenses for basic necessities in 2017: rent- \$780; electricity-about \$120; gas-\$40; telephone and internet -\$80; food-\$220; clothing-\$25; car payments-\$308; car insurance-\$95; gas for the car-\$160 (Testimony of Appellant, Exhibits 2, 4, 5, 7, 8, 9, 10, and 11).

## **ANALYSIS AND CONCLUSIONS OF LAW**

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2017 should be waived, either in whole or in part.

G.L c. 111M, § 2, also called the “individual mandate,” requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable” under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to

a tax penalty for “each of the months” that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2010, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector’s regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08. Pursuant to 45 CFR 155.305(f), an individual is not eligible for an advance premium tax credit if the individual has access to affordable health insurance which meets minimum essential coverage as defined in the Patient Protection and Affordable Care Act.

The appellant was assessed for a penalty for August through December, 2017. The appellant has appealed the assessment. Exhibits 1, 2.

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

Appellant would not have been able to afford health insurance through the individual market. According to Table 3 of Schedule HC for 2017, the appellant with no dependents claimed with an adjusted gross income of \$31,890, could afford to pay \$132 per month for health insurance. According to Table 4, Appellant, 55 years old and living in Middlesex County, could have purchased insurance for \$363 per month for a plan for an individual. Insurance on the individual market would not have been affordable to the appellant. See Schedule HC for 2017, Tables 3 and 4, Exhibit 1.

Appellant testified that he was offered health insurance through his job, but he felt he could not afford the coverage. There is no evidence in the record regarding the cost of the coverage offered, so we cannot determine whether it was affordable for the appellant according to Schedule HC for 2017, Table 3.

Appellant was income-eligible for ConnectorCare coverage. In fact, Appellant had ConnectorCare coverage from January through April, 2017. Appellant chose to drop this coverage because he felt he could not continue to pay the premium. This was his choice. He could have retained coverage for all of the year. See the testimony of the appellant which I find to be credible.

Since the appellant could have had ConnectorCare program for all of 2017, we need to determine if he had a financial hardship such the the cost of purchasing health insurance would have caused him to experience a serious deprivation of basic necessities or some other financial hardship as defined in 956 CMR 6.08 (a), (b), (d), and or (e), and 6.08(3).

Appellant had the following monthly expenses for basic necessities in 2017: rent- \$780; electricity-about \$120; gas-\$40; telephone and internet -\$80; food-\$220; clothing-\$25; car payments-\$308; car insurance-\$95; gas for the car-\$160. See the testimony of Appellant and Exhibits 2, 4, 5, 7, 8, 9, 10, and 11. During the first six months of the year, Appellant earned \$13.25 an hour. He generally worked 40 hours a week, but some times earned overtime. He could not count on earning overtime during any particular pay period. At the end of June, his hours were cut. Before his hours were cut, he earned about \$2,300 a month (before taxes). After his hours were cut, he earned about \$2,000 gross (excluding overtime, which was not ensured). His expenses amounted to about \$1,850.

Based upon the fact summarized above, I determine that the cost of purchasing health insurance would have caused the appellant to experience a serious deprivation of basic necessities. Pursuant to 956 CMR 6.08 (1)(e), the

appellant had a serious financial hardship such that the cost of purchasing health insurance was not affordable for the appellant. After paying his expenses for basic necessities, Appellant had little or no disposable income.

Appellant's penalty is waived because of financial hardship.

Appellant should note that any waiver granted here is for 2017 only and is based upon the specific facts I have found to be true and should not assume that the same determination will be made should Appellant be assessed a penalty in the future.

### **PENALTY ASSESSED**

Number of MonthsAppealed:   5   Number of Months Assessed:   0  

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

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

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

Hearing Officer

Cc:     Connector Appeals Unit

Addendum: As of the date of this hearing, Appellant had no health insurance coverage. If he still does not, he may wish to apply for coverage through the Connector during the open enrollment period which begins on November 15, 2018. He may apply on line at [MAhealthconnector.org](http://MAhealthconnector.org) or by calling the Connector at 1-877-623-6765.

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17135

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

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** August 13, 2018

**Decision Date:** October 23, 2018

### AUTHORITY

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

### JURISDICTION

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

### HEARING RECORD

The appellant appeared at the hearing, which was held by telephone on August 13, 2018. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

Exhibit 1: Appeal Case Information from Schedule HC 2017

Exhibit 2: Statement of Grounds for Appeal 2017 signed and dated by Appellant on May 23, 2018 with letter in support attached

Exhibit 3: Notice of Hearing sent to Appellant dated July 17, 2018 for August 13, 2018 hearing

### FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2017 Massachusetts tax return as a single person with no dependents claimed, was 56 years old in 2017 (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Essex County in 2017 (Exhibit 1, Testimony of Appellant).
3. Appellant's Federal Adjusted Gross Income for 2017 was \$57,570 (Exhibit 1, Testimony of Appellant).
4. Appellant had a job in health care in January and February, 2017. She had health insurance through this job. She left her job and went to another job, also in health care. She was offered health insurance through her new job, but she was not eligible to enroll until after her probationary period of 90 days. Before her probationary period was over, she left the job and went back to her first employer because she was offered a better position. Again, she was offered health insurance but had to wait until her probationary period was over before she could enroll (Testimony of Appellant).

5. Appellant thought she would be able to enroll in her employer's health insurance plan at the end of August. She then learned that did not qualify for a special enrollment period and would have to wait until December. She finally was allowed to enroll with an effective start date of December 1, 2017 (Testimony of Appellant).
6. Appellant has been assessed a tax penalty for six months, June through November, 2017. The appellant has appealed this assessment (Exhibits 1, 2).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
8. According to Table 3 of Schedule HC for 2017, the appellant with no dependents claimed with an adjusted gross income of \$57,570 could afford to pay \$391 per month for health insurance. According to Table 4, Appellant, age 56 and living in Essex County, could have purchased insurance for \$374 per month.
9. Private insurance was affordable for the appellant in 2017 (Schedule HC for 2017).
10. According to Table 2 of Schedule HC for 2017, Appellant earning more than \$35,640 per year, would have been ineligible for the ConnectorCare program based upon income (Table 2 of Schedule HC-2017).
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 2017 (Testimony of Appellant).
12. Appellant fell more than thirty days behind in mortgage payments in 2017. Throughout the year, she was always at least a month behind in her payments (Testimony of Appellant).
13. Appellant received a shut-off notice from National Grid for her gas service in June, 2017 (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 2017 should be waived, either in whole or in part.

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

45 CFR 155.410 and 420 provide for open enrollment periods during which individuals may enroll in health care plans and for special open enrollment periods when individuals may enroll outside of the open enrollment period if they have had a qualifying life event within the past 60 days.

Appellant had health insurance which met the Commonwealth's minimum creditable coverage standards in January, February, and December, 2017. Since she is allowed a three-month grace period after losing coverage, she has only been assessed a penalty for June through November. The appellant has 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 she had a job in health care in January and February, 2017. She had health insurance through this job. She left her job and went to another job, also in health care. She was offered health insurance through her new job, but she was not eligible to enroll until after her probationary period of 90 days. Before her probationary period was over, she left the job and went back to her first employer because she was offered a better position. Again, she was offered health insurance but had to wait until her probationary period was over before she could enroll. Appellant thought she would be able to enroll in her employer's health insurance plan at the end of August. She then learned that did not qualify for a special enrollment period and would have to wait until December. She finally was allowed to enroll with an effective start date of December 1, 2017. See the testimony of the appellant which I find to be credible. Appellant had no access to insurance through employment until December.

Appellant had no access to health insurance through the ConnectorCare program since her income was too high. See Table 2 of Schedule HC. There is no evidence in the record that Appellant had access to any other government sponsored coverage.

According to Table 3 of Schedule HC for 2017, the appellant with no dependents claimed with an adjusted gross income of \$57,570 could afford to pay \$391 per month for health insurance. According to Table 4, Appellant, age 56 and living in Essex County, could have purchased insurance for \$374 per month. Affordable health insurance through the individual market would have been available to the appellant but only if she applied for it within 60 days of losing her coverage at the end of February. See 45 CFR 155.410 and 420. Losing coverage is a qualifying event. Appellant did not apply within 60 days of losing her coverage because she believed she would obtain insurance through her job after her probationary period when she changed jobs. Once she missed the 60-day deadline, she would not have been able to obtain insurance until the next open enrollment period at the end of 2017.

Appellant had no access to health insurance from June through November. She understandably waited to obtain health insurance through her job available to her after her probationary period. She was then offered a better job and took it. Again, she was faced with a probationary period, with no possibility of enrolling in a plan until the next probationary period was over. Once she missed the 60-day special enrollment period after losing coverage, she was blocked from obtaining coverage through the individual market. Finally, she was not eligible for any government sponsored program.

In addition, Appellant experienced financial hardships as defined in 956 CMR 6.08. She fell more than 30 days behind in her mortgage payment and received a shut-off notice for an essential utility. See 956 CMR 6.08(1)(a) and (b).

Based upon the facts summarized above, I determine that pursuant to 956 CMR 6.08(1) and because of the unavailability of affordable health insurance, the appellant's penalty is waived in its entirety.

Appellant should note that any waiver granted here is for 2017 only and is based upon the specific facts I have found to be true and should not assume that the same determination will be made should Appellant be assessed a penalty in the future.

## **PENALTY ASSESSED**

Number of MonthsAppealed:   6   Number of Months Assessed:   0  

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

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

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

Hearing Officer

Cc:     Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17136

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

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** August 13, 2018

**Decision Date:** October 17, 2018

### AUTHORITY

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

### JURISDICTION

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

### HEARING RECORD

The appellant appeared at the hearing, which was held by telephone on August 13, 2018. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

Exhibit 1: Appeal Case Information from Schedule HC 2017

Exhibit 2: Statement of Grounds for Appeal-2017 signed and dated by Appellant on May 21, 2018

Exhibit 3: Notice of Hearing sent to Appellant dated July 17, 2018 for August 13, 2018 hearing

### FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2017 Massachusetts tax return as a single person with no dependents claimed, was 44 years old in 2017 (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Middlesex County in 2017 (Exhibit 1, Testimony of Appellant).
3. Appellant's Federal Adjusted Gross Income for 2017 was \$21,232 (Exhibit 1, Testimony of Appellant).
4. Appellant had a full-time job from January through March, 2017 when Appellant was laid off. After he was laid off, he collected unemployment compensation for thirty weeks. By November, his benefits ended and Appellant had no source of income (Testimony of Appellant).
5. Appellant had health insurance through his job. When he was laid off, he applied for MassHealth. He thought he had coverage, but found out in November that he had never obtained coverage because he did not send in requested documentation. He applied again and obtained MassHealth coverage at the beginning of December, 2017. As of the date of this hearing, Appellant still had MassHealth (Testimony of Appellant, Exhibit 1).

6. Appellant has been assessed a tax penalty for five months, July through November. The appellant has appealed this assessment (Exhibits 1, 2).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
8. According to Table 3 of Schedule HC for 2017, the appellant with no dependents claimed, and with an adjusted gross income of \$21,232 could afford to pay \$51 per month for health insurance. According to Table 4, Appellant, age 44 and living in Middlesex County, could have purchased insurance for \$274 per month. Private health insurance was unaffordable for the appellant in 2017 (Exhibit 1, Tables 3 and 4 of 2017 Schedule HC).
9. According to Table 2 of Schedule HC for 2017, Appellant who earned less than \$35,640 per year would have been eligible for the Connector Care program (Table 2 of Schedule HC-2017, Exhibit 1).
10. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2017 (Testimony of Appellant).
11. Appellant did not fall more than thirty days behind in rent payments in 2017 (Testimony of Appellant).
12. Appellant did not receive any shut-off notices for basic utilities in 2017 (Testimony of Appellant).

13. Appellant, who lived with his father, had the following monthly expenses for basic necessities in 2017: rent, including utilities- \$150. When he was unemployed, he did not pay anything else for other necessities, though he gave his father \$300 a month towards household expenses once he received unemployment compensation (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 2017 should be waived, either in whole or in part.

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

Appellant had health insurance from January through March and then in December, 2017. Because he is entitled to a three-month grace after losing coverage at the end of March, Appellant has been assessed a five-month penalty, from July through November. Appellant has 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 was unemployed from April on in 2017. See the testimony of the appellant which I find credible and Exhibit 1. Appellant, therefore, had no health insurance available to him through employment.

According to Table 3 of Schedule HC for 2017, appellant with no dependents claimed, and with an adjusted gross income of \$21,232 could afford to pay \$51 per month for health insurance. According to Table 4, Appellant, age 44 and living in Middlesex County, could have purchased insurance for \$274 per month. See 956 CMR 6.05 (1)(2), Schedule HC Tables 3 and 4, and Exhibit 1. Health insurance on the individual market was not affordable for the appellant.

According to Table 2 of Schedule HC for 2017, Appellant who earned less than \$35,640 would have been eligible based upon income level and lack of access to insurance through employment for ConnectorCare coverage. See Table 2 of Schedule HC-2016 and 956 Code of Massachusetts Regulations 12.00 et. seq.

Though Appellant may have been eligible for ConnectorCare, I note that the appellant applied for MassHealth after he lost his job. MassHealth asked the appellant to send in some information. Appellant admits that he did not follow through and reply to the request, but he thought he had MassHealth coverage anyway. He discovered in November, that he did not have coverage. He then supplied the information requested and obtained MassHealth coverage which he still had as of the date of this hearing. I find the appellant's testimony credible.

Taking into account that Appellant, after he had lost his job and his health insurance, applied for MassHealth, I determine that his penalty should be waived. He is not an individual who did not care about lack of coverage or who thought coverage was unimportant. He took what action he could while dealing with unemployment and the resulting loss of income. As soon as he realized that the coverage had not gone into effect, he took steps to correct the situation. Since December, 2017 he has had MassHealth coverage.

Based upon the facts summarized above, I determine that the appellant's penalty for 2017 should be waived.

Appellant should note that any waiver granted here is for 2017 only and is based upon the specific facts I have found to be true and should not assume that the same determination will be made should Appellant be assessed a penalty in the future.

## **PENALTY ASSESSED**

Number of MonthsAppealed:   5   Number of Months Assessed:   0  

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

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

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

Cc: Connector Appeals Unit

Hearing Officer

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-154

**Appeal Decision:** Appeal Granted

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** August 22, 2018

**Decision Date:** October 30, 2018

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on August 22, 2018. The Appellant offered testimony under oath or affirmation. At the end of the hearing, the record was closed.

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

Exhibit 1:       Appeal Case Information from 2017 Schedule HC

Exhibit 2:       5/9/18 Appeal (8 pages)

Exhibit 3:       7/17/18 Hearing Notice (3 pages)

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant appealed from the assessment of a two-month penalty on his 2017 state income tax return. (Exhibit 1)
2. The Appellant's filing status in 2017 was Single with no dependents. The Appellant's household federal AGI in 2017 was \$47,613. The Appellant resided in Plymouth County in 2017. The Appellant turned twenty-nine years old in 2017. (Exhibit 1)
3. On May 9, 2018, the Appellant appealed his two-month penalty, checking off that, in 2017, "the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities," as the basis for his appeal. (Exhibit 2)
4. The Appellant had no health insurance coverage in January 2017 through May 2017. (Appellant's testimony)
5. The Appellant was employed by the same employer throughout 2017. He has been employed by this employer since 2012. His employer offered health insurance coverage, but the Appellant had not enrolled

- because the weekly premium of \$125 (or, \$541 monthly) individual coverage was too expensive for him. (Appellant's testimony)
6. The Appellant's employer had open enrollment twice a year, in June and October. (Appellant's testimony)
  7. In January 2017, the Appellant learned that the employer was offering new individual plan at a lower premium of \$85 weekly (or, \$368 monthly). The Appellant determined that he could afford this coverage. However, he had to wait until his employer's next open enrollment, in June 2017, to enroll. (Appellant's testimony)
  8. The Appellant enrolled in his employer's coverage in June 2017 and maintained this coverage through the remainder of 2017. (Appellant's testimony)
  9. According to Table 2 of the Schedule HC 2017, the Appellant was not eligible for government-subsidized insurance in 2017, since his AGI for 2017 was more than \$35,640 for a family one.
  10. According to Table 3, Affordability, of the Schedule HC 2017, based on his 2017 AGI and Single with no dependents tax filing status, the Appellant could have afforded to pay a monthly premium of up to \$323 for health insurance coverage in 2017.
  11. According to Table 4, Premiums, of the Schedule HC 2017, the Appellant could have purchased health insurance in the private market in 2017 at a monthly premium cost of \$278, based on his age and county residence in 2017.
  12. The Appellant did not check the private market in 2017, because he was not aware that he could do this. (Appellant's testimony)

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

Since the Appellant had health insurance coverage through his employer during the last seven months of 2017, and had a three-month grace period at the start of 2017 to obtain coverage, under M.G.L. c. 111M, s. 2, the issue before me is the Appellant’s failure to have coverage in April and May 2017.

As the Appellant had worked for the same employer for several years and immediately enrolled in the employer-sponsored insurance as soon as it became affordable and available to him in 2017, I find credible the Appellant’s testimony that he was not aware in 2017 that affordable coverage was available to him in the private market or that he could seek health insurance coverage through the private market. The Appellant appeared genuinely surprised to learn that he could have shopped for health insurance directly through private health insurance companies in 2017.

Therefore, I conclude that no penalty should be assessed against the Appellant for 2017, under 956 CMR 6.08(3).

Accordingly, the Appellant’s two-month penalty shall be waived in full for 2017.

## **PENALTY ASSESSED**

Number of MonthsAppealed:   2   Number of Months Assessed:   0  

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2017 for the amount equal to one half of the lowest cost health insurance plan available to

you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

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

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

Hearing Officer

Cc:      Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-157

**Appeal Decision:** Appeal Denied

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** August 22, 2018

**Decision Date:** October 31, 2018

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on August 22, 2018. The Appellant offered testimony under oath or affirmation. At the end of the hearing, the record was left open until September 19, 2018, for the Appellant to submit additional evidence. The Appellant submitted additional evidence on September 19, 2018, and the record was closed.

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

- Exhibit 1: Appeal Case Information from 2017 Schedule HC
- Exhibit 2: 5/3/18 Appeal (5 pages)
- Exhibit 3: 7/17/18 Hearing Notice (3 pages)
- Exhibit 4: 5/15/18 Certificate of Creditable Coverage – MassHealth, 1/10/15 to 11/10/16
- Exhibit 5: 9/19/18 Cover Letter for submission of Exhibit 4

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant appealed from the assessment of a twelve-month penalty on his 2017 income tax return, checking off “Other,” as the grounds for his appeal, without further explanation. (Exhibit 1)
2. The Appellant’s filing status in 2017 was Single with no dependents. The Appellant’s federal AGI in 2017 was \$45,143. The Appellant resided in Worcester County in 2017. The Appellant turned forty years old in September 2017. (Exhibit 1)
3. The Appellant had no health insurance coverage during 2017. (Appellant’s testimony)
4. Prior to 2017, the Appellant last had health insurance coverage through MassHealth. The Appellant enrolled in the MassHealth coverage shortly after becoming unemployed. He had the MassHealth coverage from January 10, 2015, until November 10, 2016. (Exhibit 4; Appellant’s testimony)

5. The Appellant worked for the same employer throughout 2017. The Appellant started out as a part-time employee and became a full-time employee in April 2017. The Appellant's employer offered health insurance coverage to full-time employees only, at a cost of \$40 weekly (or, \$173 monthly) for individual coverage. (Appellant's testimony)
6. According to Table 2 of the Schedule HC 2017, the Appellant was not eligible for government-subsidized insurance in 2017, since his AGI for 2017 was more than \$35,640 for a family one.
7. According to Table 3, Affordability, of the Schedule HC 2017, based on his 2017 AGI and Single with no dependents tax filing status, the Appellant could have afforded to pay up to 7.6 percent of income for health insurance, which calculates to a monthly premium of up to \$285, for health insurance coverage in 2017.
8. According to Table 4, Premiums, of the Schedule HC 2017, the Appellant could have purchased health insurance in the private market in 2017 at a monthly premium cost of \$256, based on his age and county of residence in 2017, until September 2017, when the premium would have risen to \$274 monthly.

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

At hearing, the Appellant testified that by “other” as his grounds for appeal, he meant that he was unaware that his MassHealth coverage had ended in November 2016, until April 2017; that he had applied for insurance through his employer in April 2017 when he became eligible; that his employer responded that he needed proof that the Appellant’s MassHealth coverage had terminated; and, that he did not have any time to contact MassHealth to obtain this proof, because he was working so much overtime. I do not find the Appellant’s testimony credible because it is difficult to believe that the Appellant became eligible for his employer coverage and learned that his MassHealth coverage had terminated in late 2016 at exactly the same time. In addition, even assuming that MassHealth never notified the Appellant at the time that his coverage was terminating in November 2016, it is not credible that the Appellant would not have had time to request and obtain proof of this from MassHealth soon after his employer had told him that this proof was needed in order for the Appellant to get insurance coverage.

As the Appellant’s employer offered health insurance coverage at a cost of \$40 weekly (or, \$173 monthly) and the Appellant could afford to pay up to \$285 monthly for coverage, his employer’s coverage was very affordable for the Appellant.

As affordable health insurance coverage was available to the Appellant in 2017, the Appellant had a three-month grace period to obtain coverage at the start of 2017, and the Appellant did not have any coverage during the rest of 2017, I conclude that the Appellant failed to meet the requirements of the individual mandate in 2017, under MGL Chapter 11M, Section 2, for the last nine months of 2017.

Accordingly, the Appellant’s twelve-month penalty for 2017 shall be reduced to a nine-month penalty

## **PENALTY ASSESSED**

Number of MonthsAppealed: 12 Number of Months Assessed: 9

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

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

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

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

Hearing Officer

Cc:      Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-158

**Appeal Decision:** Appeal Denied

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** August 22, 2018

**Decision Date:** October 31, 2018

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on August 22, 2018. The Appellant offered testimony under oath or affirmation. At the end of the hearing, the record was left open until September 19, 2018, for the Appellant to submit a summary of benefits for his 2017 health insurance coverage through his employer. The Appellant did not submit any additional evidence by September 19, 2018, and the record was closed.

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

- Exhibit 1:       Appeal Case Information from 2017 Schedule HC
- Exhibit 2:       5/20/18 Appeal (5 pages)
- Exhibit 3:       7/17/18 Hearing Notice (3 pages)

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant appealed from the assessment of a twelve-month penalty on his 2017 income tax return. The Appellant did not check off any box on the appeal form, as the grounds for his appeal. However, he wrote on the form that he was insured during all of 2017 through his employer, a national department store chain, and that "don't understand why I have to do this." (Exhibit 1)
2. The Appellant's filing status in 2017 was Single with no dependents. The Appellant's federal AGI in 2017 was \$29,221. The Appellant resided in Norfolk County in 2017. The Appellant turned sixty-two years old in September 2017. (Exhibit 1)
3. The Appellant did not have health insurance coverage during 2017 that met "Minimum Creditable Coverage" standards for Massachusetts. (Exhibit 1)

4. The Appellant worked for a national department store chain from June 2012, until February 2018. He started working for the company in Florida and began working in Massachusetts in July 2016. The Appellant had employer-sponsored health insurance coverage through this employer and had this coverage throughout his employment with the company. (Appellant's testimony)
5. According to Table 2 of the Schedule HC 2017, the Appellant was eligible for government-subsidized insurance in 2017, since his AGI for 2017 was less than \$35,640 for a family one.
6. According to Table 3, Affordability, of the Schedule HC 2017, based on his 2017 AGI and Single with no dependents tax filing status, the Appellant could have afforded to pay up to 4.2 percent of income for health insurance, which calculates to a monthly premium of \$102, for health insurance coverage in 2017.
7. According to Table 4, Premiums, of the Schedule HC 2017, the Appellant could have purchased health insurance in the private market in 2017 at a monthly premium cost of \$374, based on his age and county of residence in 2017.

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

While the Appellant had the same health insurance coverage in 2017 through his nation-wide employer that he had while working in Florida the prior four years, in order for the Appellant to be considered insured and avoid tax penalties in Massachusetts the Appellant's insurance coverage must meet "minimum creditable coverage" (MCC) standards, under Massachusetts law. This can be determined from the insurance plan's summary of benefits. The record was left open for the Appellant to provide this additional evidence. As the Appellant did not submit the requested document or any other evidence to address this issue, I have no basis for determining that the Appellant's coverage through his employer met, or substantially met, MCC standards.

Therefore, I have no basis for overturning the original determination and conclude that the Appellant failed to meet the requirements of the individual mandate in 2017, under MGL Chapter 11M, Section 2.

Accordingly, the Appellant's twelve-month penalty for 2017 shall not be reduced or waived entirely.

## **PENALTY ASSESSED**

Number of MonthsAppealed: 12 Number of Months Assessed: 12

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

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

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

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-159

**Appeal Decision:** Appeal Denied

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** August 22, 2018

**Decision Date:** October 30, 2018

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on August 22, 2018. The Appellant offered testimony under oath or affirmation. At the end of the hearing, the record was closed.

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

Exhibit 1:       Appeal Case Information from 2017 Schedule HC

Exhibit 2:       5/25/18 Appeal (7 pages)

Exhibit 3:       7/17/18 Hearing Notice (3 pages)

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant appealed from the assessment of a twelve-month penalty on his 2017 state income tax return. (Exhibit 1)
2. The Appellant's filing status in 2017 was Single with no dependents. The Appellant's federal AGI in 2017 was \$21,110. The Appellant resided in Hampden County in 2017. The Appellant turned sixty-two years old in 2017. (Exhibit 1)
3. The Appellant retired in 2015. (Appellant's testimony; Exhibit 2)
4. On May 25, 2018, the Appellant appealed his twelve-month penalty, checking off that, in 2017, "the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities," as the basis for his appeal. (Exhibit 2)
5. The Appellant had no health insurance coverage in 2017. (Appellant's testimony)
6. The Appellant checked the Health Connector for health insurance coverage in 2017, and the lowest cost plan that he found cost a monthly premium of \$385, or 21.88 percent of his 2017 income. This cost was unaffordable for the Appellant. (Appellant's testimony; Exhibit 2)

7. The Appellant does not have health insurance coverage at this time. The Appellant does not want subsidized health insurance coverage. The Appellant just wants catastrophic coverage. (Appellant's testimony)
8. According to Table 2 of the Schedule HC 2017, the Appellant was eligible for government-subsidized insurance in 2017, since his AGI for 2017 was less than \$35,640 for a family one.
9. According to Table 3, Affordability, of the Schedule HC 2017, based on his 2017 AGI and Single with no dependents tax filing status, the Appellant could have afforded to pay up to 2.9 percent of income for health insurance, which calculates to a monthly premium of up to \$51, for health insurance coverage in 2017.
10. According to Table 4, Premiums, of the Schedule HC 2017, the Appellant could have purchased health insurance in the private market in 2017 at a monthly premium cost of \$374, based on his age and county residence in 2017.

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

In this case, the Appellant’s only effort to obtain health insurance coverage in 2017 was to check the Health Connector website for the lowest-cost premiums for individual health insurance plans, where he saw a plan with a \$385 monthly premium. The Appellant never applied to the Health Connector for coverage. If he had, he would have found that he qualified for subsidized health insurance coverage for a monthly premium of \$51, based on his expected income for 2017. At 2.9 percent of his 2017 AGI, this annual cost of \$612 was affordable for the Appellant.

As affordable health insurance coverage was available to the Appellant in 2017 and the Appellant did not have any coverage during 2017, I conclude that the Appellant failed to meet the requirements of the individual mandate in 2017, under MGL Chapter 11M, Section 2.

Accordingly, the Appellant’s twelve-month penalty for 2017 shall not be waived or reduced.

## **PENALTY ASSESSED**

Number of MonthsAppealed: 12 Number of Months Assessed: 12

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

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

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

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-160

**Appeal Decision:** Appeal Denied

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** August 22, 2018

**Decision Date:** October 31, 2018

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on August 22, 2018. The Appellant offered testimony under oath or affirmation. At the end of the hearing, the record was closed.

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

- Exhibit 1: Appeal Case Information from 2017 Schedule HC
- Exhibit 2: 5/22/18 Appeal (6 pages)
- Exhibit 3: 7/17/18 Hearing Notice (3 pages)
- Exhibit 4: 7/20/17 Final Appeal Decision (3 pages)

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant appealed from the assessment of a three-month penalty on her 2017 income tax return, checking off that, "During 2017, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities," as the grounds for her appeal. (Exhibit 1)
2. The Appellant's filing status in 2017 was Single with no dependents. The Appellant's federal AGI in 2017 was \$40,687. The Appellant resided in Middlesex County in 2017. The Appellant turned thirty-one years old in October 2017. (Exhibit 1)
3. The Appellant had health insurance coverage through the private market in March through June 2017 at a monthly premium cost of \$230. The lowest cost coverage that she found in the private market had a \$200 monthly premium. (Appellant's testimony; Exhibit 2)
4. The Appellant did not have health insurance coverage in January and February 2017 and in July through December 2017. (Exhibit 1; Appellant's testimony)

5. The Appellant became engaged in March 2017 and began planning for her wedding in November 2017. (Appellant's testimony; Exhibit 2)
6. The Appellant canceled her insurance coverage at the end of June 2017 because of what she considered the high cost of coverage and because she had a down payment to make for her wedding. In her appeal she stated that an additional "big part of why I let my insurance go is because overall, I am a healthy person." (Appellant's testimony; Exhibit 2))
7. The Appellant's basic monthly expenses in 2017 were \$2,174, or about \$26,088 for the year. (Appellant's testimony; Exhibit 2)
8. According to Table 2 of the Schedule HC 2017, the Appellant was not eligible for government-subsidized insurance in 2017, since her AGI for 2017 was more than \$35,640 for a family one.
9. According to Table 3, Affordability, of the Schedule HC 2017, based on her 2017 AGI and Single with no dependents tax filing status, the Appellant could have afforded to pay up to 7.4 percent of income for health insurance, which calculates to a monthly premium of up to \$250, for health insurance coverage in 2017.
10. According to Table 4, Premiums, of the Schedule HC 2017, the Appellant could have purchased health insurance in the private market in 2017 at a monthly premium cost of \$150, based on her age and county of residence in 2017, until October 2017, when the premium would have risen to \$249 monthly.

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

In this case, the Appellant did not have coverage during the first two months of 2017, but enrolled in health insurance coverage through the private market beginning in March 2017 and maintained this coverage through June 2017, when she terminated her coverage in order to save money for her wedding in November 2017. While the Appellant had a three-month grace period to find new coverage after June 2017, the Appellant made no effort to obtain insurance coverage during the rest of 2017. The Appellant offered no evidence in support of her contention that the expense of purchasing health insurance in 2017 would have caused a serious deprivation of food, shelter, clothing or other necessities. The Appellant's list of basic expenses in 2017 added up to less than 2/3's of her 2017 AGI. The Appellant could have afforded to pay up to \$250 monthly for health insurance coverage in 2017 and was paying \$230 monthly for the coverage that she terminated in June 2017. The Appellant could have afforded to continue this coverage in 2017 or, if she wanted to pay even less, coverage was available to the Appellant in the private market until October 2017 for as low as \$150 monthly, and for \$249 thereafter, had the Appellant sought it. Instead, she assumed that she would be healthy for the rest of 2017 and terminated her coverage for the rest of the year, so that she could save more money for her upcoming wedding. This was a personal choice and not due to necessity. Affordable insurance coverage was available to the Appellant throughout 2017.

As affordable health insurance coverage was available to the Appellant in 2017 and the Appellant did not have any coverage during the last six months of 2017, I conclude that the Appellant failed to meet the requirements of the individual mandate in 2017, under MGL Chapter 11M, Section 2.

Accordingly, the Appellant's three-month penalty for 2017 shall not be waived or reduced.

**PENALTY ASSESSED**

Number of MonthsAppealed: 3 Number of Months Assessed: 3

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

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

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

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-165

**Appeal Decision :** Penalty Overturned in Full

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** August 23, 2018

**Decision Date:** October 22, 2018

### AUTHORITY

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

### JURISDICTION

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

### HEARING RECORD

Appellant appeared at the hearing, which was held by telephone, on August 23, 2018. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified. At the end of the hearing, the record was left open until September 6, 2018 so that Appellant could send in additional documents. Appellant did not send in documents and the record is now closed.

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

Exhibit 1: Correspondence from the Health Connector

Exhibit 2: Appeal Case Information from Schedule HC 2017

Exhibit 3: Notice of Appeal, dated May 26, 2018

Exhibit 4: Statement of Appellant in support of the Appeal

### FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 30 years old in 2017. Appellant filed a Massachusetts 2017 tax return as single, with no dependents claimed (Exhibit 2).
2. Appellant resided in Plymouth County, MA in 2017 (Exhibit 2).
3. Appellant had an Adjusted Gross Income for 2017 of \$52,597 (Exhibit 2).
4. Appellant began a contract job in February 2017. Employer sponsored health insurance was available after a three month waiting period (Testimony of Appellant).

5. Appellant was covered by employer sponsored health insurance in May and June 2017 (Exhibit 2 and Testimony of Appellant).
6. Appellant's contract job ended in July, 2017 and Appellant no longer had employer sponsored health insurance (Testimony of Appellant).
7. Appellant began a new job in August 2017 and employer sponsored health insurance was not available (Testimony of Appellant).
8. Appellant went to the Health Connector in August 2017 and did not qualify for subsidized health insurance. Appellant did not sign up for unsubsidized insurance due to the cost (Testimony of Appellant).
9. At the time of the hearing, Appellant was working a different job and was enrolled in employer sponsored health insurance (Testimony of Appellant).
10. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
11. According to Table 3 of Schedule HC for 2017 a single person with no dependents with an adjusted gross income of \$52,597 could afford to pay \$358 per month for private insurance. According to Table 4, Appellant, age 30 and living in Plymouth County could have purchased private insurance for \$278 per month.
12. Private insurance was considered to be affordable for Appellant in 2017 (Schedule HC for 2017).
13. According to Table 2 of Schedule HC for 2017, Appellant, earning more than \$35,640, would not have met the income eligibility guidelines for government subsidized insurance.
14. Appellant had the following monthly expenses for basic necessities during 2017: mortgage \$700; utilities \$117; telephone \$100; food \$300; supplies \$75; clothing \$42; car payment \$250; car insurance \$170; gasoline \$120; medical and dental \$63; student loans \$700. The monthly expenses for basic necessities totaled \$2,637 (Testimony of Appellant).
15. Appellant has been assessed a penalty for four months for 2017 (Exhibit 2).
16. Appellant filed an Appeal on May 7, 2018 appealing the assessment of the penalty. Appellant claimed that the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities (Exhibits 3 and 4).

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2017, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

Appellant has been assessed a tax penalty for 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 2017, Appellant first worked a job that had a waiting period prior to being eligible to enroll in employer sponsored insurance. Appellant enrolled after the waiting period, but was laid off from the job in July 2017. Although Appellant began a new job in August, employer sponsored health insurance was not offered. Appellant looked into health insurance through the Health Connector, but did not sign up due to the cost. According to Tables 2, 3 and 4 of Massachusetts Schedule HC 2017, private health insurance was considered to be affordable for Appellant. Since Appellant potentially had access to affordable insurance, we need to consider whether Appellant experienced a financial hardship as defined by 956 CMR 6.08.

Appellant had monthly expenses of \$2,637. Since Appellant's monthly income for 2017 was \$4,383, private health insurance for \$278 would not cause Appellant a deprivation of food, shelter clothing or other necessities. See Testimony of Appellant, which I find to be credible and 956 CMR 6.08.

I find the penalty assessed against Appellant for 2017 should be upheld.

#### **PENALTY ASSESSED**

Number of MonthsAppealed: 4

Number of Months Assessed: 4

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

#### **OR**

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

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

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

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-186

### **Appeal Decision** Appeal Approved

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** August 22, 2018

**Decision Date:** October 1, 2018

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on August 22, 2018.

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

- Exhibit 1: Notice of Hearing (8-2-18) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2017 (1 page); and
- Exhibit 3: Statement of Grounds for Appeal (5-21-18) (4 pages).

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, age 29 during 2017, was from Essex County.
2. Appellant did not have health insurance during 2017.
3. Appellant previously had health insurance through an employer. Appellant began work for a contract company in the beginning of 2017, and asked about health insurance. Appellant believed she had to wait three months to qualify for health insurance through the employer. When she inquired further, she then had to wait for open enrollment in November 2017.
4. Appellant enrolled in November 2017 for health insurance beginning in January 2018.

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply. Appellant’s failure to have health insurance during 2017 was due to inadvertent error on her part about when she could apply, missing the deadline, and then having to wait for open enrollment in November 2017. Appellant now has health insurance and had health insurance previously. Based on this information, the penalty is waived.

### **PENALTY ASSESSED**

Number of MonthsAppealed: 12      Number of Months Assessed: 0

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

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

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

Hearing Officer

Cc:      Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-196

### **Appeal Decision** Appeal Approved

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** September 13, 2018

**Decision Date:** October 24, 2018

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on September 13, 2018.

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

Exhibit 1: Notice of Hearing (8-17-18) (3 pages);

Exhibit 2: Information from Schedule HC TY 2017 (1 page); and

Exhibit 3: Statement of Grounds for Appeal (5-24-18) (with letter and documents) (17 pages).

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, age 29 during 2017, was from Middlesex County, and filed as Head of Household with one dependent, and family size of 2.
2. Appellant had seasonal work with varying income, and the health insurance available through the employer was too expensive for Appellant.
3. Appellant could not afford health insurance based on the tables in Schedule HC.
4. 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 as paying for health insurance would have caused a serious deprivation of food, shelter, clothing and transportation. Appellant’s expenses for food, shelter, clothing and transportation used most of the income. Based on this information, the penalty is waived.

## **PENALTY ASSESSED**

Number of MonthsAppealed: 12      Number of Months Assessed: 0

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

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

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

Hearing Officer

Cc:      Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-209

**Appeal Decision:** Penalty Overturned in Full

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** September 12, 2018

**Decision Date:** October 19, 2018

### AUTHORITY

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

### JURISDICTION

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

### HEARING RECORD

Appellant appeared at the hearing, which was held by telephone, on September 12, 2018. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

Exhibit 1: Correspondence from the Health Connector

Exhibit 2: Appeal Case Information from Schedule HC 2017

Exhibit 3: Notice of Appeal, dated May 25, 2018

Exhibit 4: Statement of Appellant in support of the Appeal

### FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 27 years old in 2017. Appellant filed a Massachusetts 2017 tax return as single, with no dependents claimed (Exhibit 2).
2. Appellant resided in Essex County, MA in 2017 (Exhibit 2).
3. Appellant had an Adjusted Gross Income for 2017 of \$39,323 (Exhibit 2).
4. In early 2017, Appellant worked for a small non-profit company on a part-time basis. The company did not offer employer sponsored health insurance (Testimony of Appellant).
5. Appellant's part-time job ended in February 2017 (Testimony of Appellant).

6. In early 2017, Appellant began looking for a new full-time job that offered health insurance (Testimony of Appellant).
7. In early 2017, Appellant looked at health insurance through the Health Connector, but did not sign up due to the cost. Appellant was hoping to start a new job with employer sponsored health insurance (Testimony of Appellant).
8. Appellant struggled to pay expenses in early 2017 (Testimony of Appellant).
9. Appellant found a new job that began on July 31, 2017. Appellant began employer sponsored health insurance, after the waiting period. Appellant's insurance began in September 2017 (Testimony of Appellant).
10. Appellant did not have insurance from January through August of 2017 (Testimony of Appellant and Exhibit 2).
11. Appellant was covered by employer sponsored health insurance from September through December 2017 (Testimony of Appellant and Exhibit 2).
12. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
13. According to Table 3 of Schedule HC for 2017 a single person with no dependents with an adjusted gross income of \$39,323 could afford to pay \$242 per month for private insurance. According to Table 4, Appellant, aged 27 and living in Essex County could have purchased private insurance for \$150 per month.
14. Private insurance was considered to be affordable for Appellant in 2017 (Schedule HC for 2017).
15. According to Table 2 of Schedule HC for 2017, Appellant, earning more than \$35,640, would not have met the income eligibility guidelines for government subsidized insurance.
16. Appellant had the following monthly expenses for basic necessities during 2017: rent \$150; telephone \$100; food \$433; supplies \$40; clothing \$50; car payment \$255; car insurance \$150; gasoline \$110; student loans \$500; medical expenses \$10. The monthly expenses for basic necessities totaled \$1,798 (Testimony of Appellant).
17. Appellant has been assessed a penalty for five months for 2017 (Exhibit 2).
18. Appellant filed an Appeal on May 25, 2018 appealing the assessment of the penalty. Appellant claimed that the expense of purchasing health insurance during early 2017 would cause a hardship (Exhibits 3 and 4).

## **ANALYSIS AND CONCLUSIONS OF LAW**

G.L.c. 111M, § 2, also called the "individual mandate," requires every adult resident of Massachusetts to obtain health insurance that meets minimum creditable coverage standards "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance or who do not obtain insurance that meets the minimum creditable coverage standard are subject to a tax penalty for "each of the months" that the individual did not have health

insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2017, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

Appellant has been assessed a tax penalty for five 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 early 2017, Appellant did not have access to employer sponsored health insurance. According to Tables 2, 3 and 4 of Massachusetts Schedule HC 2017, private health insurance was considered to be affordable for Appellant, but Appellant did not apply for private insurance. Since Appellant potentially had access to affordable insurance, we need to consider whether Appellant experienced a financial hardship as defined by 956 CMR 6.08.

In early 2017, Appellant was not working and was looking for new employment. Appellant struggled to pay bills for necessary expenses. Given Appellant's financial circumstances, and since Appellant began coverage in September 2017, 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 the penalty assessed against Appellant for 2017 should be waived in its entirety.

#### **PENALTY ASSESSED**

Number of MonthsAppealed: 5

Number of Months Assessed: 0

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

#### **OR**

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

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

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

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-217

**Appeal Decision:** Appeal Allowed

**Hearing Issue:** Appeal of a 2017 Tax Year Penalty

**Hearing Date:** September 13, 2018

**Decision Date:** October 29, 2018

### AUTHORITY

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

### JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07. Appellants, a married couple who became Massachusetts residents during 2017, appeal the assessment of a 2017 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 held by telephone on September 13, 2018. The hearing record consists of the Appellants' testimony and the following documents which were admitted into evidence:

Exhibit 1: Appeal dated May 24, 2018;

Exhibit 2: Notice of Hearing dated August 16, 2018;

Exhibit 3: Appeal Case Information print-out dated August 16, 2018 generated from Appellant's 2017 Massachusetts Schedule HC; and

Exhibit 4: Appellants' post-hearing supplemental evidence.<sup>1</sup>

### FINDINGS OF FACT

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<sup>1</sup> The record was held open after the September 13, 2018 hearing for Appellants to submit documentation of any 2017 Federal Healthcare Shared Responsibility Payments which would have reduced their 2017 Massachusetts tax penalty. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 17-1, available at <https://www.mass.gov/technical-information-release/tir-17-1-individual-mandate-penalties-for-tax-year-2017>. Appellants subsequently informed the Health Connector that they had claimed a coverage exemption on their 2017 Federal tax return based on unaffordability of employer-sponsored health insurance and, therefore, did not make any shared responsibility payments. Exhibit 4.

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 are a married couple who became Massachusetts residents in February of 2017. Testimony; Exhibits 1 and 3.
2. Appellant Husband worked during 2017 for an employer that offered health insurance coverage at a cost to Appellants of \$202.08 weekly. Testimony; Exhibit 1 at 5; Exhibit 4 at 4.
3. Appellants did not enroll in the employer-sponsored health plan because they felt they could not afford the premiums. Testimony; Exhibit 1 at 5-6.
4. Appellants were not aware of the health insurance coverage requirements under Massachusetts law when they first moved to Massachusetts. Testimony; Exhibit 1 at 5.
5. Appellants were informed by Appellant Husband's employer about the requirements of Massachusetts law and the availability of health insurance through the Health Connector but that they had missed the open enrollment period for 2017. Testimony; Exhibit 1 at 5-6.<sup>2</sup> Consequently, Appellants believed that they would have to wait until the 2018 open enrollment period to purchase health insurance coverage through the Health Connector. *Id.*
6. Appellant Wife was hired by a Massachusetts employer in November, and both Appellants were enrolled in that employer's health insurance plan effective December 1, 2017. Testimony; Exhibit 1 at 6; Exhibit 3.
7. Appellants filed a Massachusetts Resident Income Tax Return for 2017 jointly as a married couple, reporting a Federal Adjusted Gross Income ("AGI") of \$85,415.00. Exhibit 3. The Schedule HC filed with the return reported no health insurance coverage for the months of January through November of 2017 that met minimum creditable coverage ("MCC") requirements. *Id.*
8. Based on Appellants' 2017 Schedule HC, the Department of Revenue assessed two five-month tax penalties on Appellants. Exhibit 3.
9. Appellants appeal the tax penalty on the ground that the cost of health insurance coverage would have caused a serious deprivation of food, shelter, clothing or other necessities. Exhibit 1 at 2, 5.
10. Appellants' income for the months of February through November of 2017, the period of time that they were uninsured Massachusetts residents, averaged \$4,218.00 per month. Testimony; Exhibit 1 at 7, 21. Appellants' reported Federal AGI for 2017 included a lump sum severance and vacation pay package that Appellants received in April of 2017 and Appellant Wife's earnings from the employment that commenced in November of 2017. Testimony.

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<sup>2</sup> The 2018 open enrollment period closed on January 31, 2017. See Health Connector Policy #: NG-4 (rev. Jun. 3, 2016), available at [https://www.mahealthconnector.org/wp-content/uploads/policies/Policy\\_NG\\_4.pdf](https://www.mahealthconnector.org/wp-content/uploads/policies/Policy_NG_4.pdf). Although the information Appellants were provided about the close of the 2017 open enrollment period was correct, it was incomplete since individuals who relocate to Massachusetts from outside the state are eligible for a special enrollment period in which to purchase health insurance coverage outside of the annual open enrollment period. See Health Connector Administrative Information Bulletin 01-14 (Apr. 1, 2014), available at <https://www.mahealthconnector.org/wp-content/uploads/rules-and-regulations/AdminBulletin01-14.pdf>.

11. Appellants' average monthly living expenses during 2017 were as follows:

Rent (including water bill	\$2,230.02
Renter's Insurance	\$13.42
Electric	\$143.20
Student loan payments	\$353.11
Auto payment	\$380.63
Auto insurance	\$87.17
Gasoline	\$250.00
Mobile phone plan	\$119.05
Internet	\$78.80
Veterinary payments	\$87.98
Total	\$3,743.38 <sup>3</sup>

Testimony; Exhibit 1 at 7, 21. Appellants incurred additional expenses in 2017 related to their move to Massachusetts including deposits required for their rental unit and car repairs. Exhibit 1 at 6.

In addition to the foregoing facts, I take administrative notice of the 2017 Schedule HC Instructions and Worksheets, available at <https://www.mass.gov/files/documents/2018/01/16/dor-2017-inc-sch-hc-inst.pdf>, and in particular Tables 1 – 6 which, as will be discussed below, include the Affordability Schedule and other financial information used in making 2017 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).

Individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”), which was set at \$17,820.00 for family of one in 2017, are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 17-1, available at <https://www.mass.gov/technical-information-release/tir-17-1-individual-mandate-penalties-for-tax-year-2017>. In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. Mass. Gen. Laws ch. 111M, § 2. This provision, as implemented by 956 Mass. Code Regs., interprets the 63-day gap in coverage to be three months. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at [www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf](http://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf); see also 830 Mass. Code Regs. 111M.2.1(5)(c). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months.

Since Appellants' reported household income in 2017 of \$85,415.00 was more than 150 percent of the applicable FPL (\$24,030.00 for family of two), which makes them subject to the individual mandate tax penalty, the

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<sup>3</sup> Where applicable, annual and one-time expenses have been divided by 12 to arrive at a monthly cost.

threshold issue to be addressed is whether creditable health insurance coverage was affordable to Appellants in 2017. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and, second, to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2017 Schedule HC Instructions and Worksheets, *supra*.

Appellants reported a Federal AGI of \$85,415.00 in 2017, and their filing status was married filing a joint return with no dependents. Exhibit 3. According to the Affordability Schedule established by the Connector's board and included in the Instructions and Worksheets of the 2017 Massachusetts Schedule HC, Appellants could afford to pay 8.16 percent of their reported Federal AGI or \$612.14 monthly ( $\$85,415.00 \times 8.16\% = \$7,345.69 \div 12 = \$612.14$ ) for health insurance. See 2017 Schedule HC Instructions and Worksheets, *supra* at Table 3.

The employer-sponsored health insurance that was available to Appellants between February and December of 2017 cost \$202.08 weekly (\$875.68 monthly) which exceeds the \$612.14 monthly amount deemed affordable, and Appellant's income exceeded the cut-off for government-subsidized health insurance which was set at \$48,060.00 for a family of two in 2017. See 2017 Schedule HC Instructions and Worksheets, *supra* at Table 2. However, private health insurance would have cost \$299.00 monthly for coverage as a couple based on Appellants' age range (under 30) and county of residence (Essex) which would have been affordable according to the Schedule. *Id.* at Table 4.

Since Appellants did not obtain affordable private health insurance, they are subject to the HCRA's tax penalty unless they demonstrate a qualifying hardship. 956 Mass. Code Regs. 6.08. To qualify for a waiver or reduction of a tax penalty based on hardship, an appellant "must establish that, based on all his circumstances, health insurance that provided minimum creditable coverage was not affordable to him because he experienced a hardship." 956 Mass. Code Regs. 6.08(1). In this regard, Appellants allege that the additional expense of health insurance coverage would have resulted in a serious deprivation of food, shelter, clothing or other necessities. Exhibit 1 at 2, 6.

Based on a reported Federal AGI of \$85,415.00, Appellants' gross monthly available income in 2017 was \$7,117.92 which would appear to more than adequate, after expenses, to cover the \$299.00 monthly premium cost of private health insurance. However, simply dividing Appellants' AGI by 12 does not provide an accurate economic picture for the relevant months of February through November when Appellants were uninsured because the AGI includes earnings from Appellant wife's new job that commenced in November and a lump sum severance and vacation payment that was exhausted by the costs of Appellants' relocation to Massachusetts. Appellants credibly testified to and documented basic monthly living expenses of \$3,743.38 which did not include food or any miscellaneous living expenses. Adding the \$299.00 monthly premium cost to Appellants' expenses would bring their costs to \$4,042.38, exclusive of food and incidentals. Since Appellants' monthly income during their period of uninsurance averaged \$4,218.00, the additional cost of health insurance would have left them with a meager \$176.00 per month for food and all miscellaneous expenses. Based on this financial analysis, I find that Appellants have demonstrated that the additional cost of \$299.00 monthly to purchase private health insurance coverage would have resulted in a serious deprivation of food, shelter, clothing or other necessities" which is a qualifying hardship. See 956 Mass. Code Regs. 6.08(1)(e).

Accordingly, Appellants' appeal is **ALLOWED**, and the 2017 penalty assessed is **OVERTURNED**.

## **PENALTY ASSESSED**

Number of MonthsAppealed: 10

Number of Months Assessed: 0

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

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-218

**Appeal Decision:** Appeal Allowed

**Hearing Issue:** Appeal of a 2017 Tax Year Penalty

**Hearing Date:** September 13, 2018

**Decision Date:** October 11, 2018

### AUTHORITY

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

### JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07. Appellant, a Massachusetts resident during 2017, appeals the assessment of a 2017 tax penalty for failure to comply with the individual health insurance mandate of Mass. Gen. Laws ch. 111M, § 2.

### HEARING RECORD

Appellant appeared at the hearing which was held by telephone on September 13, 2018. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

Exhibit 1: Appeal dated May 29, 2018 with attachments;

Exhibit 2: Notice of Hearing dated August 16, 2018; and

Exhibit 3: Appeal Case Information print-out dated August 16, 2018 generated from Appellant's 2017 Massachusetts Schedule HC.

### FINDINGS OF FACT

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

1. Appellant is a single person who was a resident of Massachusetts during 2017. Testimony; Exhibits 1 and 3.
2. Appellant was covered as a dependent under a parental health care plan through June of 2017 when Appellant's dependent status ended due to Appellant having reached the age of 27 during May of 2017. Testimony.

3. Appellant was laid off in June of 2017 and began receiving unemployment benefits at the rate of \$400.00 biweekly. Testimony; Exhibit 1 at 4.
4. Appellant decided not to purchase health insurance because of the cost and because family members agreed to cover costs of prescription medications and any medical care until Appellant found a new job with health insurance coverage. Testimony; Exhibit 1 at 4.
5. Appellant started a new job in November of 2017 and, after the waiting period for new hires, enrolled in an employer-sponsored health plan effective February 1, 2018. Testimony; Exhibit 1 at 4.
6. Appellant filed a Massachusetts Resident Income Tax Return for 2017, reporting a Federal Adjusted Gross Income of \$47,280.00. Exhibit 3. The Schedule HC filed with the return reported no health insurance coverage for the months of July through December 2017 that met minimum creditable coverage (“MCC”) requirements. *Id.*
7. Based on Appellant’s 2017 Schedule HC, the Department of Revenue assessed a three-month tax penalty on Appellant. Exhibit 3.
8. Appellant appeals the tax penalty on the ground that the cost of health insurance coverage would have produced a serious deprivation of food, shelter, clothing or other necessities. Exhibit 1 at 2, 4.
9. Appellant’s basic monthly living expenses during the period of July 2017 through December 2017 were as follows:

Rent	\$300.00
Student loan payments	\$600.00
Auto loan	\$250.00
Mobile phone	\$125.00
Prescription medications	\$375.00
Total	\$1,650.00

Testimony; Exhibit 1 at 4.

10. Appellant’s parents and grandparents supplemented Appellant’s biweekly unemployment benefits during the period that Appellant was unemployed to cover Appellant’s food and prescription costs and help Appellant make ends meet. Testimony; Exhibit 1 at 4.

In addition to the foregoing facts, I take administrative notice of the 2017 Schedule HC Instructions and Worksheets, available at <https://www.mass.gov/files/documents/2018/01/16/dor-2017-inc-sch-hc-inst.pdf>, and in particular Tables 1 – 6 which, as will be discussed below, include the Affordability Schedule and other financial information used in making 2017 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).

Individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”), which was set at \$17,820.00 for family of one in 2017, are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 17-1, available at <https://www.mass.gov/technical-information-release/tir-17-1-individual-mandate-penalties-for-tax-year-2017>. In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. Mass. Gen. Laws ch. 111M, § 2. This provision, as implemented by 956 Mass. Code Regs., interprets the 63-day gap in coverage to be three months. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at [www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf](http://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf); see also 830 Mass. Code Regs. 111M.2.1(5)(c). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months. This policy effectively reduced Appellant’s 2017 tax penalty for six months of non-coverage to three months.

Since Appellant’s reported household income in 2017 (\$47,280.00) was more than 150 percent of the applicable FPL (\$17,820.00 for family of one), which makes Appellant subject to the individual mandate tax penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to Appellant in 2017. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and, second, to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2017 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a Federal AGI of \$47,280.00.00 in 2017, and Appellant’s filing status was single with no dependents. Exhibit 3. According to the Affordability Schedule established by the Connector’s board and included in the Instructions and Worksheets of the 2017 Massachusetts Schedule HC, Appellant could afford to pay 7.6 percent of the reported Federal AGI or \$299.44 monthly ( $\$47,280.00 \times 7.6\% = \$3,593.28 \div 12 = \$299.44$ ) for health insurance. See 2017 Schedule HC Instructions and Worksheets, *supra* at Table 3.

Appellant had no access to employer-sponsored health insurance after June, but private health insurance would have been affordable at a cost \$150.00 monthly for individual coverage based on Appellant’s age range (under 30) and county of residence (Middlesex). *Id.* at Table 4. Since Appellant did not obtain affordable private health insurance, Appellant is subject to the HCRA’s tax penalty unless Appellant demonstrates a qualifying hardship. 956 Mass. Code Regs. 6.08. To qualify for a waiver or reduction of a tax penalty based on hardship, an Appellant “must establish that, based on all his circumstances, health insurance that provided minimum creditable coverage was not affordable to him because he experienced a hardship.” 956 Mass. Code Regs. 6.08(1). In this regard, Appellant alleges that the additional expense of health insurance coverage would have resulted in a serious deprivation of food, shelter, clothing or other necessities. Exhibit 1 at 2, 4.

Based on a reported Federal AGI of \$47,280.00, Appellant’s gross monthly available income in 2017 was \$3,940.00 which would appear to cover Appellant’s basic monthly living expenses of \$1,650.00 while leaving nearly \$2,300.00 available for food, health insurance and incidentals. However, this math does not take into consideration the fact that Appellant’s income after June 2017, the relevant period in which Appellant did not have health insurance coverage, was reduced to \$400.00 in biweekly unemployment payments. During this period of time, Appellant’s expenses clearly exceeded Appellant’s income, and Appellant credibly testified that family members had to step in to provide financial assistance. On this record, I find that the cost of purchasing

health insurance during the period of July – December 2017 would have resulted in a “serious deprivation of food, shelter, clothing or other necessities” which qualifies as a hardship. See 956 Mass. Code Regs. 6.08(1)(e).

Accordingly, Appellants appeal is **ALLOWED**, and the 2017 penalty assessed is **OVERTURNED**.

#### **PENALTY ASSESSED**

Number of MonthsAppealed: 3

Number of Months Assessed: 0

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

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-223

**Appeal Decision:** Appeal Denied

**Hearing Issue:** Appeal of a 2017 Tax Year Penalty

**Hearing Date:** September 13, 2018

**Decision Date:** October 31, 2018

### AUTHORITY

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

### JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07. Appellant, a Massachusetts resident during 2017, appeals the assessment of a 2017 tax penalty for failure to comply with the individual health insurance mandate of Mass. Gen. Laws ch. 111M, § 2.

### HEARING RECORD

Appellant appeared at the hearing which was held by telephone on September 13, 2018. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

Exhibit 1: Appeal dated May 25, 2018;

Exhibit 2: Notice of Hearing dated August 16, 2018;

Exhibit 3: Appeal Case Information print-out dated August 16, 2018 generated from Appellant's 2017 Massachusetts Schedule HC; and

Exhibit 4: 2017 electrical service billing and payment records submitted post-hearing.<sup>1</sup>

### 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:

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<sup>1</sup> The record was held open for Appellant to submit documentation of any utility shut-off or delivery refusal since Appellant cited shut-off, receipt of a shut-off notice or refusal of delivery of essential utilities as a ground for the appeal but did not submit any documentation in accordance with the instructions on the appeal form to "*Provide a copy of a shut-off notice (not a late notice) or other similar correspondence from the utility company.*" Exhibit 1 at 3 (italics in original). On October 25, 2018, Appellant submitted an Account Activity Statement for electrical service and stated that "I have contacted national grid for my gas statements and have no results." Exhibit 4 at 2.

1. Appellant is a single person who was a resident of Massachusetts during 2017. Testimony; Exhibits 1 and 3.
2. Appellant was enrolled in an employer-sponsored health insurance plan at the beginning of 2017. Testimony; Exhibit 3.
3. Appellant was informed at a doctor's appointment in June of 2017 that the employer-sponsored health insurance coverage was no longer in effect, and he learned upon further inquiry that the plan had been canceled in April. Testimony; Exhibit 3.
4. Appellant did not purchase alternate health insurance coverage for the remainder of 2017. Testimony.
5. Appellant filed a Massachusetts Resident Income Tax Return for 2017, reporting a Federal Adjusted Gross Income of \$55,286.00. Exhibit 3. The Schedule HC filed with the return reported no health insurance coverage for the months of May through December of 2017 met minimum creditable coverage ("MCC") requirements. *Id.*
6. Based on Appellant's 2017 Schedule HC, the Department of Revenue assessed a five-month tax penalty on Appellant. Exhibit 3.
7. Appellant appeals the tax penalty on hardship grounds, including shut-off, receipt of a shut-off notice or refusal of delivery of essential utilities and a claim that the cost of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. Exhibit 1 at 3. The appeal also asserts that Appellant purchased health insurance coverage in 2017 that did not meet MCC requirements. *Id.*
8. Appellant's monthly living expenses during 2017 were as follows:

Rent	\$1,100.00
Utilities	\$80.00 (summer) - \$350.00 (winter)
Internet	\$80.00
Auto Loan	\$233.00
Auto Insurance	\$100.00
Gasoline	\$130.00
Auto Repairs	\$33.00
Food	\$412.00
Credit Debt Payments	\$400.00 - \$600.00
Work Clothes and Tools	\$83.00
Pet Food and Care	\$80.00
Medical	\$18.00
Vision	\$33.00
Food	\$300.00
Miscellaneous	\$250.00

Total	\$3,350.00 - \$3,805.00 <sup>2</sup>
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Testimony.

9. Appellant received utility shut-off warning notices from gas and electric providers during 2017.  
Testimony.
10. Appellant's electric service Account Activity Statement for 2017 shows a pattern of late and partial payments. Exhibit 4 at 3-5. This documentation does not reflect any shut-off or suspension of service in 2017, and Appellant did not submit any utility shut-off notices or other documentation of utility shut-off or suspension of service.

In addition to the foregoing facts, I take administrative notice of the 2017 Schedule HC Instructions and Worksheets, available at <https://www.mass.gov/files/documents/2018/01/16/dor-2017-inc-sch-hc-inst.pdf>, and in particular Tables 1 – 6 which, as will be discussed below, include the Affordability Schedule and other financial information used in making 2017 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).

Individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”), which was set at \$17,820.00 for family of one in 2017, are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 17-1, available at <https://www.mass.gov/technical-information-release/tir-17-1-individual-mandate-penalties-for-tax-year-2017>. In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. Mass. Gen. Laws ch. 111M, § 2. This provision, as implemented by 956 Mass. Code Regs., interprets the 63-day gap in coverage to be three months. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at [www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf](http://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf); see also 830 Mass. Code Regs. 111M.2.1(5)(c). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months. In the instant case, this policy reduced Appellant’s tax penalty exposure for eight months of non-insurance to five months.

Since Appellant’s reported household income in 2017 (\$55,286.00) was more than 150 percent of the applicable FPL (\$17,820.00 for family of one), which makes Appellant subject to the individual mandate tax penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to Appellant in 2017. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and, second, to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2017 Schedule HC Instructions and Worksheets, *supra*.

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<sup>2</sup> Where applicable, the monthly figures listed reflect Appellant’s share. Appellant provided annual amounts for some expenses such as medical and vision care which have been divided by 12 to arrive at a monthly figure.

Appellant reported a Federal AGI of \$55,286.00 in 2017, and Appellant's filing status was single with no dependents. Exhibit 3. According to the Affordability Schedule established by the Connector's board and included in the Instructions and Worksheets of the 2017 Massachusetts Schedule HC, Appellant could afford to pay 8.16 percent of the reported Federal AGI or \$375.95 monthly ( $\$55,286.00 \times 8.16\% = \$4,511.34 \div 12 = \$375.95$ ) for health insurance. *See* 2017 Schedule HC Instructions and Worksheets, *supra* at Table 3.

Appellant did not have access to employer-sponsored health insurance after April of 2017, and Appellant's 2017 income was above the cut-off for government-subsidized health insurance which was set at \$35,640.00 for a family of one in 2017. *See* 2017 Schedule HC Instructions and Worksheets, *supra* at Table 2. However, private health insurance would have cost \$274.00 monthly for individual coverage based on Appellant's age range (40-44) and county of residence (Middlesex) which would have been affordable according to the Schedule. *Id.* at Table 4.

Since Appellant did not obtain affordable private health insurance, Appellant is subject to the HCRA's tax penalty unless Appellant demonstrates a qualifying hardship. 956 Mass. Code Regs. 6.08. To qualify for a waiver or reduction of a tax penalty based on hardship, an Appellant "must establish that, based on all his circumstances, health insurance that provided minimum creditable coverage was not affordable to him because he experienced a hardship." 956 Mass. Code Regs. 6.08(1). In this regard, Appellant alleges that the additional expense of health insurance coverage was not affordable and that purchasing health insurance would have resulted in economic hardship.

Based on a reported Federal AGI of \$55,286.00, Appellant's gross monthly available income in 2017 was \$4,607.18. Appellant credibly testified to monthly living expenses averaging between \$3,350.00 and \$3,805.00 in 2017 which was at least \$800.00 less than Appellant's available income. Even allowing for some additional expenses that Appellant did not list, I cannot find on this record that Appellant has demonstrated that the additional cost of \$274.00 monthly to purchase private health insurance coverage would have resulted in a serious deprivation of food, shelter, clothing or other necessities." *See* 956 Mass. Code Regs. 6.08(1)(e). I have also considered Appellant's testimony regarding receipt of utility shut-off notices in 2017 but conclude on the particular facts presented in this case that such evidence is insufficient to establish an economic hardship warranting waiver or reduction of the tax penalty. In this regard, I note that a shut-off or delivery refusal for an essential utility is an indicator of financial hardship that the Health Connector is required to consider when adjudicating a tax penalty appeal. *See* 956 Mass. Code Regs. 6.08(1)(b). It does not perform establish a qualifying hardship. In the circumstances of this case where the record shows that Appellant had sufficient income after claimed living expenses to cover the cost of both health insurance and essential utilities, I conclude that Appellant has not carried his burden of establishing "that, based on all his circumstances, health insurance that provided minimum creditable coverage was not affordable to him because he experienced a hardship." 956 Mass. Code Regs. 6.08(1).

Accordingly, Appellant's appeal is **DENIED**, and the 2017 penalty assessed is **AFFIRMED**.

## **PENALTY ASSESSED**

Number of MonthsAppealed: 5

Number of Months Assessed: 5

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

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-220

**Appeal Decision:** Appeal Denied

**Hearing Issue:** Appeal of a 2017 Tax Year Penalty

**Hearing Date:** September 13, 2018

**Decision Date:** October 11, 2018

### AUTHORITY

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

### JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07. Appellant, a Massachusetts resident during 2017, appeals the assessment of a 2017 tax penalty for failure to comply with the individual health insurance mandate of Mass. Gen. Laws ch. 111M, § 2.

### HEARING RECORD

Appellant appeared at the hearing which was held by telephone on September 13, 2018. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

Exhibit 1: Appeal dated May 3, 2018;

Exhibit 2: Notice of Hearing dated August 16, 2018; and

Exhibit 3: Appeal Case Information print-out dated August 16, 2018 generated from Appellant's 2017 Massachusetts Schedule HC.

### FINDINGS OF FACT

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

1. Appellant is a single person who was a resident of Massachusetts during 2017. Testimony; Exhibits 1 and 3.
2. Appellant worked during 2017 for an employer that offered health insurance coverage, but Appellant did not enroll because Appellant considered the premiums of \$175.00 per week to be unaffordable. Testimony.

3. Appellant filed a Massachusetts Resident Income Tax Return for 2017, reporting a Federal Adjusted Gross Income of \$45,665.00. Exhibit 3. The Schedule HC filed with the return reported no health insurance coverage for any month in 2017 that met minimum creditable coverage (“MCC”) requirements. *Id.*
4. Based on Appellant’s 2017 Schedule HC, the Department of Revenue assessed a 12-month tax penalty on Appellant. Exhibit 3.
5. Appellant appeals the tax penalty on the ground that the cost of health insurance coverage would have caused a serious deprivation of food, shelter, clothing or other necessities. Exhibit 1 at 2.
6. Appellant lives with a domestic partner and the partner’s dependent child. Testimony. Appellant and the partner equally divide the cost of their basic living expenses including the cost of child care for the partner’s dependent child. Testimony.
7. Appellant’s monthly living expenses during 2017 were as follows:

Rent	\$800.00
Electric	\$100.00
Heating oil	\$75.00
Gas	\$65.00
Cable / Internet	\$100.00
Auto loan	\$350.00
Auto Insurance	\$240.00
Gasoline	\$303.00
Food	\$50.00
Work clothes and tools	\$83.00
Eye glasses	\$63.00
Child care	\$200.00
Total	\$2,429.00 <sup>1</sup>

Testimony.

In addition to the foregoing facts, I take administrative notice of the 2017 Schedule HC Instructions and Worksheets, available at <https://www.mass.gov/files/documents/2018/01/16/dor-2017-inc-sch-hc-inst.pdf>, and in particular Tables 1 – 6 which, as will be discussed below, include the Affordability Schedule and other financial information used in making 2017 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).

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<sup>1</sup> Where applicable, the monthly figures listed reflect Appellant’s share. Appellant provided annual amounts for some expenses such as classes, work clothes and tools. These expenses were divided by 12 to arrive at a monthly figure.

Individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”), which was set at \$17,820.00 for family of one in 2017, are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 17-1, available at <https://www.mass.gov/technical-information-release/tir-17-1-individual-mandate-penalties-for-tax-year-2017>. In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. Mass. Gen. Laws ch. 111M, § 2. This provision, as implemented by 956 Mass. Code Regs., interprets the 63-day gap in coverage to be three months. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at [www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf](http://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf); see also 830 Mass. Code Regs. 111M.2.1(5)(c). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months.

Since Appellant’s reported household income in 2017 (\$45,665.00) was more than 150 percent of the applicable FPL (\$17,820.00 for family of one), which makes Appellant subject to the individual mandate tax penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to Appellant in 2017. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and, second, to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2017 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a Federal AGI of \$45,665.00 in 2017, and Appellant’s filing status was single with no dependents. Exhibit 3. According to the Affordability Schedule established by the Connector’s board and included in the Instructions and Worksheets of the 2017 Massachusetts Schedule HC, Appellant could afford to pay 7.6 percent of the reported Federal AGI or \$289.21 monthly ( $\$45,665.00 \times 7.6\% = \$3,470.54 \div 12 = \$289.21$ ) for health insurance. See 2017 Schedule HC Instructions and Worksheets, *supra* at Table 3.

Appellant testified that employer-sponsored health insurance cost \$175.00 weekly (\$758.33 monthly) which would have been unaffordable under the Schedule, and Appellant’s 2017 income was above the cut-off for government-subsidized health insurance which was set at \$35,640.00 for a family of one in 2017. See 2017 Schedule HC Instructions and Worksheets, *supra* at Table 2. However, private health insurance would have cost \$150.00 monthly for individual coverage based on Appellant’s age range (0-30) and county of residence (Middlesex) which would have been affordable according to the Schedule. *Id.* at Table 4.

Since Appellant did not obtain affordable private health insurance, Appellant is subject to the HCRA’s tax penalty unless Appellant demonstrates a qualifying hardship. 956 Mass. Code Regs. 6.08. To qualify for a waiver or reduction of a tax penalty based on hardship, an Appellant “must establish that, based on all his circumstances, health insurance that provided minimum creditable coverage was not affordable to him because he experienced a hardship.” 956 Mass. Code Regs. 6.08(1). In this regard, Appellant alleges that the additional expense of health insurance coverage would have resulted in a serious deprivation of food, shelter, clothing or other necessities. Exhibit 1 at 2.

Based on a reported Federal AGI of \$45,665.00, Appellant’s gross monthly available income in 2017 was \$3,805.00. Appellant credibly testified to monthly living expenses of \$2,429.00 which is more than \$1,300.00 less than Appellant’s available income. Even allowing for some additional expenses that Appellant did not list, I cannot find on this record that Appellant has demonstrated that the additional cost of \$150.00 monthly to purchase private health insurance coverage would have resulted in a serious deprivation of food, shelter, clothing

or other necessities.” See 956 Mass. Code Regs. 6.08(1)(e). To conclude otherwise on this record would impermissibly override the judgment of the Legislature that Massachusetts residents must have qualifying health insurance coverage if affordable or face the consequences of a tax penalty.

Accordingly, Appellant’s appeal is **DENIED**, and the 2017 penalty assessed is **AFFIRMED**.

#### **PENALTY ASSESSED**

Number of MonthsAppealed: 12

Number of Months Assessed: 12

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

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-221

**Appeal Decision:** Appeal Allowed

**Hearing Issue:** Appeal of a 2017 Tax Year Penalty

**Hearing Date:** September 13, 2018

**Decision Date:** October 11, 2018

### AUTHORITY

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

### JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07. Appellants, a married couple who were Massachusetts residents during 2017, appeal the assessment of a 2017 tax penalty for failure to comply with the individual health insurance mandate of Mass. Gen. Laws ch. 111M, § 2.

### HEARING RECORD

Appellant Husband appeared at the hearing which was held by telephone on September 13, 2018. The hearing record consists of the Appellant Husband's testimony and the following documents which were admitted into evidence:

Exhibit 1: Appeal dated May 26, 2018;

Exhibit 2: Notice of Hearing dated August 16, 2018; and

Exhibit 3: Appeal Case Information print-out dated August 16, 2018 generated from Appellant's 2017 Massachusetts Schedule HC.

### FINDINGS OF FACT

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

1. Appellants are a married couple who were residents of Massachusetts during 2017. Testimony; Exhibits 1 and 3.
2. Appellant Husband worked during 2017 for an employer that did not offer health insurance coverage. Testimony.

3. Appellant wife was unemployed during the first half of 2017 pending processing of an application for immigrant status as a spouse. Testimony; EX 1 at 4.
4. Appellants filed a Massachusetts Resident Income Tax Return for 2017 jointly as a married couple, reporting a Federal Adjusted Gross Income of \$29,274.00. Exhibit 3. The Schedule HC filed with the return reported no health insurance coverage for any month in 2017 that met minimum creditable coverage (“MCC”) requirements. *Id.*
5. Based on Appellants’ 2017 Schedule HC, the Department of Revenue assessed two 12-month tax penalties on Appellants. Exhibit 3.
6. Appellants appeal the tax penalty on the ground that the cost of health insurance coverage would have caused a serious deprivation of food, shelter, clothing or other necessities. Exhibit 1 at 2, 4
7. Appellants’ monthly living expenses during 2017 were as follows:

Rent	\$1,600.00
Utilities	\$200.00
Mobile phone plan	\$100.00
T Pass	\$80.00
Scooter Insurance and Maintenance	\$35.00
Food	\$200.00
Clothing	\$67.00
Immigration Fees	\$147.00
Dental Care Husband)	\$33.00
Medical and Dental (Wife)	\$255.00
Total	\$2,717.00 <sup>1</sup>

Testimony.

8. Appellant’s both enrolled in health insurance coverage through the Health Connector in 2018. Testimony.

In addition to the foregoing facts, I take administrative notice of the 2017 Schedule HC Instructions and Worksheets, available at <https://www.mass.gov/files/documents/2018/01/16/dor-2017-inc-sch-hc-inst.pdf>, and in particular Tables 1 – 6 which, as will be discussed below, include the Affordability Schedule and other financial information used in making 2017 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).

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<sup>1</sup> Where applicable, annual and one-time expenses have been divided by 12 to arrive at a monthly cost.

Individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”), which was set at \$17,820.00 for family of one in 2017, are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 17-1, available at <https://www.mass.gov/technical-information-release/tir-17-1-individual-mandate-penalties-for-tax-year-2017>. In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. Mass. Gen. Laws ch. 111M, § 2. This provision, as implemented by 956 Mass. Code Regs., interprets the 63-day gap in coverage to be three months. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at [www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf](http://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf); see also 830 Mass. Code Regs. 111M.2.1(5)(c). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months.

Since Appellants’ reported household income in 2017 (\$29,274.00) was more than 150 percent of the applicable FPL (\$24,030.00 for family of two), which makes them subject to the individual mandate tax penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to Appellant in 2017. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and, second, to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2017 Schedule HC Instructions and Worksheets, *supra*.

Appellants reported a Federal AGI of \$29,274.00 in 2017, and their filing status was married filing a joint return with no dependents. Exhibit 3. According to the Affordability Schedule established by the Connector’s board and included in the Instructions and Worksheets of the 2017 Massachusetts Schedule HC, Appellants could afford to pay 4.3 percent of the reported Federal AGI or **\$104.90** monthly ( $\$29,274.00 \times 4.3\% = \$1,258.78 \div 12 = \$104.898$ ) for health insurance. See 2017 Schedule HC Instructions and Worksheets, *supra* at Table 3.

Appellants had no access to employer-sponsored health insurance in 2017, and private health insurance would have cost \$625.00 monthly for coverage as a couple based on Appellant Husband’s age range (45-49) and county of residence (Suffolk ) which would have been unaffordable according to the Schedule. *Id.* at Table 4. However, Appellants’ 2017 income was below the income eligibility cut-off for government-subsidized health insurance which was set at \$48,060.00 for a family of two in 2017. See 2017 Schedule HC Instructions and Worksheets, *supra* at Table 2. Since Appellants did not obtain affordable private health insurance, they are subject to the HCRA’s tax penalty unless Appellant demonstrates a qualifying hardship. 956 Mass. Code Regs. 6.08. To qualify for a waiver or reduction of a tax penalty based on hardship, an Appellant “must establish that, based on all his circumstances, health insurance that provided minimum creditable coverage was not affordable to him because he experienced a hardship.” 956 Mass. Code Regs. 6.08(1). In this regard, Appellants allege that the additional expense of health insurance coverage would have resulted in a serious deprivation of food, shelter, clothing or other necessities. Exhibit 1 at 2, 4. Appellants emphasize that 2017 was a financially challenging year because of the immigrations costs, unexpected but necessary medical care and Appellant Wife’s inability to work until the immigration application was approved.

Based on a reported Federal AGI of \$29,274.00, Appellant’s gross monthly available income in 2017 was \$2,439.50. Appellants credibly testified to and substantially documented monthly living expenses of \$2,717.00 which exceeded their available monthly income. Thus, Appellants’ claim of financial difficulty is well-supported, and I find on this record that Appellants have demonstrated that the additional cost of \$150.00 monthly to purchase private health insurance coverage would have resulted in a serious deprivation of food, shelter, clothing or other necessities” which is a qualifying hardship. See 956 Mass. Code Regs. 6.08(1)(e).

Accordingly, Appellant's appeal is **ALLOWED**, and the 2017 penalty assessed is **OVERTURNED**.

**PENALTY ASSESSED**

Number of MonthsAppealed: 24

Number of Months Assessed: 0

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

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-222

**Appeal Decision:** Appeal Allowed

**Hearing Issue:** Appeal of a 2017 Tax Year Penalty

**Hearing Date:** September 13, 2018

**Decision Date:** October 11, 2018

### AUTHORITY

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

### JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07. Appellant, a Massachusetts resident during 2017, appeals the assessment of a 2017 tax penalty for failure to comply with the individual health insurance mandate of Mass. Gen. Laws ch. 111M, § 2.

### HEARING RECORD

Appellant appeared at the hearing which was held by telephone on September 13, 2018. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

Exhibit 1: Appeal dated June 8, 2018;

Exhibit 2: Notice of Hearing dated August 16, 2018;

Exhibit 3: Appeal Case Information print-out dated August 16, 2018 generated from Appellant's 2017 Massachusetts Schedule HC; and

Exhibit 4: Copy of Appellant's Form 1099-HC.

### FINDINGS OF FACT

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

1. Appellant was a resident of Massachusetts during 2017. Testimony; Exhibits 1 and 3.
2. Appellant was employed during 2017 and was covered by an employer-sponsored Blue Cross Blue Shield plan. Testimony; Exhibits 1 and 4.

3. Appellant filed a Massachusetts Resident Income Tax Return for 2017, reporting a Federal Adjusted Gross Income of \$60,792.00. Exhibit 3. The Schedule HC filed with the return reported no health insurance coverage for any month during 2017 that met minimum creditable coverage ("MCC") requirements. *Id.*
4. Based on Appellant's 2017 Schedule HC, the Department of Revenue assessed a 12-month tax penalty on Appellant. Exhibit 3.
5. Appellant appeals the tax penalty on the ground that Appellant had qualifying health insurance coverage in 2017. Exhibit 1.
6. Appellant previously used a tax preparer to file tax returns but did not use a preparer in 2017. Testimony.
7. The Form 1099-HC that Appellant introduced during the hearing shows that Appellant had full-year coverage in 2017 meeting MCC requirements. Exhibit 4.

## **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).

In this case, it appears that Appellant made an inadvertent error with respect to answering the questions on the 2017 Schedule HC regarding health insurance coverage. Specifically, the Schedule HC failed to show that Appellant had health insurance coverage meeting MCC requirements which resulted in the assessment of a 12-month tax penalty. Appellant has now provided a copy of a Form 1099-HC which shows that Appellant had health insurance coverage meeting MCC requirements for all of 2017. Therefore, I find that Appellant is not liable for any tax penalty for non-compliance with § 2(b) of the HCRA.

Accordingly, Appellants appeal is **ALLOWED**, and the 2017 penalty assessed is **OVERTURNED**.

## **PENALTY ASSESSED**

Number of MonthsAppealed: 12

Number of Months Assessed: 0

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

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-223

**Appeal Decision:** Appeal Denied

**Hearing Issue:** Appeal of a 2017 Tax Year Penalty

**Hearing Date:** September 13, 2018

**Decision Date:** October 11, 2018

### AUTHORITY

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

### JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07. Appellant, a Massachusetts resident during 2017, appeals the assessment of a 2017 tax penalty for failure to comply with the individual health insurance mandate of Mass. Gen. Laws ch. 111M, § 2.

### HEARING RECORD

Appellant appeared at the hearing which was held by telephone on September 13, 2018. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

Exhibit 1: Appeal dated May 25, 2018;

Exhibit 2: Notice of Hearing dated August 16, 2018; and

Exhibit 3: Appeal Case Information print-out dated August 16, 2018 generated from Appellant's 2017 Massachusetts Schedule HC.

### FINDINGS OF FACT

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

1. Appellant is a single person who was a resident of Massachusetts during 2017. Testimony; Exhibits 1 and 3.
2. Appellant worked during 2017 for an employer that did not offer any health insurance coverage. Testimony.

3. Appellant filed a Massachusetts Resident Income Tax Return for 2017, reporting a Federal Adjusted Gross Income of \$54,750.00. Exhibit 3. The Schedule HC filed with the return reported no health insurance coverage for any month in 2017 that met minimum creditable coverage (“MCC”) requirements. *Id.*
  4. Based on Appellant’s 2017 Schedule HC, the Department of Revenue assessed a 12-month tax penalty on Appellant. Exhibit 3.
  5. Appellant appeals the tax penalty on the ground that “other circumstances, such as applying the affordability tables in Schedule HC to you is inequitable (for example, because of family size); that you were unable to obtain government-subsidized insurance even though your income qualified you; or that you didn’t reside in Massachusetts during your period of uninsurance.” EX 1 at 2.
  6. Appellant clarified the appeal during the hearing to essentially assert that the cost of obtaining health insurance coverage in 2017 was not affordable. Testimony.
7. Appellant’s monthly living expenses during 2017 were as follows:

Rent	\$500.00 <sup>1</sup>
Auto loan	\$350.00
Auto Insurance	\$75.00
Mobile Phone	\$100.00
Loan Payments (3)	\$850.00
Credit Debt Payments	\$700.00 - \$750.00
Medical	\$18.00
Vision	\$33.00
Food	\$300.00
Total	\$2,916.00 - \$2,966.00 <sup>2</sup>

Testimony.

In addition to the foregoing facts, I take administrative notice of the 2017 Schedule HC Instructions and Worksheets, available at <https://www.mass.gov/files/documents/2018/01/16/dor-2017-inc-sch-hc-inst.pdf>, and in particular Tables 1 – 6 which, as will be discussed below, include the Affordability Schedule and other financial information used in making 2017 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

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<sup>1</sup> Appellant lived in an apartment from January through October and paid half of the rent. Testimony. In November and December, Appellant received housing from Appellant’s employer for which Appellant paid utilities only which totaled approximately \$350.00 per month. Testimony.

<sup>2</sup> Where applicable, the monthly figures listed reflect Appellant’s share. Appellant provided annual amounts for some expenses such as medical and vision care which have been divided by 12 to arrive at a monthly figure.

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).

Individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”), which was set at \$17,820.00 for family of one in 2017, are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 17-1, available at <https://www.mass.gov/technical-information-release/tir-17-1-individual-mandate-penalties-for-tax-year-2017>. In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. Mass. Gen. Laws ch. 111M, § 2. This provision, as implemented by 956 Mass. Code Regs., interprets the 63-day gap in coverage to be three months. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at [www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf](http://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf); see also 830 Mass. Code Regs. 111M.2.1(5)(c). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months.

Since Appellant’s reported household income in 2017 (\$54,750.00) was more than 150 percent of the applicable FPL (\$17,820.00 for family of one), which makes Appellant subject to the individual mandate tax penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to Appellant in 2017. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and, second, to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2017 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a Federal AGI of \$54,750.00 in 2017, and Appellant’s filing status was single with no dependents. Exhibit 3. According to the Affordability Schedule established by the Connector’s board and included in the Instructions and Worksheets of the 2017 Massachusetts Schedule HC, Appellant could afford to pay 8.16 percent of the reported Federal AGI or \$372.30 monthly ( $\$54,750.00 \times 8.16\% = \$4,467.60 \div 12 = \$372.30$ ) for health insurance. See 2017 Schedule HC Instructions and Worksheets, *supra* at Table 3.

Appellant did not have access to employer-sponsored health insurance in 2017, and Appellant’s 2017 income was above the cut-off for government-subsidized health insurance which was set at \$35,640.00 for a family of one in 2017. See 2017 Schedule HC Instructions and Worksheets, *supra* at Table 2. However, private health insurance would have cost \$278.00 monthly for individual coverage based on Appellant’s age range (0-30) and county of residence (Barnstable) which would have been affordable according to the Schedule. *Id.* at Table 4.

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

Based on a reported Federal AGI of \$54,750.00, Appellant’s gross monthly available income in 2017 was \$4,562.50. Appellant credibly testified to monthly living expenses of nearly \$3,000.00 \$2,429.00 which is more than \$1,500.00 less than Appellant’s available income. Even allowing for some additional expenses that Appellant

did not list, I cannot find on this record that Appellant has demonstrated that the additional cost of \$278.00 monthly to purchase private health insurance coverage would have resulted in a serious deprivation of food, shelter, clothing or other necessities." See 956 Mass. Code Regs. 6.08(1)(e). I further find that Appellant has not alleged or shown any of the other indicia of hardship described in 956 Mass. Code Regs. 6.08. To conclude otherwise on this record would impermissibly override the judgment of the Legislature that Massachusetts residents must have qualifying health insurance coverage if affordable or face the consequences of a tax penalty.

Accordingly, Appellant's appeal is **DENIED**, and the 2017 penalty assessed is **AFFIRMED**.

#### **PENALTY ASSESSED**

Number of MonthsAppealed: 12

Number of Months Assessed: 12

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

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-224

**Appeal Decision:** Appeal Allowed

**Hearing Issue:** Appeal of a 2017 Tax Year Penalty

**Hearing Date:** September 13, 2018

**Decision Date:** October 12, 2018

### AUTHORITY

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

### JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07. Appellant, a Massachusetts resident during 2017, appeals the assessment of a 2017 tax penalty for failure to comply with the individual health insurance mandate of Mass. Gen. Laws ch. 111M, § 2.

### HEARING RECORD

Appellant appeared at the hearing which was held by telephone on September 13, 2018. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

Exhibit 1: Appeal dated May 27, 2018;

Exhibit 2: Notice of Hearing dated August 16, 2018; and

Exhibit 3: Appeal Case Information print-out dated August 16, 2018 generated from Appellant's 2017 Massachusetts Schedule HC.

### FINDINGS OF FACT

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

1. Appellant became a resident of Massachusetts during 2017. Testimony; Exhibits 1 and 3.
2. Between January and June of 2017, Appellant was transitioning from living in Italy to establishing residency in Massachusetts. Testimony. During this period, Appellant stayed temporarily with friends in Massachusetts and frequently traveled back and forth between Italy and Massachusetts. Testimony.

3. Appellant did limited freelance consulting work between January and June of 2017, earning total gross income of \$10,702.00. Testimony.
4. Appellant's basic living expenses during the period of January through June of 2017 averaged \$1,500.00 monthly. Testimony. During this period, Appellant incurred additional travel and relocation expenses. *Id.*
5. Appellant secured full-time employment in July and was enrolled in employer-sponsored health insurance coverage from July through December of 2017. Testimony; Exhibit 3.
6. Appellant filed a Massachusetts Resident Income Tax Return for 2017 as a full-year resident, reporting a Federal Adjusted Gross Income of \$63,054.00. Exhibit 3. The Schedule HC filed with the return reported no health insurance coverage for the months of January through June of 2017 that met minimum creditable coverage ("MCC") requirements. *Id.*
7. Based on Appellant's 2017 Schedule HC, the Department of Revenue assessed a three-month tax penalty on Appellant. Exhibit 3.
8. Appellant appeals the tax penalty on the ground "other circumstances, such as applying the affordability tables in Schedule HC to you is inequitable (for example, because of family size); that you were unable to obtain government-subsidized insurance even though your income qualified you; or that you didn't reside in Massachusetts during your period of uninsurance." EX 1 at 2.

In addition to the foregoing facts, I take administrative notice of the 2017 Schedule HC Instructions and Worksheets, available at <https://www.mass.gov/files/documents/2018/01/16/dor-2017-inc-sch-hc-inst.pdf>, and in particular Tables 1 – 6 which, as will be discussed below, include the Affordability Schedule and other financial information used in making 2017 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).

Individuals with incomes up to 150 percent of the Federal Poverty Level ("FPL"), which was set at \$17,820.00 for family of one in 2017, are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release ("TIR") 17-1, available at <https://www.mass.gov/technical-information-release/tir-17-1-individual-mandate-penalties-for-tax-year-2017>. In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. Mass. Gen. Laws ch. 111M, § 2. This provision, as implemented by 956 Mass. Code Regs., interprets the 63-day gap in coverage to be three months. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at [www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf](http://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf); see also 830 Mass. Code Regs. 111M.2.1(5)(c). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months. This policy effectively reduced Appellant's 2017 tax penalty for six months of non-coverage to three months.

Since Appellant's reported household income in 2017 (\$63,054.00) was more than 150 percent of the applicable FPL (\$17,820.00 for family of one), which makes Appellant subject to the individual mandate tax penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to Appellant in 2017. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and, second, to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2017 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a Federal AGI of \$63,054.00 in 2017, and Appellant's filing status was single with no dependents. Exhibit 3. According to the Affordability Schedule established by the Connector's board and included in the Instructions and Worksheets of the 2017 Massachusetts Schedule HC, Appellant could afford to pay 8.16 percent of the reported Federal AGI or \$428.77 monthly ( $\$63,054.00 \times 8.16\% = \$5,154.21 \div 12 = \$428.77$ ) for health insurance. See 2017 Schedule HC Instructions and Worksheets, *supra* at Table 3.

Appellant did not have access to employer-sponsored health insurance during the January – June period of uninsurance, and Appellant's 2017 income was above the cut-off for government-subsidized health insurance which was set at \$35,640.00 for a family of one in 2017. See 2017 Schedule HC Instructions and Worksheets, *supra* at Table 2. However, private health insurance would have cost \$368.00 monthly for individual coverage based on Appellant's age range (45-49) and county of residence (Plymouth) which would have been affordable according to the Schedule based on her reported Federal AGI for 2017. *Id.* at Table 4.

Since Appellant did not obtain affordable private health insurance, Appellant is subject as a 2017 Massachusetts resident to the HCRA's tax penalty unless Appellant demonstrates a qualifying hardship. 956 Mass. Code Regs. 6.08. To qualify for a waiver or reduction of a tax penalty based on hardship, an Appellant "must establish that, based on all his circumstances, health insurance that provided minimum creditable coverage was not affordable to him because he experienced a hardship." 956 Mass. Code Regs. 6.08(1).

During the six-month period of uninsurance, Appellant earned gross income of \$10,072.00 and incurred approximately \$9,000.00 in basic living expenses exclusive of travel and relocation costs. The difference between income and basic living expenses during this period was approximately \$167.00 monthly, well less than the \$368.00 monthly cost of private health insurance. Therefore, I find that the cost of purchasing health insurance during the period of January – June 2017 would have resulted in a "serious deprivation of food, shelter, clothing or other necessities" which qualifies as a hardship. See 956 Mass. Code Regs. 6.08(1)(e). I additionally note that while Appellant filed the 2017 tax return as a full-year resident, Appellant was not living in Massachusetts on a full-time basis for the first six months of 2017 and was instead temporarily staying with friends and traveling back and forth between Italy and Massachusetts. Under these particular circumstances, Appellant could reasonably be considered to be exempt as a non-resident from the HCRA's individual mandate prior to July of 2017.

Accordingly, Appellant's appeal is **ALLOWED**, and the 2017 penalty assessed is **OVERTURNED**.

## **PENALTY ASSESSED**

Number of MonthsAppealed: 3

Number of Months Assessed: 0

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

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-236

**Appeal Decision:** Appeal Approved

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** September 19, 2018

**Decision Date:** October 1, 2018

### AUTHORITY

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

### JURISDICTION

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

### HEARING RECORD

The Appellants appeared at the hearing, which was held by telephone, on September 19, 2018. The procedures to be followed during the hearing were reviewed with the Appellants who were then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellants. After the hearing concluded, the record was left open until October 3, 2018 to allow the Appellants to submit additional information. Additional information was submitted in a timely manner. The hearing record consists of the Appellants' testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated August 24, 2018.
- Exhibit 2: Appeal Case Information from Schedule HC 2017.
- Exhibit 3: Statement of Grounds for Appeal signed by the Appellants on May 26, 2018.
- Exhibit 4: The Appellants' letter in support of this Appeal with an attachment.
- Exhibit 5: Health Connector Appeals Unit Open Record form dated September 19, 2018.
- Exhibit 6: Additional information submitted by the Appellants including the Appellants' Massachusetts 1099-HC for tax year 2017.

### FINDINGS OF FACT

The record shows, and I so find:

1. The Appellants filed their Federal Income Tax return as a married couple with one dependent claimed (Exhibit 2).
2. The Appellants lived in Essex County, MA in 2017 (Exhibit 2).
3. The Appellants' Federal Adjusted Gross Income for 2017 was \$144,111 (Exhibit 2 and Appellants Testimony).

4. The Appellant listed as the Primary on the 2017 Schedule HC had health insurance for all twelve months of tax year 2017 and has not been assessed a tax penalty (Exhibit 2 and Appellant Testimony).
5. According to the information on the Appellants' Schedule HC, the Appellant Spouse did not have insurance for any months of tax year 2017. The Appellant Spouse has been assessed a twelve-month tax penalty for 2017. The Appellants filed an appeal of the assessment in May 2018 (Exhibits 2, 3, 4).
6. The Appellant testified that both adult household members work for the same employer and both had employer sponsored health insurance for all twelve months of tax year 2017. The Appellant explained that their Spouse is the primary on the family's insurance. The Appellant submitted a copy of the Benefit Summary for Cigna Global Choice Plan. The Appellant testified that their employer made a mistake on the Form MA 1099-HC for tax year 2017 but a corrected one was being issued (Exhibits 3, 4 and Appellant Testimony).
7. The Record was left open until October 3, 2018 to allow the Appellants to submit additional information verifying the Appellants' health insurance coverage for tax year 2017 (Exhibit 5).
8. The Appellants submitted a copy of an updated Form MA 1099-HC issued by Cigna. The Appellant and their Spouse had health insurance that met Massachusetts minimum creditable coverage standards for all twelve months in tax year 2017 (Exhibits 4, 6).

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

The Appellants filed their tax year 2017 return as a married couple with one dependent. Based on the information from the Appellants' 2017 Schedule HC, it appeared that the Appellant had health insurance for all of tax year 2017 but their Spouse did not have health insurance in tax year 2017. Consequently, the Appellant Spouse has been assessed a twelve-month penalty. The Appellants submitted a statement of grounds for this appeal, claiming that both spouses work for the same employer and both had employer sponsored health insurance under the same policy for all twelve months of tax year 2017. The record was left open to allow the Appellants to contact their employer to obtain verification of their insurance coverage. The Appellants submitted a copy of their Form MA 1099-HC for tax year 2017. This document verifies that the Appellant and the Appellant Spouse had employer sponsored health insurance for all twelve months of tax year 2017. The Appellant Spouse's twelve-month penalty is therefore waived.

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

**PENALTY ASSESSED**

Number of MonthsAppealed: 12 Number of Months Assessed: 0

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

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

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

Cc: Connector Appeals Unit

**ADDENDUM**

If the Appellants have not done so, it is suggested that the Appellants file an amended tax return for tax year 2017 and include the documentation necessary to verify their health insurance coverage for the year.

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-241

**Appeal Decision:** Appeal Approved.

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** September 21, 2018

**Decision Date:** October 1, 2018

### AUTHORITY

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

### JURISDICTION

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

### HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on September 21, 2018. The procedures to be followed during the hearing were reviewed with the appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated August 24, 2018.
- Exhibit 2: Appeal Case Information from Schedule HC 2017.
- Exhibit 3: Statement of Grounds for Appeal signed by the Appellant on May 22, 2018.
- Exhibit 4: The Appellant's letter in support of this appeal with attachments.

### FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant turned 30 years old in January 2017. The Appellant filed their Federal Income Tax return as an individual with no dependents claimed (Exhibit 2).
2. The Appellant lived in Worcester County, MA in 2017 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2017 was \$37,661 (Exhibit 2 and Appellant Testimony).
4. The Appellant had health insurance for the period of January through April in tax year 2017. The Appellant did not have health insurance for the period of May through December 2017 (Exhibit 2 and Appellant Testimony).
5. The Appellant has been assessed a five-month tax penalty for 2017. The Appellant filed an appeal of the assessment in May 2018 (Exhibits 2, 3, 4).

6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
7. In accordance with Table 3 of Schedule HC for 2017, the Appellant filing the Federal tax return as an individual, with no dependents claimed, with an annual adjusted gross income of \$37,661 could afford to pay \$232.24 per month for health insurance. In accordance with Table 4, the Appellant, age 30, living in Worcester County, could have purchased private insurance for \$150 per month for a plan (Schedule HC for 2017). Private insurance was affordable for the appellant in 2017.
8. The Appellant was not eligible for ConnectorCare coverage in 2017 because the Appellant's income of \$37,661 was greater than 300% of the federal poverty level, which was \$35,640 in 2017. The Appellant had no access to affordable insurance through employment in tax year 2017 (See Table 2 of Schedule HC-2017 and 956 CMR 12.04) (Exhibits 2, 4 and Appellant Testimony).
9. The Appellant testified that they had Tufts health insurance through the Health Connector for the first four months of tax year 2017 and were paying about \$150 per month for the premium. The Appellant said that they had a difficult time meeting their living expenses and stopped paying the monthly health insurance premium because they could not afford the payment (Appellant Testimony).
10. The Appellant's monthly living expenses included: rent-\$650; car loan-\$370; car insurance- \$120; gasoline-\$390; telephone-\$80 and food-\$607. The Appellant explained that their apartment was heated by electricity and the electric bill was extremely high in the winter months. The Appellant testified that they got behind in their payments and were late with payments for rent and their car. The Appellant did receive a shut off notice from National Grid for the billing period of August through September. The Appellant had a balance due of \$1,355.06 as of December 15, 2017. I found the Appellant to be a credible witness (Exhibit 4 and Appellant Testimony).

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

The Appellant had no health insurance for the last eight months of tax year 2017. The Appellant has been assessed a five-month penalty. The Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply in this case because of financial hardship. To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met

minimum creditable coverage standards was available to the Appellant through employment, through private insurance, or through a government sponsored program. If affordable insurance was available, it must be determined if such insurance was not affordable to the Appellant because the Appellant experienced a financial hardship as defined in 956 CMR 6.08.

In accordance with Table 3 of Schedule HC for 2017, the Appellant filing the Federal tax return with no dependents claimed with an adjusted gross income of \$37,661 could afford to pay \$232 per month for health insurance. According to Table 4, the Appellant, age 30, living in Worcester County, could have purchased a private insurance plan for \$150 per month. See Schedule HC for 2017. Private insurance was affordable for the Appellant in tax year 2017.

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

The Appellant was paying \$150 per month for health insurance for the first four months of tax year 2017. The Appellant testified credibly that they stopped paying the monthly premium because they were struggling to meet their living expenses. The Appellant's monthly living expenses were substantial, and the Appellant received a shut off notice for their heat and electricity for an overdue balance of \$1,355.06 as of December 15, 2017. The cost of purchasing health insurance would have caused the Appellant to experience a serious financial hardship. See 956 CMR 6.08(1)(e). The Appellant's penalty for all five months is therefore waived.

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

#### **PENALTY ASSESSED**

Number of MonthsAppealed:       5       Number of Months Assessed:       0      

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

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

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

Cc:      Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17121

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

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** August 23, 2018

**Decision Date:** October 31, 2018

### AUTHORITY

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

### JURISDICTION

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

### HEARING RECORD

The appellant appeared at the hearing, which was held by telephone on August 23, 2018. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

Exhibit 1: Appeal Case Information from Schedule HC 2017

Exhibit 2: Statement of Grounds for Appeal 2017 signed and dated by Appellant on May 24, 2018

Exhibit 3: Notices of Hearing sent to Appellant dated July 17, and August 3, 2018 for August 23, 2018 hearing

### FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2017 Massachusetts tax return as a single person with no dependents claimed, was 60 years old in 2017 (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Plymouth County in 2017 (Exhibit 1, Testimony of Appellant).
3. Appellant's Federal Adjusted Gross Income for 2017 was \$52,735 (Exhibit 1, Testimony of Appellant).
4. In October, 2016, Appellant got a temporary job. He was paid \$17 an hour and worked 40 hours a week. He was not offered benefits. He had been unemployed before getting this job (Testimony of Appellant).
5. In April, 2017, he got a permanent job. He was still paid by the hour at the rate of \$19 per hour. He was offered health insurance which met the Commonwealth's minimum creditable coverage standards. He had to wait 90 days before he could enroll. His coverage started July 1, 2017. As of the date of this hearing, Appellant still had coverage (Testimony of Appellant, Exhibit 1).

7. Appellant has been assessed a tax penalty for January through March, 2017. 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 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
9. According to Table 3 of Schedule HC for 2017, the appellant with no dependents claimed with an adjusted gross income of \$52,735 could afford to pay \$358 per month for health insurance. According to Table 4, Appellant, age 60 and living in Plymouth County, could have purchased insurance for \$441 per month. Individual coverage was not affordable for the appellant in 2017 (Schedule HC for 2017).
10. According to Table 2 of Schedule HC for 2017, Appellant earning slightly less than \$35,640 per year during January through March would have been eligible for the ConnectorCare program based upon income. During these months, he was earning \$680 a week, or at the rate of \$35,360 a year (Table 2 of Schedule HC-2017).
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 2017 (Testimony of Appellant).
12. Appellant did not fall more than thirty days behind in mortgage payments in 2017 (Testimony of Appellant).
13. Appellant did not receive any shut-off notices for basic utilities in 2017 (Testimony of Appellant).
14. Appellant had the following monthly expenses for basic necessities in 2017: mortgage-\$1,023; water-\$65; home owner's insurance-\$220; electricity-\$300; gas-\$300 during winter months; telephone and internet-\$100; food-\$500; clothing-\$65; car insurance-\$100; gas for car-\$120. Appellant had credit card debt which he incurred when he was unemployed in 2016. He paid \$130 a month to pay off the debt (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 2017 should be waived, either in whole or in part. Appellant has been assessed a tax penalty for January through March, 2017. Appellant has appealed the penalty. See Exhibits 1 and 2.

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

To determine if Appellant’s penalty should be waived in whole or in part, we must consider whether affordable insurance which met minimum creditable coverage standards was available to the appellant through employment, through the private market, or through a government-sponsored program. If affordable insurance was available, we

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

Appellant testified that he had a temporary job from January through March, 2017. He was not offered any benefits from his employer. Appellant had no access to health insurance during the first three months of 2017 through employment.

According to Table 3 of Schedule HC for 2017, the appellant with no dependents claimed with an adjusted gross income of \$52,735 could afford to pay \$358 per month for health insurance. According to Table 4, Appellant, age 60 and living in Plymouth County, could have purchased insurance for \$441 per month. Affordable insurance through the individual market was not available to the appellant.

Appellant had access to health insurance through the ConnectorCare program from January through March. He earned just under the income limit for a single person during those months. See Table 2 of Schedule HC.

Since Appellant had access to insurance through the ConnectorCare program, we need to determine if he experienced a financial hardship such the coverage would have been unaffordable for him. See 956 CMR 6.08. et. seq.

Appellant had the following monthly expenses for basic necessities in 2017: mortgage-\$1,023; water-\$65; home owner's insurance-\$220; electricity-\$300; gas-\$300 during winter months; telephone and internet-\$100; food-\$500; clothing-\$65; car insurance-\$100; gas for car-\$120. Appellant had credit card debt which he incurred when he was unemployed in 2016. He paid \$130 a month to pay off the debt. See the testimony of the appellant which I find to be credible.

During January through March, 2017, Appellant had monthly expenses for basic necessities amounting to approximately \$2,400. He had a temporary job, earning \$17 an hour. He received no benefits. He earned about \$2,700 a month before taxes leaving the appellant with virtually no disposable income. I determine that pursuant to 956 CMR 6.08(1)(e) the cost of purchasing health insurance would have caused the appellant to experience a serious deprivation of basic necessities. His penalty is, therefore, waived.

I also note that Appellant obtained insurance as soon as it was available to him through employment and was still insured as of the date of this hearing.

Appellant should note that any waiver granted here is for 2017 only and is based upon the specific facts I have found to be true and should not assume that the same determination will be made should Appellant be assessed a penalty in the future.

## **PENALTY ASSESSED**

Number of MonthsAppealed:   3   Number of Months Assessed:   0  

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

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

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

Cc: Connector Appeals Unit

Hearing Officer

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17122

**Appeal Decision :** Penalty waived in full

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** August 23, 2018

**Decision Date:** October 29, 2018

### AUTHORITY

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

### JURISDICTION

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

### HEARING RECORD

The appellant appeared at the hearing, which was held by telephone on August 23, 2018. The procedures to be followed during the hearing were reviewed with the appellant. The appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified. At the end of the hearing, the record was left open until September 12, 2018 to give the appellant time to submit additional evidence. On September 7, 2018, a document was received from the appellant. It has been marked as an exhibit and entered in evidence. The record for this hearing is now closed.

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

Exhibit 1: Appeal Case Information from Schedule HC 2017

Exhibit 2: Statement of Grounds for Appeal 2017 signed and dated by Appellant on May 24, 2018

Exhibit 3: Notice of Hearing sent to Appellant dated July 17, 2018 for hearing on August 23, 2018

Exhibit 3a: Notice of Hearing sent to Appellant dated August 3, 2018 for hearing on August 23, 2018

Exhibit 4: Appellant's 2017 Federal Form 1095-B

Exhibit 5: Appellant's 2017 Form MA 1099-HC

### FINDINGS OF FACT:

The record shows, and I so find:

1. Appellant turned 25 in May, 2017. She filed a 2017 Massachusetts tax return as a single individual with no dependents claimed (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Suffolk County, MA in 2017 (Testimony of Appellant).
3. Appellant had a Federal Adjusted Gross Income of \$31,585 in 2017 (Exhibit 1).
4. Appellant had health insurance all of 2017 through her parents' plan which met the Commonwealth's minimum creditable coverage standards (Testimony of Appellant, Exhibit 5).

5. Appellant has been assessed a tax penalty for all of 2017. She completed her tax return electronically and, in error, indicated on her return that she had no health insurance all year (Testimony of Appellant, Exhibit 1).

## **ANALYSIS AND CONCLUSIONS OF LAW**

The appellant has been assessed a tax penalty for all of 2017. The appellant has appealed the penalty. See Exhibits 1 and 2. The issue on appeal is whether the tax penalty assessed should be waived, either in whole or in part.

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

Appellant testified that she had health insurance all year through her parents’ plan. She stated that she inadvertently indicated on her 2017 Massachusetts tax return that she had no coverage. Exhibit 5, Appellant’s Form MA 1099-HC corroborates the testimony. It shows that Appellant had coverage which met the Commonwealth’s minimum creditable coverage standards all year under her parents’ plan.

Since Appellant had coverage which met the Commonwealth’s standards all year, her penalty is waived. See Massachusetts General Laws, Chapter 111M.

Appellant should note that this waiver of the penalty is based upon the facts that I have determined to be true for this 2017 appeal. Appellant should not assume that a similar determination will be made in the future should Appellant again be assessed a penalty for failure to have health insurance.

## **PENALTY ASSESSED**

Number of MonthsAppealed: 12 Number of Months Assessed: 0

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

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

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17125

**Appeal Decision :** Penalty waived in full

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** August 23, 2018

**Decision Date:** October 30, 2018

### AUTHORITY

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

### JURISDICTION

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

### HEARING RECORD

The appellant appeared at the hearing, which was held by telephone on August 23, 2018. The procedures to be followed during the hearing were reviewed with the appellant. The appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified. At the end of the hearing, the record was left open until September 12, 2018 to give the appellant time to submit additional evidence. On September 10, 2018, a document was received from the appellant. It has been marked as an exhibit and entered in evidence. The record for this hearing is now closed.

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

Exhibit 1: Appeal Case Information from Schedule HC 2017

Exhibit 2: Statement of Grounds for Appeal 2017 signed and dated by Appellant on May 21, 2018 with letter in support attached

Exhibit 3: Notice of Hearing sent to Appellant dated July 17, 2018 for hearing on August 23, 2018

Exhibit 4: Appellant's 2017 Form MA 1099-HC showing MassHealth coverage for January through August

Exhibit 5: Appellant's 2017 Federal Form 1095-B

Exhibit 6: Appellant's 2017 Form MA1099-HC showing coverage for November and December

### FINDINGS OF FACT:

The record shows, and I so find:

1. Appellant turned 23 in March, 2017. He filed a 2017 Massachusetts tax return as a single individual with no dependents claimed (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Essex County, MA in 2017 (Testimony of Appellant).
3. Appellant had a Federal Adjusted Gross Income of \$37,671 in 2017 (Exhibit 1).
4. Appellant had health insurance which met the Commonwealth's minimum creditable coverage standards from January through August and November and December, 2017. He had MassHealth from January through August and health insurance through employment in November and December (Testimony of Appellant, Exhibits 4 and 6).

5. Appellant has been assessed a tax penalty for December, 2017. He has appealed this assessment (Testimony of Appellant, Exhibits 1 and 2).

## **ANALYSIS AND CONCLUSIONS OF LAW**

The appellant has been assessed a tax penalty for December, 2017. The appellant has appealed the penalty. See Exhibits 1 and 2. The issue on appeal is whether the tax penalty assessed should be waived, either in whole or in part.

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

Appellant testified that he had MassHealth insurance from January through August, 2017 and insurance through his job in November and December, 2017. Exhibits 4 and 6, Appellant’s two Form MA 1099-HC, corroborate the testimony. It shows that Appellant had coverage which met the Commonwealth’s minimum creditable coverage standards every month except September and October.

Appellant is entitled to a three-month grace period after losing his MassHealth coverage at the end of August. Since Appellant obtained coverage which met the Commonwealth’s standards within the grace period, Appellant’s penalty for December is waived. See Massachusetts General Laws, Chapter 111M.

Appellant should note that this waiver of the penalty is based upon the facts that I have determined to be true for this 2017 appeal. Appellant should not assume that a similar determination will be made in the future should Appellant again be assessed a penalty for failure to have health insurance.

## **PENALTY ASSESSED**

Number of MonthsAppealed: 1 Number of Months Assessed: 0

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

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

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17126

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

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** August 23, 2018

**Decision Date:** October 31, 2018

### AUTHORITY

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

### JURISDICTION

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

### HEARING RECORD

The appellant appeared at the hearing, which was held by telephone on August 23, 2018. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified. At the end of the hearing, the record was left open until September 12, 2018 to give the appellant time to submit additional evidence. On September 7, 2018, documents were received from the appellant. These have been marked as exhibits and admitted in evidence. The record for this hearing is now closed.

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

Exhibit 1: Appeal Case Information from Schedule HC 2017

Exhibit 2: Statement of Grounds for Appeal 2017 signed and dated by Appellant on May 21, 2018 with letter in support attached

Exhibit 3: Notice of Hearing sent to Appellant dated July 17, 2018 for August 23, 2018 hearing

Exhibit 4: Letter dated April 7, 2017 to Appellant from employer

Exhibit 5: Letter, undated, to Appellant regarding employment

Exhibit 6: Letter from insurer to Appellant dated April 26, 2017

Exhibit 7: Appellant's 2017 Form MA1099-HC showing coverage for January through March and December

Exhibit 8: Appellant's 2017 Form MA1099-HC showing coverage for November

### FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2017 Massachusetts tax return as a single person with no dependents claimed, was 42 years old in 2017 (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Worcester County in 2017 (Exhibit 1, Testimony of Appellant).
3. Appellant's Federal Adjusted Gross Income for 2017 was \$63,920 (Exhibit 1, Testimony of Appellant).

4. Appellant was employed from January through March, 2017. She was paid at the rate of \$65,000 a year. She had health insurance which met the Commonwealth's minimum creditable coverage standards through this job. She resigned at the end of March (Testimony of Appellant, Exhibit 7).
5. Appellant was unemployed from April through mid-July, 2017. Because she had resigned from her job, she was ineligible for unemployment compensation. She had no source of income during this period. She also had no health insurance (Testimony of Appellant).
6. When she started at her new job mid-July, she was offered health insurance but was told she had to wait 90 days to enroll. She obtained health insurance that met the Commonwealth's minimum creditable coverage standards as of November 1, 2017. Her annual salary at this job was \$70,000 (Testimony of Appellant, Exhibits 7 and 8).
7. Appellant has been assessed a tax penalty for all of 2017. 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 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
9. According to Table 3 of Schedule HC for 2017, the appellant with no dependents claimed with an adjusted gross income of \$63,920 could afford to pay \$434 per month for health insurance. According to Table 4, Appellant, age 42 and living in Worcester County, could have purchased insurance for \$274 per month. Private insurance was affordable for the appellant in 2017 (Schedule HC for 2017).
10. According to Table 2 of Schedule HC for 2017, Appellant earning more than \$35,640 per year, would have been ineligible for the ConnectorCare program based upon income (Table 2 of Schedule HC-2017).
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 2017 (Testimony of Appellant).
12. Appellant did not fall more than thirty days behind in mortgage payments in 2017 (Testimony of Appellant).
13. Appellant did not receive any shut-off notices for basic utilities in 2017 (Testimony of Appellant).
14. Appellant had the following monthly expenses for basic necessities in 2017: mortgage-\$800; water-\$25; electricity-\$100; gas-\$80; telephone and internet-\$85; food-\$500; clothing-\$85; car payment-\$187; car insurance-\$92; student loan payments-\$144. While she was unemployed, she spent about \$500 looking for a job.

## **ANALYSIS AND CONCLUSIONS OF LAW**

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2017 should be waived, either in whole or in part. Appellant has been assessed a tax penalty for all of 2017. Appellant has appealed the penalty. See Exhibits 1 and 2.

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

45 CFR 155.410 and 420 provide for open enrollment periods during which individuals may enroll in health care plans and for special open enrollment periods when individuals may enroll outside of the open enrollment period if they have had a qualifying life event within the past 60 days.

Appellant testified that she had health insurance which met the Commonwealth’s minimum creditable coverage standards in January, February, March, November, and December, 2017. Exhibits 7 and 8 corroborate this testimony. The penalty for these months is waived. Since she is allowed a three-month grace period after losing coverage, the penalty for April through June is also waived. We need to determine if the penalty for July through October should be waived or not.

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 she was unemployed from April through mid-July and that she had no source of income during those month. When she found a new job, she was offered health insurance but was not allowed to enroll in a plan until she had been on the job for 90 days. She enrolled as soon as she was eligible on November 1, 2017. See the testimony of the appellant which I find to be credible. Appellant had no access to insurance through employment until November.

According to Table 3 of Schedule HC for 2017, the appellant with no dependents claimed with an adjusted gross income of \$63,920 could afford to pay \$434 per month for health insurance. According to Table 4, Appellant, age 42 and living in Worcester County, could have purchased insurance for \$274 per month. Affordable health insurance through the individual market would have been available to the appellant but only if she applied for it within 60 days of losing her coverage at the end of March. See 45 CFR 155.410 and 420. Losing coverage is a qualifying event. Once she missed the 60-day deadline, she would not have been able to obtain insurance until the next open enrollment period at the end of 2017.

Appellant had no access to health insurance through the ConnectorCare program from July through October since her income was too high. See Table 2 of Schedule HC. There is no evidence in the record that Appellant had access to any other government sponsored coverage.

Appellant had no access to health insurance from July through October. She was employed, but she was not eligible for the offered health insurance for the first 90 days after starting the job. She was able to enroll as of November 1st. When she lost her job and her health insurance at the end of March, she had no source of income and did not attempt to obtain insurance on the individual market. 60 days after losing her coverage, she was no longer eligible to purchase insurance through the individual market until the next open enrollment period. Finally, she was not eligible for any government sponsored program, given her income once she started working in July.

Since Appellant had no access to health insurance from July through October, the penalty for those months is waived. See Massachusetts General Laws, Chapter 111M, Section 2.

Appellant should note that any waiver granted here is for 2017 only and is based upon the specific facts I have found to be true and should not assume that the same determination will be made should Appellant be assessed a penalty in the future.

## **PENALTY ASSESSED**

Number of MonthsAppealed: 12 Number of Months Assessed: 0

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

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

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-198

### **Appeal Decision** Appeal Approved

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** September 13, 2018

**Decision Date:** October 30, 2018

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on September 13, 2018.

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

Exhibit 1: Notice of Hearing (8-17-18) (3 pages);

Exhibit 2: Information from Schedule HC TY 2017 (1 page); and

Exhibit 3: Statement of Grounds for Appeal (5-27-18) (with documents) (10 pages).

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, age 30 during 2017, was from Plymouth County, and filed married filing jointly with a family size of 2.
2. Appellant had health insurance but lost it. Appellant's spouse had health insurance throughout 2017.
3. Appellant could not afford health insurance based on the tables in Schedule HC.
4. 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 as paying for health insurance would have caused a serious deprivation of food, shelter, clothing and transportation. Appellant’s expenses for food, shelter, clothing and transportation used most of the income. Based on this information, the penalty is waived.

## **PENALTY ASSESSED**

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

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

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

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-285

**Appeal Decision:** Penalty Overturned in Full

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** October 3, 2018

**Decision Date:** October 30, 2018

### AUTHORITY

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

### JURISDICTION

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

### HEARING RECORD

The appellant husband appeared at the hearing which was held by telephone on October 3, 2018, and testified under oath. The hearing record consists of the appellant's testimony and the following documents which were admitted into evidence without his objection:

Ex. 1—Statement of Grounds for Appeal—2017

Ex. 1A—Notice of 90 Day Right to Cure Mortgage Default dated March 2, 2017

Ex. 1B—Notice of Past Due Mortgage Payment dated December 1, 2017

Ex. 1C—Amount Due Report from bank dated December 1, 2017

Ex. 1D—Final Appeal Decision in PA16-307 dated August 28, 2018

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

Ex. 3—Notice of Hearing

The record was held open at the conclusion of the hearing for documentation requested by the hearing officer from the appellant. No documentation was submitted by the required date and the record was closed.

### FINDINGS OF FACT

The record shows, and I so find:

1. The appellant husband is 40-years-old, the appellant wife is 39-years-old, and they have two minor children. They resided in Worcester County, MA in 2017. They did not have health insurance in 2017. (Testimony, Ex. 2)

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

2. The appellants were employed by the same employer in 2017 and were both eligible for employer health insurance. The monthly premium for a family plan was approximately \$2500.00 which they determined was not affordable. They investigated their eligibility for insurance through the Health Connector, and believed they were determined eligible for insurance, but were never able to enroll in a plan during the open enrollment period. (Testimony)
3. In 2016, the appellants had employer health insurance for the months of January and February, but lost coverage for the rest of the year when the husband was laid off from his position. He found another job for half of what he had been making and could not afford to enroll in employer health insurance. (Testimony, Ex. 1D)
4. The appellants were assessed a penalty of seven months for the period during which they were uninsured in 2016. They filed an appeal of the penalty with the Health Connector, and following a hearing, the penalty was overturned in full. The hearing officer determined that the appellants fell behind with their mortgage payments and received a notice from their lender of Intention to Foreclose. She concluded that the expense of purchasing health insurance would have caused the appellants to experience additional financial hardship. (Testimony, Ex. 1D)
5. The appellants had two mortgages on their home in 2017. The monthly payment for their first mortgage was approximately \$1101.00. The monthly payment for the second mortgage was \$143.00. (Testimony, Exs. 1A, 1B, 1C)
6. By letter dated March 2, 2017, the appellants' primary lender notified them that their mortgage was in arrears for \$5,875.52 dating back to October 1, 2016. They were advised that they had until June 2, 2017 to pay that amount or risk a foreclosure sale of their home. They entered into a payment plan with the lender and became current by the end of the year. (Testimony, Ex. 1A)
7. By letter dated December 1, 2017, the appellants' secondary lender notified them that their mortgage payment was more than 30 days past due and their loan was in default. The total amount due at that time was \$289.50 which they were able to pay to avoid foreclosure proceedings. (Testimony, Exs. 1B, 1C)
8. The appellants received a shut-off notice for their water service in 2017 and were able to work out a payment plan with the town to avoid termination of their service.<sup>2</sup> (Testimony)
9. The appellant husband began a new job in July, 2018. His employer offers health insurance and he was able to enroll in a family plan following a 90-day waiting period for a monthly premium of approximately \$160.00 (Testimony)
10. The appellants reported an adjusted gross income of \$119,282.00 on their jointly filed 2017 federal tax return, and reported that they were married with two dependents. (Ex. 2)

## **ANALYSIS AND CONCLUSIONS OF LAW**

Massachusetts General Laws c. 111M, section 2, also known as the "individual mandate", requires every adult resident of the state to obtain health insurance coverage "[s]o long as it is deemed affordable." Residents who do

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<sup>2</sup> The appellants requested a copy of the shut-off notice from the Town and were advised that it does not keep copies of those notices.

not obtain insurance are subject to a tax penalty. The tax penalty was enacted by the Massachusetts Legislature to encourage compliance with the mandate that is part of the Health Care Reform Act of 2006.

The appellants submitted a statement of grounds for appeal (Ex. 1), claiming that the individual mandate did not apply to them because during 2017, 1) they were homeless; more than 30 days in arrears in rent or mortgage payments, or received an eviction or foreclosure notice; and 2) they received a shut-off notice; were shut off; or were refused delivery of essential utilities (gas, electric, heating oil, water, primary telephone). The appellants 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 2017, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Since the appellants were uninsured for the entire year, they were assessed and are appealing a penalty of twelve months.

The appellant husband testified credibly that he and his wife worked for the same employer in 2017. He testified that the employer offered health insurance, but a family plan cost approximately \$2500.00/month which they could not afford. He testified that they investigated insurance options with the Health Connector, and believed that they were determined eligible, but were unable to enroll during the open enrollment period. He testified that there were two mortgages on his home and he fell behind on both of them during the year. He testified that on the primary mortgage, he received a notice of arrears in March, 2017, and was given 90 days to cure the default or risk a foreclosure sale of his home. He testified that on the secondary mortgage, he received a notice of default in December, 2017, that he had fallen behind in his payment for more than 30 days. He testified that he worked out a payment plan with the primary lender and was able to pay off the outstanding balance with the secondary lender. He testified that he was assessed a penalty for being uninsured for part of 2016, and filed an appeal with the Health Connector which resulted in a waiver of the penalty based on financial hardship. Finally, he testified that he started a new job in July, 2018, and that following a 90-day waiting period, he enrolled his family in employer health insurance.

The appellant's testimony regarding his mortgage arrears was corroborated by a statement from his primary lender indicating that as of March 1, 2017, his mortgage was in arrears for \$5,875.52 dating back to October 1, 2016. His testimony was also supported by a notice from his secondary lender indicating that as of December 1, 2017, his second mortgage was in default as his payment was more than 30 days past due. Accordingly, it is concluded that the appellants established through substantial and credible evidence that they experienced a financial hardship within the meaning of 956 CMR 6.08(1)(a) as a result of which they should not be subject to a penalty.<sup>3</sup>

Therefore, based upon the totality of the evidence, the appellants' request for a waiver from the penalty is granted for the months in question. The determination that the appellants are eligible for a waiver is with respect to 2017, only and is based upon the extent of information submitted by them in this appeal.

## PENALTY ASSESSED

Number of MonthsAppealed (husband): 12 Number of Months Assessed (husband): 0  
Number of MonthsAppealed (wife): 12 Number of Months Assessed (wife): 0

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<sup>3</sup> In light of this conclusion, it is not necessary to address the sufficiency of the appellants' second claim that they received a shut-off notice for their water service.

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

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

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

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

Hearing Officer

Cc:      Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-296

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

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** October 4, 2018

**Decision Date:** October 26, 2018

### AUTHORITY

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

### JURISDICTION

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

### HEARING RECORD

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2017;
3. Appellant's Letter in Support of Appeal (1 page, dated 5/23/18);
4. Appellant's 2014 IRS Form 1099-G (Unemployment) (1 page);
5. Appellant's Payroll Record (1 page, dated 11/2/17);
6. Appellant's Gas Bill (1 page, Feb. 2018);
7. Appellant's Car Insurance Bill (1 page, Feb. 2018);
8. Appellant's Mortgage Bill (1 page, Feb. 2018);
9. Appellant's Verizon Bill (1 page, Jan. 2018);
- 9A. Appellant's Water & Sewer Bill (1 page, Feb. 2018) (copied on same page as Exhibit 9);
10. Appellant's Xfinity Cable TV Bill (1 page, Feb. 2018);
11. Appellant's Eversource Bill (1 page, Jan. 2018); and
12. Health Connector's Notice of Hearing (3 pages, dated 9/11/18);

### FINDINGS OF FACT

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

1. The Appellant appealed from the Department of Revenue's assessment of a 6 month penalty for 2017. The basis for the penalty was that the Appellant was insured for the months of January, February and March (3 months) but was not insured for the remainder of 2017 (April – December, or 9 months). Exhibits 1 and 2. (The DOR penalty calculation is 12 months minus 3 months insured = 9 months minus 3-month administrative grace period = 6 penalty months.)
2. The Appellant filed a Massachusetts personal income tax return for 2017 as a head of household with 1 dependent. Exhibit 1.
3. The Appellant's federal adjusted gross income (AGI) for 2017 was \$33,701. Exhibit 1. The Appellant's 2017 income included income from two jobs plus \$1,143 in unemployment insurance benefits. Exhibits 4 and 5. See also Exhibit 3 and Testimony.
4. The Appellant was 26 years old at the beginning of 2017 and resided in [name of city or town omitted] in Hampden County, Massachusetts. Exhibit 1.
5. The Appellant's dependent child was insured by MassHealth for all of 2017 for which the Appellant was not charged a monthly premium. The child used the MassHealth coverage during 2017, and no question was raised by the medical providers as to the child's insurance coverage. Exhibit 3 and Testimony. See also Exhibit 1 (head of household status and one dependent).
6. The Appellant was employed part-time in a grocery store earning \$13 per hour for the months of January – March 2017 (Job #1). During this period the Appellant was insured by MassHealth and was not charged a monthly premium. The MassHealth coverage is reflected in Exhibit 1, the DOR document reflecting the penalty assessment for periods after March 2017. See also Exhibit 3 and Testimony.
7. The Appellant changed jobs at the end of March 2017. For the remainder of 2017 (April – December) the Appellant was employed by a lawn care company (Job #2), except for the seasonal layoff at the end of the year when he collected unemployment insurance benefits. Testimony and Exhibits 3, 4 and 5. This is the period for which DOR assessed a penalty after it deducted the 3-month administrative grace period, as reflected in Exhibit 1.
8. The Appellant did not enroll in the health plan offered by the lawn care company (Job #2) at the end of the 90 day waiting period for two reasons: (1) He thought that he was still insured by MassHealth; and (2) the cost of the employer's health plan was approximately \$450 per month for the Appellant, his child and his girlfriend, which was more than he could afford. Exhibit 3 and Testimony. (I note that there is no document in the hearing record to verify the premium cost.)
9. In December 2017 the Appellant received a notice from MassHealth about his coverage. The Appellant had not used health insurance in 2017 prior to this notice and was not aware that there was any question about his coverage. In response to the notice the Appellant went to the MassHealth Enrollment Center in the city where he lives and updated his information on file. MassHealth reinstated his MassHealth coverage starting in January 2018. Testimony and Exhibit

3. (I have adopted the Appellant's reference to MassHealth, though it is likely that the Appellant's government-subsidized health insurance was provided through the Health Connector.)
10. In 2018 the Appellant pays \$44 per month and his girlfriend pays \$67 per month for their government-subsidized health insurance (\$111 per month total). Testimony. (I note that the hearing record does not contain any MassHealth documents, but I found the Appellant's testimony to be credible evidence).
11. The Appellant's 2017 AGI (\$33,701) was less than 300% of the federal poverty level (\$48,060 for a 2 person household). DOR Table 2. On this basis I infer that the Appellant satisfied the financial eligibility requirements for government-subsidized health insurance for 2017.
12. Based on DOR Table 3 the Appellant could afford to pay \$174 per month for health insurance coverage in 2017. (The calculation is 6.20 % multiplied by \$33,701 AGI = \$2,089.46 per year divided by 12 months = \$ 14.12 per month.)
13. Based on DOR Table 4 (Region 3) the Appellant could obtain individual health insurance coverage at his age and location for \$150 per month in 2017.
14. For 2017 the Appellant did not receive notice of either a utility shut off or a mortgage foreclosure. Exhibits 6, 8, and 11. See also Exhibits 9, 9A, and 10 (telephone, cable tv, and water & sewer bills).
15. The Appellant presented documentary evidence of reasonable monthly household expenses for 2017: \$676 mortgage (Exhibit 8), \$133 gas (Exhibit 6), \$66 electric (Exhibit 11), \$95 cable tv (Exhibit 10), and \$110 telephone (Exhibit 10), totaling \$1,080 per month. The Appellant also presented a \$410 car insurance bill (Exhibit 7), which is likely less than the full annual bill. (I note that several of the bills are for early 2018, but I find that they reasonably reflect expenses in 2017.)
16. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2017 Massachusetts income tax return.
17. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2017. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2017. (The DOR instructions are published

online at <http://www.mass.gov/dor/2016ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2017.)

## **ANALYSIS AND CONCLUSIONS OF LAW**

The case is before me on the Appellant's appeal from the state Department of Revenue's (DOR) assessment of a six month tax penalty because the Appellant did not have health insurance coverage in 2017 after January through March (3 months). See Exhibits 1 and 2. The issue to be decided is whether the penalty should be waived, either in whole or in part.

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

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

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

The Appellant's principal argument in this appeal is that he should not be penalized because he reasonably believed that he was insured for all of 2017 through MassHealth. There is force in his argument in the absence of any documents in the hearing record that address his coverage after the end of March. The starting point is the Appellant's testimony that he was insured by MassHealth for January, February and March, which is supported by Exhibit 1, the document presented by the DOR on which the penalty assessment is based. Apart from Exhibit 1, there is no evidence in the hearing record about what happened after March beyond the Appellant's testimony (orally at the appeal hearing and in his supporting letter (Exhibit 3)), that he had no reason to believe that his MassHealth coverage did not continue after he changed jobs starting in April. The Appellant acknowledges in Exhibit 3 that he did receive a communication from MassHealth in December and states that he went to the local MassHealth Enrollment Center in response to that communication. The upshot, according the Appellant's testimony

that I find is credible in the absence of any contrary evidence, is that MassHealth continued his coverage starting in January 2018.

Because the Appellant had MassHealth coverage in January – March 2017 and again in January 2018 it is reasonable to infer that the mere fact of the Appellant’s new job did not make him ineligible for government-subsidized health insurance for April – December 2017 (though perhaps there would have been an adjustment in the monthly premium, as took place in January 2018). Lacking more cogent or persuasive evidence as to what happened after March 2017, it does not seem reasonable to penalize the Appellant for the remainder of 2017.

This conclusion is reinforced by the limited evidence that is available based on the DOR Tables. In particular, DOR Table 2 shows that the Appellant’s 2017 annual income (\$33,701 AGI) was substantially less than 300% of the federal poverty level (\$48,060). This indicates that the Appellant was still eligible for government-subsidized health insurance throughout 2017. Second, DOR Table 3 shows that the Appellant could afford to pay \$174 per month for health insurance, an amount substantially less than the Appellant’s testimony of the monthly cost of the health plan offered by his new employer. The fact that MassHealth approved his coverage beginning in January 2018 lends further support to the Appellant’s position that his employer’s health plan was not affordable.

In sum, after considering the circumstances based on the evidence presented in the hearing record in this appeal, I conclude that the entire penalty assessed for 2017 should be vacated. See, e.g., 956 Code Mass. Regs. 6.08 (3).

#### **PENALTY ASSESSED**

Number of MonthsAppealed: 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.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

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

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA17-344

**Appeal Decision:** Appeal Approved In Part -- 2017 tax penalty reduced to 3 months

**Hearing Issue:** Appeal of the 2017 Tax Year Penalty

**Hearing Date:** October 29, 2018

**Decision Date:** November 1, 2018

### AUTHORITY

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

### JURISDICTION

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

### HEARING RECORD

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2017; and
3. Health Connector's Notice of Hearing (3 pages, dated 9/1718).

### FINDINGS OF FACT

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

1. The Appellant appealed from the Department of Revenue's assessment of a 12 month penalty for 2017. The basis for the penalty is that the Appellant was not insured at any time in 2017. Exhibits 1 and 2. Based on Exhibit 1 and the Appellant's hearing testimony, I find that the penalty assessment is accurate.
2. The Appellant did not provide any proof when she filed her appeal as requested in the Statement of Grounds for Appeal, where she asserted that the cost of health insurance would have caused her to sustain a "serious deprivation" of food, shelter, clothing or other necessities under 956 Code Mass. Regs. 6.08 (e). See Exhibits 1-3, above.

3. The Appellant filed a Massachusetts personal income tax return for 2017 as a single person with no dependents. The Appellant's federal adjusted gross income (AGI) for 2017 was \$47,206. Exhibit 1.
4. The Appellant was 35 years old at the beginning of 2017 and resided in [name of city or town omitted] in Suffolk County, Massachusetts. Exhibit 1..
5. The Appellant's 2017 AGI (\$47,206) was substantially more than 300% of the federal poverty level (\$35,640 for a one person household). DOR Table 2. On this basis I infer that the Appellant would not have met the financial eligibility requirements for government-subsidized health insurance.
6. Based on DOR Table 3 the Appellant could afford to pay \$299 per month for health insurance coverage based on her 2017 income. (The calculation is 7.60 % multiplied by \$47,206 AGI = \$3,587.65 per year divided by 12 months = \$298.97 per month.)
7. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage at her age (35-39 age bracket) and location for \$256 per month in 2017. In her appeal hearing testimony the Appellant asserted that \$365 per month was the lowest price health plan that she found in her research.
8. The Appellant was insured by MassHealth since her college graduation in 2009. Her coverage was still in effect when she had surgery in late 2016 that was paid for by her health insurance. Testimony.
9. The Appellant asserts that she believed that she was still covered by MassHealth in 2017 and that she did not learn there was a problem with her coverage until she prepared her 2017 tax return in early 2018. At that point she contacted MassHealth and was told that she was no longer insured because her income was greater than allowed under the financial eligibility guidelines. Testimony.
10. The Appellant works in the insurance industry. Since 2013 she has been employed by an insurance company that did not offer her health insurance as a job benefit. Testimony.
11. In January 2019 the Appellant plans to join a new employer in the insurance industry. She will receive health insurance as a job benefit. Testimony.
12. The Appellant had approximately \$46,000 in student loans when she finished college in 2009. The Appellant is still paying \$370 per month on 3 remaining student loans (\$46 + \$135 + \$189). The Appellant did not know offhand what the current balance on her student loans is. Testimony.
13. The Appellant helps care for and support 2 godchildren whose father was in prison part of 2017 and in 2018. Testimony.

14. The Appellant, who is an only child, also helps her Mother who had to stop working due to cancer. More recently, the Mother was burned out of her apartment, where she did not have insurance coverage for her belongings. The Appellant is helping her Mother find new Section 8 subsidized housing. Testimony.
15. The Appellant pays \$850 per month to rent an apartment in a building owned by her Grandmother. She is not behind in rent or utility payments. The Appellant does not have any outstanding credit card debt and she is not behind in the payment of other debts. Testimony.
16. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2017 Massachusetts income tax return.
17. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2017. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2017. (The DOR instructions are published online at <http://www.mass.gov/dor/2016ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2017.)

## **ANALYSIS AND CONCLUSIONS OF LAW**

The case is before me on the Appellant's appeal from the state Department of Revenue's (DOR) assessment of a tax penalty because the Appellant did not have health insurance coverage in 2017. See Exhibits 1 and 2. The issue to be decided is whether the penalty should be waived, either in whole or in part.

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

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

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

The testimony presented by the Appellant in this appeal is consistent with her assertion that she was covered by MassHealth at the time of her surgery in late 2016, although no letters or other documents were presented to support her coverage. The Appellant contends that she reasonably believed that she was still covered by MassHealth in 2017, but her substantial income (\$47,206 AGI) indicates otherwise. When the Appellant inquired in early 2018 in the process of preparing her 2017 state income tax return, MassHealth informed her that her coverage had ended due to her income level.

In the appeal hearing the Appellant presented additional evidence of special financial circumstances. Nearly ten years after she graduated from college the Appellant is still paying \$370 per month for her remaining student loans. She helps care for two god children whose father is incarcerated. She is also helping care for her Mother, who can no longer work due to cancer and who, more recently, was burned out of her apartment.

I consider this evidence against the backdrop of the objective standards set forth in DOR Tables 3 and 4. They show that the Appellant could afford to pay \$299 per month for health insurance (7.60% of her income) and that individual coverage was available for \$256 per month. The \$46 per month difference is, for example, less than the Appellant’s \$370 per month payment for her remaining student loans. Moreover, the Appellant testified that the monthly premium for health insurance that she identified was more than the \$256 amount in DOR Table 4. One thing that is missing (apart from more precise information and verifying documents) is evidence of any effort by the Appellant to enroll in health insurance in 2018 – the year after the period at issue in this appeal. I recognize, however, that the Appellant emphasized during the hearing that she would have health insurance coverage starting in January 2019, just a few months from now.

After considering all the circumstances, I conclude that it is appropriate to reduce the penalty assessed for 2017 to three (3) months. I add that the Appellant needs to get health insurance coverage as required by Massachusetts law. She should not assume that tax penalties that may be assessed for future years will be reduced or waived.

#### **PENALTY ASSESSED**

Number of MonthsAppealed: 12 Number of Months Assessed: 3

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

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2017.

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

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

Hearing Officer

Cc:      Connector Appeals Unit