

# Massachusetts Health Connector Appeals Unit

## Tax Penalty Appeal Decision—Docket No. PA18-558

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

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** September 16, 2019

**Decision Date:** October 1, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2018;
3. Appellant's Credit Card Bill (Texas Address) (1 page, March 2018);
4. Appellant's Credit Card Bill (Texas Address) (1 page, April 2018); and
5. Health Connector's Notice of Hearing (3 pages, dated 8/6/19).

### **FINDINGS OF FACT**

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

1. The Appellant appealed from the Department of Revenue's assessment of a 3 month penalty for 2018. The basis for the penalty was that the Appellant was not insured for the months of January – June 2018 but was insured for the months of July – December 2018. Exhibits 1 and 2. (The calculation is 12 months minus 6 months insured = 6 months uninsured minus 3-month administrative grace period = 3 penalty months.)

2. For the reasons set forth in more detail below, I find that the Appellant was a part-year resident of Massachusetts in 2016 (by mistake this fact was not reported to the DOR on the Massachusetts income tax return that the Appellant filed for 2018. See Exhibit 1).
3. I find, based on the Appellant's credible hearing testimony, that the Appellant moved to Massachusetts at the end of June 2018 to assume a medical residency at a hospital in Boston. See also Exhibit 1.
4. The Appellant enrolled in the health plan that the hospital offered to its staff. She was insured for the months of July – December 2018. The Appellant's testimony on this point is supported by Exhibit 1 (showing insurance for July – December).
5. I find that the Appellant did not reside in Massachusetts during the months of January – June 2018. During this period the Appellant was either outside the United States (her family is from another country) or she was in Texas (where an uncle lives). See also Exhibits 3 and 4 (Texas address on Appellant's credit card statements for March and April 2018).
6. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2018 Massachusetts income tax return.
7. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2018. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2018. (The DOR instructions are published online at <http://www.mass.gov/dor/2018ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2018.)

## **ANALYSIS AND CONCLUSIONS OF LAW**

The case is before me on the Appellant's appeal from the state Department of Revenue's (DOR) assessment of a tax penalty because the Appellant did not have health insurance in Massachusetts for the months of January - June 2018. See Exhibits 1 and 2. The issue to be decided is whether the penalty should be waived, either in whole or in part.

I begin by summarizing the legal rules that underlie this appeal. The tax penalty was enacted by the Massachusetts Legislature to encourage compliance with what is known as the "individual mandate"

under the Massachusetts Health Care Reform Act of 2006. The individual mandate requires that all Massachusetts residents, age 18 and older, “shall obtain and maintain” health insurance coverage, as long as it is “deemed affordable” under the schedule set by the Health Connector’s board of directors that is incorporated in the DOR tables referred to earlier. Massachusetts General Laws c. 111M, sec. 2(a). Any health insurance policy must also satisfy the Massachusetts minimum creditable coverage standards (“MCC”) in order to avoid the penalty. Mass. Gen. Laws c. 111M, sec. 2(b). See also 956 Code Mass Regs. 501 and 5.03.

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

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

The evidence that the Appellant presented in this appeal establishes that the Appellant was a part-year Massachusetts resident in 2018. She did not reside in Massachusetts for the months of January – June 2018, which is the period that is the basis for the DOR tax penalty assessment. The Appellant did reside in Massachusetts for the period July – December 2018 when the DOR accurately reports that she was insured through her new Massachusetts employer. See Exhibit 1.

Under Massachusetts law, the individual mandate – and the related state tax penalties – apply only to residents of Massachusetts. Accordingly, I vacate the tax penalty that was assessed for the first half of 2018 when the Appellant did not reside in Massachusetts. See Mass. Gen. Laws, c. 111M, sec. 2(a), above. See also 2018 Schedule HC Instructions, page HC-2 (part-year residents).

**PENALTY ASSESSED**

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

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

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the

county where you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-283

**Appeal Decision** Appeal Approved in Part

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** July 23, 2019

**Decision Date:** August 7, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

Appellant appeared at the hearing, which was held by telephone, on July 23, 2019.

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

- Exhibit 1: Notice of Hearing (6-4-19) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2018 (1 page);
- Exhibit 3: Statement of Grounds for Appeal (3-12-19) (with letter and documents) (7 pages).

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, age 32 during 2018, from Berkshire County, filed single on the tax return with a family size of 1 (Exhibit 2).
2. Appellant had health insurance for January and February of 2018 but did not have health insurance for the remaining months of 2018 (Appellant's testimony).
3. Appellant's Federal Adjusted Gross Income for 2018 was \$31,224 (Exhibit 2).
4. Appellant had purchased health insurance for January and February but felt it was too expensive and she could not afford it (Appellant's testimony).
5. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4

incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.

6. Appellant could not afford health insurance based on the tables in Schedule HC. According to Table 4, the health insurance would cost \$230 for an individual. According to Table 3, Appellant was deemed to afford \$130.
7. Private insurance was not affordable for the Appellant in 2018 (Schedule HC for 2018).
8. Appellant's expenses for food, shelter, clothing and other necessities were approximately \$1,700.00 per month (\$20,400 per year). Appellant claimed that she should be granted a waiver because of other circumstances, and stated that she had just enough money to pay her necessary bills. (Testimony of Appellant, Exhibit 3).
9. Appellant stated that since January 2019, she is now earning more income and plans to enroll in health insurance during open enrollment which she stated would be in early August 2019.
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 2018 (Testimony of Appellant).
11. Appellant did not fall more than thirty days behind in rent payments in 2018. She did not receive any shut-off notices for basic utilities (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 2018 should be waived in whole, in part, or not at all.

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

Appellant had health insurance for January and February of 2018, but did not have health insurance for the remaining months of 2018. She has been assessed a tax penalty for twelve months, but the penalty should have been seven months (two months of insurance plus three months of grace period). She appealed the assessment. See Exhibits 2 and 3. To determine if the penalty should be waived in whole or in part, we must consider whether affordable insurance which met minimum creditable coverage standards was available to the appellant through employment, through the private market, or through a government-sponsored program. If affordable insurance was available, we must determine if such

insurance was, in fact, not affordable to the appellant because she experienced a financial hardship as defined in 956 CMR 6.08.

Private insurance was not affordable for the appellant during 2018. According to Tables 3 and 4 of the HC Schedule for 2018, Appellant, with an adjusted gross income of \$31,224 was deemed not to have been able to afford health insurance on the private market. According to Table 3, appellant could have afforded to pay \$130 per month; according to Table 4, Appellant, who was 32 years old in 2018, lived in Berkshire County and filed the 2018 Massachusetts taxes as single, would have had to pay \$230 per month for insurance on the private market. See CMR 6.05 (1)(2), Schedule HC Tables 3 and 4, and Exhibit 2.

Appellant had no access to affordable employer-sponsored health insurance in 2018. Appellant had insurance for January and February of 2018, but did not feel she could afford it. Appellant may have been eligible for ConnectorCare for the remaining months of 2018. Therefore, it is necessary to determine for those months when Appellant did not have health insurance but may have been eligible for health insurance through the ConnectorCare program, whether one of the hardship categories would apply to allow Appellant a waiver of the penalty for those months when she did not have health insurance.

With regard to the hardship waiver of the penalty, Appellant's expenses for food, shelter, clothing, and other necessities used some of the income during 2018, but not most or all of the income. Therefore, paying for health insurance would not have caused a serious deprivation of food, shelter, clothing and other necessities. Based on this information, the penalty is not waived for the seven months that the penalty should have been imposed. However, the penalty for five of the months is waived because the Appellant had health insurance for January and February and then would have a three-month grace period.

Appellant should note that the waiver of his penalty is based upon the facts that I have determined to be true for the 2018 appeal. She should not assume that a similar determination will be made in the future should he again be assessed a penalty for failure to have health insurance which meets the Commonwealth's minimum creditable coverage standards.

#### **PENALTY ASSESSED**

Number of Months Appealed: 12      Number of Months Assessed: 7

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

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

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-374

**Appeal Decision:** Appeal Granted

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** August 15, 2019

**Decision Date:** September 16, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on August 15, 2019. 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 2018 Schedule HC (1 page)
- Exhibit 2: 4/3/19 Appeal (9 pages)
- Exhibit 3: 7/2/19 Hearing Notice (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 his 2018 income tax return, checking off "Other" on appeal form as the grounds for her appeal. (Exhibit 1)
2. The Appellant's filing status for 2018 was Single with no dependents. The Appellant's federal AGI in 2018 was \$19,722. The Appellant resided in Middlesex County in 2018. The Appellant turned thirty-one years old in 2018. (Exhibit 1)
3. The Appellant did not have health insurance coverage in 2017. In 2017, the Appellant had resided in an immigration detention center in another state. (Appellant's testimony)
4. At the beginning of 2018, the Appellant began residing in Massachusetts. The Appellant applied for MassHealth immediately. In response, he was told that he needed to submit three or four documents of proof to show that he qualified. (Appellant's testimony)
5. The Appellant gathered the documentation that he needed to submit, but it took him some time, as he was new to the process. The Appellant submitted the documents to MassHealth when he had everything. (Appellant's testimony; Exhibit 2)

6. By letter dated March 31, 2018, MassHealth informed the Appellant that he did not qualify for health insurance coverage because he had not provided the proof requested within the required timeframe. (Exhibit 2)
7. The Appellant continued to pursue health insurance coverage. The Appellant finally obtained coverage, beginning July 1, 2018, and continuing through rest of the year. (Appellant's testimony; Exhibit 1))
8. According to Table 2 of the Schedule HC 2018, the Appellant was eligible for government-subsidized insurance in 2018, since his AGI for 2018 was less than \$36,180 for a family of one.
9. According to Table 3, Affordability, of the Schedule HC 2018, based on his 2018 AGI and Single tax filing status, the Appellant could have afforded to pay up to 2.9 percent of his income for health insurance in 2018, which calculates to a monthly premium of up to \$47 for coverage.
10. According to Table 4, Premiums, the Appellant could have purchased health insurance coverage in the private market in 2018 for \$282/monthly, bases on his age and county of residence in 2018.

**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.”

In this case, I find credible the Appellant’s testimony that he had just arrived in Massachusetts at the start of 2018 and was unfamiliar with what he needed to do to get health insurance coverage. Nevertheless, the Appellant made a good faith effort to obtain coverage by submitting an application to MassHealth for coverage. While he was initially unsuccessful due to submitting the proof requested by MassHealth too late, his failure to submit the proof timely is understandable, as MassHealth had requested several categories of proof and it took the Appellant time to gather all the necessary documents. Coverage in the private market in 2018 for \$282/monthly was far more than he could have afforded. After learning in April 2018 that his original application to MassHealth had been denied, the Appellant applied again as soon as possible and obtained coverage beginning July 1, 2018, through the rest of the year. As the Appellant was new to the Commonwealth and did his best to obtain coverage throughout 2018, it would not serve the purposes of M.G.L c. 111M, § 2, to assess any tax penalty against the Appellant for 2018.

Therefore, I conclude that the Appellant has established that health insurance that provided minimum creditable coverage was not affordable for him in 2018, under 956 CMR 6.08(3).

Accordingly, the Appellant’s three-month penalty for 2018 shall be waived in full.

**PENALTY ASSESSED**

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

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

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18410

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

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** August 13, 2019

**Decision Date:** October 13, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

One of the appellants appeared at the hearing which was held by telephone on August 13, 2019. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

Exhibit 1: Appeal Case Information from Schedule HC 2018

Exhibit 2: Statement of Grounds for Appeal 2018 signed and dated by Appellants on April 9, 2019 with letter in support attached

Exhibit 3: Notice of Hearing sent to Appellant dated July 8, 2019 for August 13, 2019 hearing

Exhibit 4: Appellant's immigration visa issued August 20, 2018 and Appellant's permanent resident card showing residency since August 24, 2018; other immigration documents regarding permanent residency card and arrival

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellants, who filed a 2018 Massachusetts tax return jointly with one dependent claimed, were 47 and 43 years old in 2018. The dependent was the appellants' nephew (Exhibit 1, Testimony of Appellant).
2. Appellants lived in Essex County in 2018, though one of the appellants lived out of the United States until August 24th when he arrived from his country of origin on a visa which was issued on August 20, 2018 (Exhibits 1, 4, Testimony of Appellant).
3. Appellants' Federal Adjusted Gross Income for 2018 was \$65,110 (Exhibit 1, Testimony of Appellant).
4. One of the appellants had health insurance which met the Commonwealth's minimum creditable coverage standards all year through the appellant's job. This coverage cost \$240 a month. The other appellant was uninsured all year. The insured appellant tried to have her spouse added to her plan after he arrived in the Commonwealth, but

the spouse could not be added until he obtained a social security number and a permanent resident card. The spouse received his permanent resident card in November, 2018. The cost of a plan for a couple would have been \$680 a month (Testimony of Appellant, Exhibits 1,2, 4).

5. The uninsured appellant was unemployed from the time of his arrival in the United States until the end of the 2018 (Testimony of Appellant).

6. The uninsured appellant has been assessed a penalty for all of 2018. The appellants have 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 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.

8. According to Table 3 of Schedule HC for 2018, the appellants with one dependent claimed with an adjusted gross income of \$65,110 could afford to pay \$436 per month for health insurance. According to Table 4, Appellants, ages 47 and 43 and living in Essex County, could have purchased insurance for \$707 per month for a family plan. One of the appellants was insured with coverage that cost \$240 a month. Coverage for the uninsured spouse would have to cost \$196 or less to be affordable (\$436 minus \$240). Coverage would have cost \$354 for an individual plan. This coverage was unaffordable for the spouse. (Schedule HC for 2018-Tables 3 and 4, Exhibit 1).

9. According to Table 2 of Schedule HC for 2018, Appellants earning more than \$60,480, the income limit for a family of three, would have been ineligible for the ConnectorCare program based upon income (Exhibit 1, Table 2 of Schedule HC-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” 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.

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived, either in whole or in part. One appellant was insured all year, so has not been assessed a penalty. The other appellant has been assessed a penalty for all of 2018. Appellants have appealed the penalty. This appellant did not arrive in the United States from his country of origin until the end of August, 2018. His penalty for January through August is waived because he was not a resident of the Commonwealth during these months. He is entitled to a three-month grace period after his arrival. His penalty for September through November is also waived. See Exhibits 1, 2, and 4; and the testimony of the appellant which I find to be credible.

To determine if the rest of the appellants’ penalty should be waived, we must consider whether affordable insurance which met minimum creditable coverage standards was available to the appellants through employment, through the individual market, or through a government-sponsored program. If affordable insurance was available, we must

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

According to Table 3 of Schedule HC for 2018, the appellants with one dependent claimed with an adjusted gross income of \$65,110 could afford to pay \$436 per month for health insurance. According to Table 4, Appellants, ages 47 and 43 and living in Essex County, could have purchased insurance for \$707 per month for a family plan. One of the appellants was insured. The coverage cost \$240 a month. Coverage for the uninsured spouse would have to cost \$196 or less to be affordable (\$436 minus \$240). Coverage would have cost \$354 for an individual plan. This coverage was unaffordable for the spouse. See Schedule HC for 2018-Tables 3 and 4, Exhibit 1.

The uninsured appellant was unemployed from the time he arrived in the Commonwealth through the end of the year. The other appellant was employed and was offered health insurance through her job. The coverage cost \$240 per month for an individual plan. She tried to add her spouse to the plan, but had to wait until he received his permanent resident card which arrived in November. Even if she could have added her husband to the plan, the coverage would not have been affordable. Whether we consider the cost of individual coverage or family coverage, the monthly cost would have been more than the \$196 per month that was considered affordable for the uninsured appellant.

The uninsured appellant had no access to health insurance through the ConnectorCare program in 2018. The income cap for a family of three was \$60,480. Appellants earned more than that. See Table 2 of Schedule HC, and Exhibit 1. There is no evidence in the record of the appellant being eligible for any other government-sponsored program.

Appellant had no access to affordable health insurance in December, 2018. He had no access to affordable insurance through employment, through a government-sponsored program, or through the individual market. According to Massachusetts General Laws, Chapter 111M, Section 2, the appellants' penalty must be waived. A penalty is imposed only when an individual has access to affordable coverage and does not obtain the coverage. Given that their penalty is waived in full, there is no need to determine if the appellants experienced a financial hardship.

Appellants should note that any waiver granted here is for 2018 only and is based upon the specific facts I have found to be true; they should not assume that the same determination will be made should Appellants be assessed a penalty in the future.

## **PENALTY ASSESSED**

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

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

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

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

Cc: Connector Appeals Unit

Hearing Officer

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18411

**Appeal Decision:** The penalty is overturned in full  
**Hearing Issue:** Appeal of the 2018 Tax Year Penalty  
**Hearing Date:** August 13, 2019  
**Decision Date:** October 8, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The appellant appeared at the hearing which was held by telephone on August 13, 2019. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2018
- Exhibit 2: Statement of Grounds for Appeal 2018 signed and dated by Appellant on March 30, 2019
- Exhibit 3: Notice of Hearing sent to Appellant dated July 8, 2019 for August 13, 2019 hearing
- Exhibit 4: Connector Appeals Unit Final Appeal Decision, Tax Year 2017, dated January 7, 2019
- Exhibit 5: Connector Appeals Unit Final Appeal Decision, Tax Year 2015, dated September 21, 2016
- Exhibit 6: Connector Appeals Unit Final Appeal Decision, Tax Year 2014, dated December 1, 2015

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, who filed a 2018 Massachusetts tax return as a single individual with no dependents claimed, was 38 years old in 2018 (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Middlesex County in 2018 (Exhibit 1, Testimony of Appellant).
3. Appellant had a Federal adjusted gross income for 2018 of \$50,050 (Exhibit 1 and Testimony of Appellant).
4. The appellant had three jobs during 2018. He was a landscaper. He worked at one company full-time in January and February. He earned \$28 an hour. The employer offered health insurance and the appellant enrolled in the offered plan. He had coverage in January and February (Testimony of Appellant, Exhibit 1).

5. At the beginning of March, 2018, Appellant took a new job. He was not offered health insurance at this job (Testimony of Appellant).
6. Appellant left the second job and went to another company where he was offered health insurance. He had coverage in July and August. At the end of August, he left his job and went back to a company he had worked for earlier in the year. He was not offered health insurance and had no coverage from September through December (Testimony of Appellant, Exhibit 1).
7. The appellant has been assessed a tax penalty for two months, June and December, 2018. The appellant has appealed the assessment (Exhibits 1, 2).
8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
9. According to Table 3 of Schedule HC for 2018, the appellant with no dependents claimed with an adjusted gross income of \$50,050 could afford to pay \$335 per month for health insurance. According to Table 4, Appellant, 38 years old and living in Middlesex County, could have purchased insurance for \$290 per month for a plan for an individual. Insurance on the individual market was affordable for him (Schedule HC for 2018, Tables 3 and 4, Exhibit 1).
10. According to Table 2 of Schedule HC for 2018, Appellant earning more than \$36,180 per year, would have been ineligible for the ConnectorCare program based upon income (Table 2 of Schedule HC-2018, and Exhibit 1).
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 2018 (Testimony of Appellant).
12. Appellant did not fall more than thirty days behind in mortgage payments in 2018 (Testimony of Appellant).
13. Appellant did not receive any shut-off notices for basic utilities in 2018 (Testimony of Appellant).
14. Appellant had the following monthly expenses for basic necessities in 2018: mortgage, property tax, and homeowners insurance-\$2,000; heat and electricity-\$570; internet and telephone-\$300; food, household supplies, and personal care items-\$1,000; clothing-\$150; car insurance-\$150; car payment-\$400; gas-\$250. In addition, the appellant paid between \$200 a month for old credit card debt, and he spent \$3,000 during the year for car repairs (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 2018 should be waived, either in whole or in part.

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

the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 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 a qualifying life event. Examples of a qualifying event include the loss of health insurance from a job, moving to the Commonwealth, moving outside of a health insurer's service area, loss of MassHealth, getting married, a change in household dependents, among other things. If an individual has a qualifying event, the individual may apply for coverage through the Connector within 60 days of the event, even outside of an open enrollment period. There is an exceptional circumstances exception. Examples of exceptional circumstances are given in the Centers for Medicare and Medicaid Services and for Consumer Information and Insurance Oversight Affordable Exchanges Guidance dated March 26, 2014. Examples listed are a natural disaster, or medical emergency.

The appellant had health insurance in January, February, July, and August, 2018. He has been assessed a two-month tax penalty (June and December). We need to determine if the penalty should be waived or not. The appellant has appealed the assessment. See Exhibits 1, 2.

To determine if the penalty should be waived in whole or in part, we must consider whether affordable insurance which met minimum creditable coverage standards was available to the appellants through employment, through the individual market, or through a government-sponsored program during the months 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.

According to Table 3 of Schedule HC for 2018, the appellant with no dependents claimed with an adjusted gross income of \$50,050 could afford to pay \$335 per month for health insurance. According to Table 4, Appellant, 38 years old and living in Middlesex County, could have purchased insurance for \$290 per month for a plan for an individual. Insurance on the individual market was affordable for him. See Schedule HC for 2018, Tables 3 and 4, Exhibit 1.

Appellant was ineligible for ConnectorCare coverage. The income limit for a household of one was \$36,180. The appellant earned more than the limit. See Exhibit 1, the testimony of the appellant, and Schedule HC. There is no evidence in the record that Appellant was eligible for any other government-sponsored program.

In June and December, Appellant was employed by the same company. He was not offered health insurance by this employer. See the testimony of the appellant which I find to be credible.

The appellant could have obtained affordable health insurance through the individual market. He could have obtained coverage within 60 days of losing his coverage at the end of February and later after losing coverage at the end of August. See cites above. Because affordable health insurance was available, we next need to determine if Appellant had a financial hardship such that 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 2018: mortgage, property tax, and homeowners insurance-\$2,000; heat and electricity-\$570; internet and telephone-\$300; food, household supplies, and personal care items-\$1,000; clothing-\$150; car insurance-\$150; car payment-\$400; gas-\$250. In addition, the appellant paid between \$200 a month for old credit card debt, and he spent \$3,000 during the year for car repairs. See the testimony of Appellant which I find credible.

Appellant's monthly expenses for basic necessities averaged over \$5,000 a month. His income, on average, amounted to \$4,175. Appellant had no disposable income each month, and, in fact, ran a deficit. Given this, the additional cost of purchasing health insurance through the individual market would have caused the appellant to experience a serious deprivation of basic necessities. See 956 CMR 6.08 (1)(e). This constitutes a financial hardship such that the cost of health insurance would have been unaffordable to the appellant. His penalty is, therefore, waived.

Appellant should note that any waiver granted here is for 2018 only and is based upon the specific facts I have found to be true and should not assume that the same determination will be made should Appellant be assessed a penalty in the future.

**PENALTY ASSESSED**

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

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

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

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

Hearing Officer

Cc: Connector Appeals Unit

## Massachusetts Health Connector Appeals Unit

### FINAL APPEAL DECISION: 18-436

**Appeal Decision:** Appeal Approved  
**Hearing Issue:** Appeal of the 2018 Tax Year Penalty  
**Hearing Date:** August 21, 2019  
**Decision Date:** October 2, 2019

#### AUTHORITY

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

#### JURISDICTION

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

#### HEARING RECORD

Appellant and Appellant Spouse appeared at the hearing, which was held by telephone on August 21, 2019. The procedures to be followed during the hearing were reviewed with Appellants. Appellants were sworn in. Exhibits were marked and admitted in evidence with no objection from Appellants. Appellants testified.

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

Exhibit 1: Notice of Hearing sent to Appellants dated July 9, 2019  
Exhibit 2: Appeal Case Information Sheet from Schedule HC 2018  
Exhibit 3: Notice of Appeal dated April 6, 2019  
Exhibit 4: Statement in Support of Appeal  
Exhibit 5: Appeal Decisions for 2013, 2018 and 2017

#### FINDINGS OF FACT

The record shows, and I so find:

1. Appellants were 60 and 56 years old in 2018 and filed a 2018 Massachusetts tax return as married, filing jointly, with no dependents claimed (Exhibit 2).
2. Appellants lived in Hampden County, MA in 2018 (Exhibit 2).
3. Appellants' Adjusted Gross Income for 2018 was \$49,125.00 (Exhibit 2).
4. Appellants were both employed in 2018 (Testimony of Appellant).
5. Employer sponsored health insurance was available through Appellant's job at a cost of \$355 per month for the couple (Testimony of Appellant).
6. Employer sponsored health insurance was not available through Appellant Spouse's job (Testimony of Appellant Spouse).
7. Appellants were each assessed a penalty of twelve months (Exhibit 2).
8. Appellants filed an appeal on April 6, 2019, claiming that they had received a shut-off notice of essential utilities (Exhibit 3).
9. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability

and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.

10. According to Table 3 of Schedule HC for 2018 a married couple, filing jointly, with no dependents with an adjusted gross income of \$49,125.00 could afford to pay \$305 per month for private insurance. According to Table 4, Appellants, ages 60 and 56 and living in Hampden County could have purchased private insurance for \$846 per month for the couple.

11. Private insurance was not considered to be affordable for Appellants in 2018 (Schedule HC for 2018).

12. The employer sponsored insurance, at a cost of \$355 per month was also not considered to be affordable (Schedule HC for 2018).

13. According to Table 2 of Schedule HC for 2018, Appellants, earning more than \$48,720, would not have met the income eligibility guidelines for government subsidized insurance.

14. Appellants struggled to make their mortgage payments of \$1,238 in 2018 (Testimony of Appellant and Exhibit 4).

15. Appellants received shut-off notices for electricity in 2018 (Testimony of Appellant and Exhibit 4).

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

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived, either in whole or in part.

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

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

Appellants were both employed in 2018. Employer sponsored health insurance was available to Appellant. The cost of employer sponsored health insurance was \$355 per month for the couple. There was no employer sponsored health insurance available through Appellant Spouse’s job. According to Tables 3 of Schedule HC for 2018, Appellants could afford to pay \$305 per month for health insurance. According to Table 4, private insurance would have cost \$846. Private insurance as well as the employer sponsored health insurance were not considered affordable for Appellants. Appellants, earning more than \$48,720, would not have met the income eligibility requirements for government sponsored insurance. See Schedule HC for 2018 and Testimony of Appellants, which I find to be credible.

I find that affordable health insurance was not available to Appellants in 2018.

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

**PENALTY ASSESSED**

Number of Months Appealed: 12/12

Number of Months Assessed: 0/0

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

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

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

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-438

**Appeal Decision:** Appeal Approved  
**Hearing Issue:** Appeal of the 2018 Tax Year Penalty  
**Hearing Date:** August 21, 2019  
**Decision Date:** October 3, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on August 21, 2019. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

Exhibit 1: Notice of Hearing sent to Appellant dated July 9, 2019  
Exhibit 2: Appeal Case Information Sheet from Schedule HC 2018  
Exhibit 3: Notice of Appeal dated April 7, 2019

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant was 43 years old in 2018 and filed a 2018 Massachusetts tax return as single with no dependents claimed (Exhibit 2).
2. Appellant lived in Hampden County, MA in 2018 (Exhibit 2).
3. Appellant's Adjusted Gross Income for 2018 was \$56,154 (Exhibit 2).
4. Up until January 2018, Appellant had been employed by the same company for ten years and had been covered by employer sponsored health insurance (Testimony of Appellant).
5. When Appellant left the previous employer in January 2018, Appellant believed that Appellant would be covered by the former employer for three months (Testimony of Appellant).
6. Appellant began a new job in January 2018. Although employer sponsored health insurance was offered, Appellant did not sign up because Appellant believed that Appellant was still covered by insurance from the previous job (Testimony of Appellant).
7. Appellant later found out that there was no coverage beginning in January 2018 (Testimony of Appellant).

8. When Appellant went to sign up for employer sponsored health insurance in the spring of 2018, Appellant was not permitted to sign up. Appellant was told that Appellant would need to wait for the next open enrollment period to sign up for health insurance (Testimony of Appellant).
9. Appellant signed up for employer sponsored health insurance with the new employer in October 2018 and the coverage began in January 2019 (Testimony of Appellant).
10. Appellant struggled to pay for basic expenses during 2018 (Testimony of Appellant).
11. During 2018, Appellant helped pay expenses for an adult son. Additionally, Appellant's mother had kidney failure and Appellant helped the mother with expenses for medications of \$300 per month (Testimony of Appellant).
12. Appellant fell behind on mortgage payments in 2018 (Testimony of Appellant).
13. Appellant was able to modify the mortgage payment for a lower amount in 2019 (Testimony of Appellant).
14. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
15. According to Table 3 of Schedule HC for 2018, Appellant, earning \$56,154.00 could afford to pay \$367 per month for health insurance. According to Table 4, Appellant, age 43 and living in Hampden county could have purchased private insurance for \$310 per month. Private health insurance was considered affordable for Appellant in 2018.
16. According to Table 2 of Schedule HC for 2018, Appellant, earning more than \$36,180 would not have met the income eligibility guidelines for government subsidized insurance.
17. Appellant was assessed a penalty for twelve months for 2018 (Exhibit 2).
18. Appellant filed an appeal, claiming that the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities (Exhibit 3).

## **ANALYSIS AND CONCLUSIONS OF LAW**

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived, either in whole or in part.

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

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

Up until January 2018, Appellant had been employed by the same company for ten years and was covered by that company's employer sponsored health insurance. When Appellant left for a new job in 2018, Appellant thought

that the health insurance from the old job would be in effect for three months. Appellant later learned that there was no health insurance coverage from the old job. When Appellant went to sign up for the health insurance from the new job in the spring of 2018, Appellant was told that Appellant would need to wait for the open enrollment period in October 2018. According to Tables 3 and 4 of Schedule HC for 2018, private health insurance was 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 helped to pay for expenses for an adult son. Appellant also helped to pay expenses for Appellant's mother, who had kidney failure. Appellant struggled to pay basic living expenses in 2018. Appellant fell behind in mortgage payments in 2018. I find that Appellant experienced a hardship that made health insurance not affordable in 2018. See Exhibit 3 and Testimony of Appellant, which I find to be credible and 956 CMR 6.08 (1)(a) and 1(e).

I find that the penalty assessed against Appellant for 2018 should be waived in full.

**PENALTY ASSESSED**

Number of Months Appealed: 12

Number of Months Assessed: 0

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

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

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

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-440

**Appeal Decision:** Penalty Overturned in Full  
**Hearing Issue:** Appeal of the 2018 Tax Year Penalty  
**Hearing Date:** August 21, 2019  
**Decision Date:** October 7, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

Appellant appeared at the hearing, which was held by telephone, on August 21, 2019. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

- Exhibit 1: Correspondence from the Health Connector, dated July 9, 2019
- Exhibit 2: Appeal Case Information from Schedule HC 2018
- Exhibit 3: Notice of Appeal, dated March 6, 2019
- Exhibit 4: Statement in Support of Appeal

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant was 38 years old in 2018. Appellant filed a Massachusetts 2018 tax return as single with no dependents claimed (Exhibit 2).
2. Appellant resided in Middlesex County, MA in 2018 (Exhibit 2).
3. Appellant had an Adjusted Gross Income for 2018 of \$53,865.00 (Exhibit 2).
4. Appellant was unemployed during 2017 and the early part of 2018 (Testimony of Appellant).
5. Appellant was covered by government subsidized health insurance from January through March 2018 (Testimony of Appellant and Exhibit 2).
6. Appellant began a new job in February 2018 as a contract worker (Testimony of Appellant).
7. Appellant became eligible for employer sponsored health insurance in August 2018 (Testimony of Appellant).
8. The employer sponsored health insurance would have cost Appellant \$300 per month (Testimony of Appellant).

9. Appellant did not sign up for the employer sponsored health insurance in August 2018, due to the cost (Testimony of Appellant).
10. During 2017 through early 2018, when Appellant was unemployed, Appellant struggled to pay the necessary bills (Testimony of Appellant).
11. After obtaining employment in 2018, Appellant focused on catching up on the bills from Appellant's time of unemployment (Testimony of Appellant).
12. Appellant did not sign up for employer sponsored health insurance when it became available in August 2018, but did sign up for the insurance for 2019 (Testimony of Appellant).
13. Appellant did not have health insurance from April through December of 2018 (Testimony of Appellant and Exhibit 2).
14. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
15. According to Table 3 of Schedule HC for 2018 a person filing as single with no dependents with an adjusted gross income of \$53,865 could afford to pay \$361 per month for private insurance. According to Table 4, Appellant, aged 38 and living in Middlesex County could have purchased private insurance for \$290 per month.
16. Private insurance was considered to be affordable for Appellant in 2018 (Schedule HC for 2018).
17. Appellant had the following monthly expenses for basic necessities during 2018: rent \$1,750; utilities \$200; telephone \$85; food \$433; supplies \$25; clothing \$15; car payment \$285; car insurance \$102; gasoline \$52; renter's insurance \$20; student loans \$250. The monthly expenses for basic necessities totaled \$3,217 (Testimony of Appellant).
18. Appellant has been assessed a penalty for six months for 2018 (Exhibit 2).
19. Appellant filed an Appeal on April 1, 2019 stating that the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities (Exhibit 3).

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

Appellant has been assessed a tax penalty for six 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 was covered by government subsidized health insurance during January, February and March 2018. Appellant became eligible for employer sponsored health insurance in August 2018, but did not sign up.

Appellant was uninsured during April through December 2018. According to Tables 2, 3 and 4 of Massachusetts Schedule HC 2018, private health insurance was considered to be affordable for Appellant. The employer sponsored health insurance which became available in August at a cost of \$300 per month was also considered available to Appellant. However, Appellant did not apply for the employer sponsored or private health 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.

During 2017 and into early 2018, Appellant was unemployed and Appellant struggled to pay the monthly bills and Appellant fell behind in the monthly bills. After Appellant began a job in early 2018, Appellant was focused on catching up financially after falling behind in the monthly bills and Appellant did not sign up for the employer sponsored health insurance which became available in August. I find that Appellant suffered a hardship. 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 2018 should be waived in its entirety.

**PENALTY ASSESSED**

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

**OR**

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

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

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

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-446

**Appeal Decision:** Appeal Denied in Part and Approved in Part

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** August 13, 2019

**Decision Date:** October 9, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant (Spouse) appeared at the hearing, which was held by telephone, on August 23, 2019. The person listed as the Primary taxpayer on the Schedule HC 2018 did not attend. 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 record was left open until September 6, 2018 to allow the Health Connector to submit additional information. The information was submitted on August 28, 2019 and copies were mailed to the Appellant. The Appellant was advised that the record would remain open until September 23, 2019 to allow the Appellant to submit a written response. The Appellant submitted a response on September 16, 2019.

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 July 10, 2019.
- Exhibit 2: Appeal Case Information from Schedule HC 2018.
- Exhibit 3: Statement of Grounds for Appeal signed by the Appellant Spouse and the Primary taxpayer on April 10, 2019.
- Exhibit 4: A letter written by the Appellant in support of this appeal, with attachments.
- Exhibit 5: Health Connector Appeals Unit Open Record Form dated August 23, 2019.
- Exhibit 6: Business records submitted by the Health Connector during the record open period (Exhibit 6).
- Exhibit 7: The Appellant's letter and other documents submitted by the Appellant on September 16, 2019.

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Primary taxpayer turned 26 years old in May 2018 and the Appellant Spouse turned 27 years old in October 2018. The Appellants filed their Federal Income Tax return as a married couple with no dependents claimed (Exhibit 2).

2. The Appellants lived in Norfolk County, MA in 2018 (Exhibit 2).
3. The Appellants' Federal Adjusted Gross Income for 2018 was \$92,463 (Exhibit 2).
4. The Appellant Primary had health insurance for the period of January through May but did not have health insurance for the period of June through December in tax year 2018. The Appellant Primary has been assessed a four-month tax penalty (Exhibit 2).
5. The Appellant Spouse did not have health insurance for any months of tax year 2018 (Exhibit 2 and Appellant Testimony).
6. The Appellant Spouse has been assessed a twelve-month tax penalty for 2018. The Appellant Spouse filed an appeal of the assessment in April 2019 (Exhibits 2, 3, 4).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
8. In accordance with Table 3 of Schedule HC for 2018, the Appellants filing the Federal tax return as a married couple, with no dependents claimed, with an annual adjusted gross income of \$92,463 could afford to pay \$620 per month for health insurance. In accordance with Table 4, the Appellants, ages 26 and 27, living in Norfolk County, could have purchased private insurance for \$498 per month for a plan (Schedule HC for 2018). Private insurance was affordable for the Appellants.
9. The Appellants would not have been eligible for ConnectorCare coverage in 2018 because the Appellants' income was greater than 300% of the federal poverty level, which was \$48,720 for a family of two in 2018. (See Table 2 of Schedule HC-2018 and 956 CMR 12.04).
10. The Appellants signed the Statement of Grounds for Appeal on April 5, 2019 citing Other as the basis of the appeal. The Appellant Spouse wrote that they had attempted to purchase health insurance but due to errors on the part of the Health Connector were unable to do so (Exhibit 3).
11. The Appellant testified that they were employed part-time and were not eligible for health insurance coverage through their employer (Appellant Testimony).
12. The Appellant testified that they are not disputing the assessment of the four month tax penalty for the Appellant Primary taxpayer (Testimony).
13. The Appellant testified that in November they attempted to purchase health insurance for 2018 and sent in all requested documentation. The Appellant aid that they spoke with someone at Customer Service and were told they were all set. The Appellant maintains that they paid the premium for the month of January 2018 but did not receive a healthcare card. The Appellant indicated that they called Customer Service in mid-January and was told the insurance company may take weeks to send a card. The Appellant said they waited a month and then called the insurance company. The company informed the Appellant that they did not have an active account for the Appellant. The

Appellant said they again telephoned the Health Connector and was informed they were disenrolled effective January 1, 2018 and could not enroll because open enrollment had ended in January. The Appellant asserts no notice was issued by the Health Connector (Appellant Testimony).

14. The Appellant submitted documentation verifying that on November 20, 2017 they had attempted to enroll in ConnectorCare effective January 1, 2018. The Appellant was informed that they were enrolled in Tufts Health Direct ConnectorCare 3 HMO/Sliver effective January 1, 2018 with a monthly premium of \$126 (Exhibit 4).
15. The Appellant was not financially eligible for ConnectorCare effective January 2018 because their household income exceeded 400% of the federal poverty level for their household of two (Exhibits 2 6).
16. The Appellant was advised that the record would be left open to ask the Health Connector to submit business records including Notes from Customer Service Interactions-SalesForce and any notices issued to the Appellant Spouse regarding their health insurance coverage for the period beginning January 1, 2018. The Health Connector submitted information on August 28, 2019 (Exhibits 5, 6).
17. The Appellant was enrolled in ConnectorCare Health Insurance for the period of January 1, 2017- November 30, 2017. On December 28, 2017 the Appellant telephoned Health Connector Customer service to dispute a bill they received. The Appellant informed Customer Service that they had cancelled their health insurance effective October 31, 2017. The Appellant indicated that they had made a payment in October thinking it was for October. The Appellant's request for retroactive termination was denied. On December 11, 2017 the Appellant was notified that their health insurance was terminated effective November 30, 2017 due to non- payment (Exhibit 6).
18. The Appellant spoke with a Customer Service representative on January 10, 2019. The Appellant was given the telephone number for Tufts but was not informed that they were no longer eligible for ConnectorCare coverage. The Customer Service representative discovered the error after the telephone call had ended. There is nothing to indicate that the representative called the Appellant to inform the Appellant that they were not in fact enrolled in Tufts ConnectorCare (Exhibits 6, 7).
19. By notice dated January 10, 2018 the Health Connector notified the Appellant that based on their verified income they were eligible for a Health Connector Plan (No Financial Help). The Health Connector notice indicated that the Appellant's household had income equivalent to 406.22% of the federal poverty level. The Appellant was informed that they could enroll in a plan effective February 1, 2018. The Appellant was also advised that must enroll in a plan and pay the monthly premium due by January 23, 2018 for coverage to be effective February 1, 2018. The notice was sent to the Appellant's address of record (Exhibit 6).
20. The Appellant received the notice issued by the Health Connector on January 10, 2019 but believed, based on their January 10, 2019 conversation with the Health Connector Customer Service representative that no further action was needed by the Appellant because they were enrolled in the Tufts Plan (Exhibits 4, 7 and Appellant Testimony).
21. The Appellant telephoned Customer Service until February 1, 2018 to ask about their insurance. The Appellant was advised of the January 10, 2018 notice and was informed that they could not enroll in

a health insurance plan because the open enrollment period for tax year 2018 had ended (Exhibits 4, 6, 7 and Appellant Testimony).

22. I take Administrative Notice of the fact that the open enrollment period for tax year 2018 was effective November 1, 2017 through January 23, 2018.
23. The Appellant testified credibly that they could not enroll in their Spouse's employer sponsored health insurance plan because they could not afford to pay the monthly premium, which was \$720. This is more than the \$620 per month deemed affordable to the Appellant in accordance with Table 3 of Schedule HC for 2018 (Appellant Testimony).
24. The information the Appellant was given during the telephone conversation with Health Connector Customer Service on January 10, 2019 was in conflict with the information contained in the notice issued by the Health Connector the same day (Exhibits 6, 7).
25. Although the Appellant attempted to enroll in a health care plan for tax year 2018 during the open enrollment period the Appellant was unable to successfully complete the application process in a timely manner in part because the Appellant was given conflicting information by the Health Connector (Exhibits 6, 7).

#### **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 listed as the Primary taxpayer had health insurance for the first five months of tax year 2018 but was uninsured for the period of June through December. The Appellant Primary was assessed a four-month tax penalty. The Appellant Spouse did not have health insurance for any months of tax year 2018 and has been assessed a twelve-month penalty. The Appellants submitted a statement of grounds for this appeal citing circumstances other than financial hardship as the reason for their failure to obtain health insurance tax year 2018. At the Hearing, the Appellant Spouse, representing both household members, testified that the Appellant Primary is not disputing the assessment of their four-month penalty. The Appellant Spouse disputes their twelve-month penalty citing Health Connector error as the reason for their being uninsured.

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

In accordance with Table 3 of Schedule HC for 2018, the Appellants filing the Federal tax return as a married couple with no dependents claimed, with an adjusted gross income of \$92,463 could afford to pay \$620 per month for health insurance. In accordance with Table 4, the Appellants, ages 26 and 27, living in Norfolk County, could have purchased private insurance for \$498 per month for a plan (Schedule HC for 2018). Private insurance was affordable for the Appellants in 2018.

The Appellants would not have been eligible for ConnectorCare coverage in 2018 because their income exceeded 300% of the federal poverty level of \$48,720 for a family of two (See Table 2 of Schedule HC-2018 and 956 CMR 12.04). The cost to have both household members enrolled in the Primary's employer sponsored insurance was \$720 per month and was more than the \$620 deemed affordable under Table 3 of Schedule HC for 2018.

The Appellant had ConnectorCare health insurance coverage through the Health Connector in tax year 2017. The Appellant was notified on December 11, 2017 that their coverage terminated effective November 30, 2017 for non-payment. It appears from the records submitted by the Appellant that on November 20, 2017 the Appellant attempted to re-enroll in ConnectorCare for the period beginning January 1, 2018. The Appellant was informed that they were enrolled in Tufts Health Direct ConnectorCare 3 HMO/Sliver effective January 1, 2018 with a monthly premium of \$126 (See Exhibit 4).

The Appellant telephoned Customer Service on January 10, 2018 to ask about their insurance. The Appellant was given the telephone number for Tufts but was not informed that they were no longer eligible for ConnectorCare. Also, on January 10, 2018 Health Connector issued a notice informing the Appellant that they were no longer financially eligible for ConnectorCare but were eligible for Health Connector plans, without subsidies based on their household's income. The Appellant was instructed to choose a new plan, enroll and pay the premium due by January 23, 2018 for insurance to be effective February 1, 2018.

The Appellant testified credibly that because the Customer Service representative had told them during the January 10, 2018 telephone conversation that they were enrolled in a plan, no further action was needed despite the January 10, 2018 notice. By the time the Appellant realized there was a problem, the Open Enrollment period for tax year 2018 had ended.

Under 45 CFR § 155.410 and 956 CMR 12.10(5), enrollees may enroll in a Health Plan in that Enrollee's Service Area during any open enrollment periods established by state or federal law. Typically, enrollees may not transfer from a Health Plan or enroll in a Health Plan outside of open enrollment unless the enrollee experiences a qualifying life event as listed in the Health Connector's Policy NG 1E which was in effect for tax year 2018. In addition to specific triggering events, enrollees may be entitled to a special enrollment period in certain circumstances where an enrollee receives misinformation from the Health Connector. 45 CFR § 155.420(d)(4). This provision is applicable in this case, but the Appellant was not given a special enrollment period. The Appellant was told on February 1, 2018 that they could not purchase insurance through the Health Connector. Given this set of circumstances and the fact that employer sponsored health insurance was not available and affordable, the Appellant's twelve-month tax penalty is waived in full.

As noted above, the Appellants did not dispute the four-month tax penalty for the Appellant Primary Taxpayer. This penalty is upheld.

The Appellant Spouse should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2018. The Appellant should not assume that a similar determination will be made for subsequent tax years should they again be assessed a penalty for failure to have health insurance.

**PENALTY ASSESSED**

Appellant Primary Taxpayer: Number of Months Appealed:   4   Number of Months Assessed:   4    
Appellant Spouse: Number of Months Appealed:   12   Number of Months Assessed:   0  

The Connector has notified the Department of Revenue that, pursuant to its decision, the Primary Tax Payer should be assessed a penalty for Tax Year 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

For the Appellant Spouse, If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

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

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the 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: PA18-454

**Appeal Decision:** Appeal Granted

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** August 22, 2019

**Decision Date:** October 11, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on August 22, 2019. 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 2018 Schedule HC (1 page)
- Exhibit 2: 4/11/19 Appeal (5 pages)
- Exhibit 3: 7/10/19 Hearing Notice (3 pages)

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant appealed from the assessment of a seven-month penalty on his 2018 income tax return. (Exhibit 1)
2. The Appellant's filing status for 2018 was Single with no dependents. The Appellant's federal AGI in 2018 was \$26,349. The Appellant resided in Essex County in 2018. The Appellant turned thirty-two years old in 2018. (Exhibit 1)
3. The Appellant had employer-sponsored health insurance coverage in 2017 and through February 2018. At the end of 2017, the Appellant was laid off. The Appellant declined COBRA coverage because it cost much more than he could afford. (Appellant's testimony)
4. The Appellant received unemployment benefits of \$266/weekly from January 2018 to mid-May 2018. (Appellant's testimony)
5. The Appellant looked for health insurance coverage in early 2018 but was unable to find any coverage that was affordable for him. (Appellant's testimony)

6. The Appellant was unemployed until the end of July 2018, when he started a new full-time job. His new employer offered health insurance coverage for \$100/weekly. The Appellant did not enroll because he could not afford the coverage when he was making only \$420/weekly at the job. (Appellant's testimony)
7. The Appellant earned most of his income in 2018 during the last half of 2018, when he was employed. (Appellant's testimony)
8. The Appellant's monthly expenses for basic necessities included: rent (including utilities), \$220; cell phone, \$101; car insurance, \$120; gas, \$325; m&r, \$35; food, \$325; and, clothing, \$35, for a total of \$1,171, monthly. The Appellant did not have cable or Internet access during 2018, because he could not afford it. (Appellant's testimony)
9. According to Table 2 of the 2018 Schedule HC, the Appellant was eligible for government-subsidized insurance in 2018, since his AGI for 2018 was less than \$36,180 for a family of one.
10. According to Table 3, Affordability, of the Schedule HC 2018, based on his 2018 AGI and Single tax filing status, the Appellant could have afforded to pay up to 4.2 percent of his income for health insurance in 2018, which calculates to a monthly premium of up to \$93 for coverage.
11. According to Table 4, Premiums, the Appellant could have purchased health insurance coverage in the private market in 2018 for \$282/monthly, based on his age and county of residence in 2018.

### **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.

After losing his health insurance coverage at the end of February 2018, the Appellant had a three-month grace period, through the end of May 2018, to obtain new insurance coverage. During that period, the Appellant's only income was a \$100/weekly unemployment benefit, and this benefit ended in mid-May 2018. Even coverage for \$93/monthly was unaffordable for the Appellant at that time. Most of the Appellant's income for 2018 came after he found new employment at the end of July 2018. While his new employer offered health insurance coverage to employees, the premium cost of \$100/weekly for the coverage far exceeded the \$93/monthly that the Appellant could have afforded to pay, based on his income from his new job of \$420/weekly.

However, as the health insurance coverage offered by his new employer was not affordable and the Appellant qualified for government-subsidized coverage under Table 2 of the 2018 Schedule HC, health insurance coverage for a monthly premium of \$93 was available to the Appellant when he started his new job, had he applied to the Health Connector for coverage.

Therefore, I conclude that the Appellant has established that health insurance that provided minimum creditable coverage was not affordable for him only from June 2018 through August 2018, under 956 CMR 6.08(1)(e). Affordable coverage was available to the Appellant for the rest of 2018 had he applied to the Health Connector for coverage in August 2018, after starting his new job.

Accordingly, the Appellant's seven-month penalty for 2018 shall be reduced to a four-month penalty.

### **PENALTY ASSESSED**

Number of Months Appealed:   7   Number of Months Assessed:   4

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

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

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-477

**Appeal Decision:** Appeal Approved.

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** September 6, 2019

**Decision Date:** October 1, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on September 6, 2019. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated July 23, 2019.
- Exhibit 2: Appeal Case Information from Schedule HC 2018.
- Exhibit 3: The Statement of Grounds for Appeal signed by the Appellant on April 14, 2019.
- 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 58 years old in January 2018. The Appellant filed their Federal Income Tax return as a single person with no dependents claimed (Exhibit 2).
2. The Appellant lived in Essex County, MA in 2018 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2018 was \$65,304 (Exhibit 2 and Appellant Testimony).
4. The Appellant had health insurance for the period of February through July but did not have health insurance in January as well as the period of August through December in tax year 2018 (Exhibit 2 and Appellant Testimony).
5. The Appellant has been assessed a two-month tax penalty for 2018. The Appellant filed an appeal of the assessment in April 2019 (Exhibits 2, 3, 4 and Appellant Testimony).

6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
7. In accordance with Table 3 of Schedule HC for 2018, the Appellant filing the Federal tax return as a single person, with no dependents claimed, with an annual adjusted gross income of \$65,304 could afford to pay \$438 per month for health insurance. In accordance with Table 4, the Appellant, age 58, living in Essex County, could have purchased private insurance for \$423 per month for a plan (Schedule HC for 2018). Private insurance was affordable for the Appellant in 2018.
8. The Appellant would not have been eligible for ConnectorCare coverage in 2018 because the Appellant's income was greater than 300% of the federal poverty level, which was \$36,180 in 2018. The Appellant had no access to affordable insurance through employment in January and August through December in tax year 2018 (See Table 2 of Schedule HC-2018 and 956 CMR 12.04) (Exhibit 4 and Appellant Testimony).
9. The Appellant testified that the adjusted gross income does not adequately reflect their circumstances for all of tax year 2018. The Appellant was unemployed in January. The Appellant explained that they found a job in February and that job ended in July. The Appellant said they were again unemployed until September 18 and took a job with a substantial pay cut (Appellant Testimony).
10. The Appellant's 2018 monthly living expenses included: rent-\$1,405; heat and electricity -\$100; telephone-\$70; car payment-\$386; car insurance-\$85; food-\$325; prescription-\$84 and credit card payments totaling \$400 to \$500. The Appellant testified credibly that they struggled to pay their monthly expenses during the periods of unemployment and reduced income and could not afford to pay a health care premium in excess of \$400. The Appellant's credible testimony is supported by copies of bills submitted with the Appellant's appeal request (Exhibit 4 and Appellant Testimony).
11. The Appellant is currently insured (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 but did not have health insurance in January as well as the period of August through December in tax year 2018. The Appellant has been assessed a two-month penalty. The Appellant asserts that the penalty

should not apply in this case because of financial hardship. To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met minimum creditable coverage standards was available to the Appellant through employment, through private insurance, or through a government sponsored program. If affordable insurance was available, it must be determined if such insurance was not affordable to the Appellant because the Appellant experienced a financial hardship as defined in 956 CMR 6.08.

In accordance with Table 3 of Schedule HC for 2018, the Appellant filing the Federal tax return as a single person with no dependents claimed with an adjusted gross income of \$65,304 could afford to pay \$438 per month for health insurance. According to Table 4, the Appellant, age 58, living in Essex County, could have purchased a private insurance plan for \$423 per month. See Schedule HC for 2018. Private insurance was affordable for the Appellant in tax year 2018.

The Appellant had no access to affordable employer-sponsored health insurance in January or the months of August through December 2018. The Appellant would not been eligible for ConnectorCare coverage based upon the Appellant's income which was greater than \$36,180. See Table 2 of Schedule HC 2018 and 956 CMR 12.04 for eligibility criteria. Since affordable insurance was available to the Appellant in 2018, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1).

The Appellant testified credibly that their gross income figure does not reflect their month to month financial circumstances in tax year 2018. The Appellant was unemployed in January, and during the period of July 18 through September 18 in 2018. The Appellant was able to find a job in September, but their income was significantly less than what the Appellant had been earning. The Appellant verified substantial day to day living expenses and testified credibly that they struggled to meet these expenses with the fluctuating income. Based on the evidence and testimony in this administrative record, the Appellant has demonstrated that the cost of purchasing health insurance would have caused the Appellant to experience a serious financial hardship. See 956 CMR 6.08(1)(e). The Appellant's two-month penalty is therefore waived.

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2018. The Appellant should not assume that a similar determination will be made for subsequent tax years should they again be assessed a penalty for failure to have health insurance.

**PENALTY ASSESSED**

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

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

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

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

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-478

**Appeal Decision:** Appeal Approved.

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** September 6, 2019

**Decision Date:** October 2, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant and their Spouse appeared at the hearing, which was held telephonically on September 6, 2019. 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. 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 July 23, 2019.

Exhibit 2: Appeal Case Information from Schedule HC 2018.

Exhibit 3: Statement of Grounds for Appeal signed by the Appellant on April 10, 2019, with attachments.

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant age 30 and their Spouse, age 29, filed their 2018 Federal Income Tax return as a married couple with no dependents claimed (Exhibit 2).
2. The Appellants were part-year residents of Massachusetts with a start date of March 1, 2018 and end date of December 31, 2018 (Exhibit 2).
3. The Appellant is listed as the primary taxpayer on the Schedule HC. The Appellant Spouse had student health insurance in tax year 2018 and is not being assessed a tax penalty (Exhibit 2 and Appellant Testimony).
4. The Appellant had health insurance through the state of Washington that did not meet Massachusetts Minimum Creditable Coverage (MCC) standards in tax year 2018. The Appellant has been assessed a seven-month tax penalty (Exhibits 2, 3 and Appellant Testimony).

5. The Appellants Federal Adjusted Gross Income for 2018 was \$77,282 (Exhibit 2 and Appellant Testimony).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
7. In accordance with Table 3 of Schedule HC for 2018, the Appellants filing the Federal tax return as a married couple, with no dependents claimed, with an annual adjusted gross income of \$77,282 could afford to pay \$518 per month for health insurance. In accordance with Table 4, the Appellants with one Spouse age 30, living in Suffolk County, could have purchased private insurance for \$498 per month for a plan (Schedule HC for 2018). Private insurance was affordable for the Appellants in 2018.
8. The Appellant testified that they married in August of tax year 2018. The Appellant Spouse was a student and was paying \$600 monthly for health insurance through the university. The Appellant explained that they were employed on a per diem basis and did not have access to health insurance through their employer. The Appellant said that they had health insurance in Washington state where they used to live. It covered services in that state but only catastrophic coverage in Massachusetts. The Appellant explained that they visited family in Washington on a regular basis and accessed medical services in that state. The Appellant was paying \$258.00 per month for health insurance (Exhibit 3 and Appellant Testimony).
9. The Appellants would not have been eligible for ConnectorCare coverage in 2018 because the Appellants' income was greater than 300% of the federal poverty level, which was \$48,720 for a family of two in 2018. (See Table 2 of Schedule HC-2018 and 956 CMR 12.04).
10. In addition to the health insurance premiums totaling \$858, the Appellants 2018 monthly living expenses included: rent-\$2,500 from March through August and \$2,100 from September through December; car loan-\$323; car insurance-\$146; gasoline-\$217; telephone-\$45; cable/internet-\$100 and food \$650 (Testimony of the Appellants).

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

Any health insurance policy must also satisfy the Massachusetts "minimum creditable coverage standards" (MCC) to avoid the tax penalty. Mass. Gen. Laws c. 111M, sec. 2(b). In addition to financial hardship, the Connector may

also consider the extent to which insurance obtained deviated from or substantially met minimum creditable coverage standards when determining if a penalty should be waived. See 956 CMR 6.08(2)(d).

The Appellant and their Spouse were Massachusetts residents during the period of March 1, 2018 through December 31, 2018. The Appellant Spouse had student health insurance in tax year 2018 and has not been assessed a tax penalty. The Appellant had an out of state health insurance for all months of tax year 2018, but the insurance did not meet Massachusetts MCC standards. To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met minimum creditable coverage standards was available to the Appellant through employment, through private insurance, or through a government sponsored program. If affordable insurance was available, it must be determined if such insurance was not affordable to the Appellant because the Appellant experienced a financial hardship as defined in 956 CMR 6.08.

In accordance with Table 3 of Schedule HC for 2018, the Appellants filing the Federal tax return as a married couple with no dependents claimed with an adjusted gross income of \$77,282 could afford to pay \$578 per month for health insurance. According to Table 4, the Appellants with one person age 30, living in Suffolk County, could have purchased a private insurance plan for \$564 per month. See Schedule HC for 2018. Private insurance was affordable for the Appellants in tax year 2018.

The Appellant was employed on a per diem basis and did not have access to employer sponsored health insurance. The Appellants would not have been eligible for ConnectorCare coverage based upon the Appellants' income which was greater than \$48,720. See Table 2 of Schedule HC 2017 and 956 CMR 12.04 for eligibility criteria.

The Appellants were paying a total of \$858 per month for health insurance. This is more than the \$578 deemed affordable as stated above. In addition, the Appellant's verified substantial monthly living expenses of \$3,981 for the period of March through August and \$3,581 for the period of September through December. Based on the evidence and testimony in this administrative record, the Appellant has demonstrated that the cost of purchasing additional health insurance that met Massachusetts MCC standards would have caused the Appellant to experience a substantial hardship. 956 CMR 6.08. The Appellant's seven-month penalty is waived.

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2018. The Appellant should not assume that a similar determination will be made for subsequent tax years should they again be assessed a penalty for failure to have health insurance.

**PENALTY ASSESSED**

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

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

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

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

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-483

**Appeal Decision:** Appeal Denied.

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** September 6, 2019

**Decision Date:** October 3, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on September 6, 2019. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated July 23, 2019.
- Exhibit 2: Appeal Case Information from Schedule HC 2018.
- Exhibit 3: Statement of Grounds for Appeal signed by the Appellant on April 14, 2019.
- Exhibit 4: A letter written by the Appellant in support of this appeal.

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant turned 38 years old in January 2018. The Appellant filed their Federal Income Tax return as a single person with no dependents claimed (Exhibit 2).
2. The Appellant lived in Barnstable County, MA in 2018 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2018 was \$52,177 (Exhibit 2).
4. The Appellant did not have health insurance for any months in tax year 2018 (Exhibit 2 and Appellant Testimony).
5. The Appellant has been assessed a twelve-month tax penalty for 2018. The Appellant filed an appeal of the assessment in April 2019 (Exhibits 2, 3, 4).

6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
7. In accordance with Table 3 of Schedule HC for 2018, the Appellant filing the Federal tax return as a single person, with no dependents claimed, with an annual adjusted gross income of \$52,177 could afford to pay \$350 per month for health insurance. In accordance with Table 4, the Appellant, age 38, living in Barnstable County, could have purchased private insurance for \$290 per month for a single plan (Schedule HC for 2018). Private insurance was affordable for the Appellant in 2018.
8. The Appellant would not have been eligible for ConnectorCare coverage in 2018 because the Appellant's income was greater than 300% of the federal poverty level, which was \$36,180 in 2018. (See Table 2 of Schedule HC-2018 and 956 CMR 12.04) (Appellant Testimony).
9. The Appellant testified that they have been employed by the same company on a part time basis for five years. The employer had told the Appellant at the end of 2017 that they would be able to pick up additional hours and health insurance once business picked up. The Appellant said that they had been paying \$123 monthly for insurance in 2017 but the cost increased to \$245.76 for 2018 with a \$2,000 deductible. The Appellant said that they thought it better to wait for their hours to increase and be able to have the employer sponsored insurance, but this did not happen (Exhibit 4 and Appellant Testimony).
10. The Appellant's monthly living expenses of \$1,664 included: rent, including heat-\$914; electricity-\$50; car insurance-\$250; telephone-\$50 and food-\$400. The Appellant testified that were making credit card payments of about \$1,000 per month so that they could pay off their debt and be able to purchase a house (Appellant Testimony).
11. In tax year 2018 the Appellant did not face eviction, did not receive any utility shut off notices, did not incur a significant and unexpected increase in expenses due to a natural or human caused disaster and did not incur significant expenses as a result of a family emergency (Appellant Testimony).

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

The Appellant did not have health insurance for any months in tax year 2018 and consequently has been assessed a twelve-month penalty. The Appellant appealed the assessment citing financial hardship and other circumstances as the reason for their failure to obtain health insurance tax year 2018.

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

In accordance with Table 3 of Schedule HC for 2018, the Appellant filing the Federal tax return as a single person with no dependents claimed, with an adjusted gross income of \$52,177 could afford to pay \$350 per month for health insurance. In accordance with Table 4, the Appellant, age 38, living in Barnstable County, could have purchased private insurance for \$290 per month for a plan (Schedule HC for 2018). Private insurance was affordable for the Appellant in 2018. The Appellant would not have been eligible for ConnectorCare coverage because their income of \$52,177 exceeded 300% of the federal poverty level of \$36,180 (See Table 2 of Schedule HC-2018 and 956 CMR 12.04).

The Appellant was employed at the same company for five years. The Appellant was working part time and was not eligible for the employer sponsored health insurance. The Appellant testified that they had health insurance in tax year 2017 and were paying a monthly premium of \$123. The Appellant explained that at the end of 2017 their employer told them that when business picked up their hours would be increased to 32 making the Appellant eligible for employer sponsored health insurance. The Appellant said that for 2018 their insurance premium increased to \$245.76 with a \$2,000 deductible. The Appellant chose to wait for their employer to offer the increased hours to allow her to obtain health insurance through the company, but this did not happen.

The Appellant argues that they were misled by their employer and therefore should not be subject to a tax penalty. While it is unfortunate that the Appellant's hours did not increase, the Appellant was aware in early 2018, during the open enrollment period, that they did not have access to employer sponsored health insurance. The Appellant said that they did not want to pay the 2018 premium of \$245.76 and preferred to wait for their employer to increase their hours. The Appellant could have chosen to remain enrolled in their health care plan until they became eligible for employer sponsored health insurance.

The Appellant verified monthly living expenses of \$1,664. The Appellant indicated that they were paying off their credit card debt by making monthly payments of \$1,000 because they were hoping to buy a house. In tax year 2018 the Appellant did not face eviction, did not receive any utility shut off notices, did not incur a significant and unexpected increase in expenses due to a natural or human caused disaster and did not incur significant expenses as a result of a family emergency. Given the Appellant's income of \$52,177 and the fact that private insurance was available at a cost of \$290 per month, the Appellant did not demonstrate that purchasing health insurance would have caused the Appellant to experience a serious financial hardship. See 956 CMR 6.08. The Appellant's twelve-month penalty is upheld.

#### **PENALTY ASSESSED**

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 for the amount equal to one half of the lowest cost health insurance plan available to

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

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

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-484

**Appeal Decision:** Appeal Approved.

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** September 6, 2019

**Decision Date:** October 2, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on September 6, 2019. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated July 23, 2019.
- Exhibit 2: Appeal Case Information from Schedule HC 2018.
- Exhibit 3: The Statement of Grounds for Appeal signed by the Appellant on April 8, 2019.
- Exhibit 4: The Appellant's letter in support of this appeal, with attachments.
- Exhibit 5: Health Connector Appeals Unit Open Record form dated September 6, 2019.
- Exhibit 6: Additional information submitted by the Appellant on September 16, 2019, including a copy of the Appellant's 2018 Form MA 1099-HC.

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant turned 32 years old in July 2018. The Appellant filed their Federal Income Tax return as a single person with no dependents claimed (Exhibit 2).
2. The Appellant lived in Middlesex County, MA in 2018 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2018 was \$48,794 (Exhibit 2 and Appellant Testimony).
4. According to the Appeal Case Information from Schedule HC for 2018, the Appellant did not have health insurance for any months of tax year 2018 (Exhibit 2).

5. The Appellant has been assessed a twelve-month tax penalty for 2018. The Appellant filed an appeal of the assessment in April 2019 (Exhibits 2, 3, 4 and Appellant Testimony).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
7. In accordance with Table 3 of Schedule HC for 2018, the Appellant filing the Federal tax return as a single person, with no dependents claimed, with an annual adjusted gross income of \$48,794 could afford to pay \$327 per month for health insurance. In accordance with Table 4, the Appellant, age 32, living in Middlesex County, could have purchased private insurance for \$282 per month for a plan (Schedule HC for 2018). Private insurance was affordable for the Appellant in 2018.
8. The Appellant would not have been eligible for ConnectorCare coverage in 2018 because the Appellant's income was greater than 300% of the federal poverty level, which was \$36,180 in 2018. (See Table 2 of Schedule HC-2018 and 956 CMR 12.04) (Exhibit 2).
9. The Appellant testified that the adjusted gross income does not adequately reflect their circumstances for all of tax year 2018. The Appellant explained that they were not employed full time from January through March and took part time jobs to try and meet their living expenses. The Appellant said that they began working for a start-up company and there was a waiting period to be eligible for health insurance. The Appellant testified that they enrolled in the insurance as soon as it was made available (Exhibit 4 and Appellant Testimony).
10. The Appellant's 2018 monthly living expenses included: rent-\$600; telephone-\$25; car insurance-\$70 and food-\$867. The Appellant said that they were also responsible for paying for electricity including heat, which was expensive. The Appellant testified credibly that they struggled to pay their monthly expenses during the months of part-time employment. The Appellant's credible testimony is supported by a 2018 Form 1099-K verifying gross income of \$3,818.75 during the period of January through March in tax year 2018 (Exhibit 4 and Appellant Testimony).
11. The record was left open until September 23, 2019 to allow the Appellant to submit additional information (Exhibit 5).
12. On September 16, 2019 the Appellant submitted a copy of their 2018 Form MA 1099-HC verifying the Appellant did have health insurance that met Massachusetts standards for the period of July through December in tax year 2018 (Exhibit 6).
13. The Appellant is currently insured (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.

According to the information on the Appellant's 2018 Schedule HC, the Appellant but did not have health insurance for any months in tax year 2018. The Appellant has been assessed a twelve-month penalty. The Appellant asserts that the penalty should not apply in this case because they were insured for part of the year and experienced financial hardship during a period of part time employment. To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met minimum creditable coverage standards was available to the Appellant through employment, through private insurance, or through a government sponsored program. If affordable insurance was available, it must be determined if such insurance was not affordable to the Appellant because the Appellant experienced a financial hardship as defined in 956 CMR 6.08.

In accordance with Table 3 of Schedule HC for 2018, the Appellant filing the Federal tax return as a single person with no dependents claimed with an adjusted gross income of \$48,794 could afford to pay \$327 per month for health insurance. According to Table 4, the Appellant, age 32, living in Middlesex County, could have purchased a private insurance plan for \$282 per month. See Schedule HC for 2018. Private insurance was affordable for the Appellant in tax year 2018.

The Appellant would not been eligible for ConnectorCare coverage based upon the Appellant's income which was greater than \$36,180. See Table 2 of Schedule HC 2018 and 956 CMR 12.04 for eligibility criteria. Since affordable insurance was available to the Appellant in 2018, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1).

The Appellant testified credibly that their gross income figure does not reflect their month to month financial circumstances in tax year 2018. The Appellant was only employed part time for the period of January through March in 2018. The Appellant was able to find a full-time job in April but there was a waiting period for health insurance eligibility. The Appellant submitted a copy of their 2018 Form MA 1099-HC verifying that the Appellant did have health insurance for the period of July through December in tax year 2018. The Appellant verified their part time income and their living expenses for the first three month of tax year 2018. The Appellant testified credibly that they struggled to meet these expenses with the limited income.

The Appellant was insured for six months of tax year 2018. Given the three month grace period and the fact that the Appellant had limited income from part time employment for the first three months of tax year 2018, the Appellant has demonstrated that the cost of purchasing health insurance would have caused the Appellant to experience a serious financial hardship. See 956 CMR 6.08. The Appellant's twelve-month penalty is therefore waived.

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2018. The Appellant should not assume that a similar determination will be made for subsequent tax years should they again be assessed a penalty for failure to have health insurance.

**PENALTY ASSESSED**

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

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

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

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

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-490

**Appeal Decision** Appeal Approved

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** September 4, 2019

**Decision Date:** October 31, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

Appellant appeared at the hearing, which was held by telephone, on September 4, 2019.

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

- Exhibit 1: Notice of Hearing (7-25-19) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2018 (1 page); and
- Exhibit 3: Statement of Grounds for Appeal (4-11-19) (with letter and document) (7 pages).

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellants, ages 47 and 49 during 2018, from Barnstable County, filed married filing jointly on the tax return with a family size of 4 (Exhibit 2).
2. Appellants had previously had health insurance through one of Appellant's employer, but the employer changed the program and it did not meet Massachusetts' standards. (Appellant's testimony, Exhibit 3).
3. Appellants were not aware of the availability of ConnectorCare, and learned about it halfway through the year and did sign up for ConnectorCare. Thus, Appellants did not have health insurance for January through June, but did have health insurance for July through December, and continue to have it through ConnectorCare. (Appellant's testimony, Exhibits 2 and 3).

4. Appellants' Federal Adjusted Gross Income for 2018 was \$39,707 (Exhibit 2).
5. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
6. Appellants could not afford health insurance based on the tables in Schedule HC. According to Table 4, the health insurance would cost \$865 for an individual. According to Table 3, Appellants were deemed to afford \$114.
7. Private insurance was not affordable for the Appellants in 2018 (Schedule HC for 2018).
8. Appellants claimed that they should be granted a waiver because of other circumstances, and stated that due to the severe disabilities of one of their children, and the lack of coverage of nurses for all hours, one of Appellants is not able to work more than ten hours per week. (Testimony of Appellant, Exhibit 3).
9. Appellants' expenses for food, shelter, clothing and other necessities used all of the income. (Appellant's testimony).
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 2018 (Exhibit 3). However, Appellants do have the responsibility of providing care for their disabled daughter.
11. Appellants did not fall more than thirty days behind in rent payments in 2018. They did not receive any shut-off notices for basic utilities (Exhibit 3).

## **ANALYSIS AND CONCLUSIONS OF LAW**

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived in whole, in part, or not at all.

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

Appellants had health insurance for July through December of 2018, but did not have health insurance for the remaining months of 2018. They have been assessed a tax penalty for three months. They appealed the assessment. See Exhibits 2 and 3. To determine if the penalty should be waived in whole or in part, we must consider whether affordable insurance which met minimum creditable coverage

standards was available to the appellants 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 appellants because she experienced a financial hardship as defined in 956 CMR 6.08.

Private insurance was not affordable for the appellants during 2018. According to Tables 3 and 4 of the HC Schedule for 2018, Appellants, with an adjusted gross income of \$39,707 were deemed not to have been able to afford health insurance on the private market. According to Table 3, appellants could have afforded to pay \$114 per month; according to Table 4, Appellants, who were 47 and 49 years old in 2018, lived in Barnstable County and filed the 2018 Massachusetts taxes as married filing jointly with a family size of 4, would have had to pay \$865 per month for insurance on the private market. See CMR 6.05 (1)(2), Schedule HC Tables 3 and 4, and Exhibit 2.

Appellants had insurance for July through December of 2018, and obtained insurance as soon as they became aware that they qualified for subsidized health insurance through the Health Connector.

With regard to the hardship waiver of the penalty, the circumstances of this case fall into the “other circumstances” provision of the hardship waiver criteria, as well as the “paying for health insurance would have caused a serious deprivation of food, shelter, clothing, etc. Appellants’ expenses for food, shelter, clothing and other necessities used all of the income. Appellants did enroll in ConnectorCare as soon as they became aware that they qualified. For these reasons, the penalty should be waived.

Appellants should note that the waiver of the penalty is based upon the facts that I have determined to be true for the 2018 appeal. They should not assume that a similar determination will be made in the future should they again be assessed a penalty for failure to have health insurance which meets the Commonwealth’s minimum creditable coverage standards.

#### **PENALTY ASSESSED**

Number of Months Appealed: 3/3    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 2018.

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

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

Hearing Officer

Cc:    Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-513

**Appeal Decision:** Appeal Approved  
**Hearing Issue:** Appeal of the 2018 Tax Year Penalty  
**Hearing Date:** September 13, 2019  
**Decision Date:** October 10, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on September 13, 2019. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

Exhibit 1: Notice of Hearing sent to Appellant dated July 25, 2019  
Exhibit 2: Appeal Case Information Sheet from Schedule HC 2018  
Exhibit 3: Statement of Grounds for Appeal 2018 signed by Appellant  
Exhibit 4: Final Appeal Decisions for 2014 and 2017

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant was 34 years old in 2018 and filed a 2018 Massachusetts tax return as single, with no dependents claimed (Exhibit 2).
2. Appellant lived in Hampden County, MA in 2018 (Exhibit 2).
3. Appellant's Adjusted Gross Income for 2018 was \$23,804 (Exhibit 2).
4. During 2018, employer sponsored insurance was available to Appellant at a cost of \$160 per month (Testimony of Appellant).
5. During 2018, Appellant did not sign up for employer sponsored insurance due to the cost (Testimony of Appellant).
6. Appellant did not apply for any other health insurance in 2018 (Testimony of Appellant).
7. Appellant struggled to pay bills for necessities in 2018, which included a child support obligation of \$407 per month (Testimony of Appellant).
8. Appellant was assessed a penalty for twelve months for 2018 (Exhibit 2).

9. Appellant filed an appeal in May, 2018, claiming that the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities (Exhibit 3).
10. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
11. According to Table 3 of Schedule HC for 2018 a person filing as single, with no dependents claimed and with a Federal Adjusted Gross Income of \$23,804 could afford to pay \$58 per month for health insurance. According to Table 4, Appellant, age 34 and living in Hampden County, could have purchased private insurance for \$282 per month. Private insurance was not affordable for Appellant in 2018.
12. According to Table 3 of Schedule HC for 2018, Appellant also could not afford to purchase the employer sponsored insurance for \$160 per month.
13. According to Table 2 of Schedule HC for 2018, Appellant, earning less than \$36,180 would have met the income eligibility guidelines for government subsidized insurance. However, according to Schedule HC Worksheet for Line 11, since employer sponsored health insurance was available and the cost for an individual plan was less than 9.56% of Appellant's Federal Adjusted Gross Income, Appellant would be blocked from enrolling in government subsidized health insurance.

## **ANALYSIS AND CONCLUSIONS OF LAW**

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived, either in whole or in part.

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

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

Appellant worked in 2018 and employer sponsored health insurance was available to Appellant at a cost of \$160 per month. According to Table 3 of Schedule HC for 2018, Appellant, who filed taxes as a single person with no dependents could afford to pay \$58 per month for health insurance. The employer sponsored insurance was not affordable. Private insurance would have cost Appellant \$282 per month and also would not be affordable. Appellant was income eligible for government subsidized health insurance. However, since the cost of employer sponsored insurance for an individual plan was less than 9.56 % of Appellant's Modified Adjusted Gross income, the employer sponsored insurance would have blocked Appellant's access to Advance Premium Tax Credits and

government subsidized health insurance. See 956 CMR 6.00, 45CFR 155.305 (f)(1)(ii)(B), 26CFR 1-36B-2(c)(3)(v), Schedule HC for Healthcare, and Testimony of Appellant, which I find to be credible.

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

**PENALTY ASSESSED**

Number of Months Appealed: 12

Number of Months Assessed: 0

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

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

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

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-514

**Appeal Decision:** Appeal Approved  
**Hearing Issue:** Appeal of the 2018 Tax Year Penalty  
**Hearing Date:** September 13, 2019  
**Decision Date:** October 14, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

Appellant appeared at the hearing, which was held by telephone, on September 13, 2019. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

Exhibit 1: Notice of Hearing sent to Appellant dated July 25, 2019  
Exhibit 2: Appeal Case Information Sheet from Schedule HC 2018  
Exhibit 3: Notice of Appeal, dated April 29, 2019  
Exhibit 4: Statement in Support of Appeal

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant was 44 years old in 2018 and filed a 2018 Massachusetts tax return as single with no dependents claimed (Exhibit 2).
2. Appellant lived in Middlesex County, MA in 2018 (Exhibit 2).
3. Appellant's Adjusted Gross Income for 2018 was \$64,077 (Exhibit 2).
4. In late 2017, Appellant began a new job that was supposed to include employer sponsored health insurance and other benefits (Testimony of Appellant).
5. Immediately before the start date, Appellant was asked to start the job as an independent contractor for a period of four weeks before Appellant would become an employee with full benefits, including health insurance (Testimony of Appellant and Exhibit 4).
6. Appellant agreed to be an independent contractor for four weeks. However, the employer did not change Appellant's status after the four weeks (Testimony of Appellant).
7. During 2018, Appellant and Appellant's supervisors asked the company to keep their word on providing benefits to Appellant (Testimony of Appellant).

8. Appellant's company offered a variety of excuses, including company reorganizations, and company debt for not making Appellant an employee with benefits (Testimony of Appellant and Exhibit 4).
9. Appellant did not want to leave the job as Appellant was afraid there would not be a comparable job at the same pay (Testimony of Appellant).
10. Appellant looked into purchasing private health insurance in 2018 but believed that that expense would hamper the ability to pay for necessary expenses (Testimony of Appellant).
11. Appellant was finally made a full-time employee and started employer sponsored health insurance in December 2018 (Testimony of Appellant and Exhibit 4).
12. Appellant had the following monthly expenses for 2018: Rent \$1,480; Utilities \$80; Telephone \$100; Food \$650; Supplies \$173; Clothing \$58; Car insurance \$100; and Gasoline \$173. Appellant's monthly expenses totaled \$2,814.
13. Appellant supported two adult children of a former partner who were struggling to be self-sufficient. Both of the adult children had serious needs, and Appellant helped them with food, clothing, cars and other expenses, and spent more than \$2,000 per month for the adult children (Testimony of Appellant).
14. Appellant did not have health insurance for eleven months in 2018 (Testimony of Appellant and Exhibit 2).
15. Appellant was assessed a penalty for eight months for 2018 (Exhibit 2).
16. Appellant filed a hardship appeal on April 29, 2019, claiming that the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities (Exhibit 3).
17. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
18. According to Table 3 of Schedule HC for 2018 a person filing as single with no dependents claimed and with a Federal Adjusted Gross Income of \$64,077 could afford to pay \$430 per month for health insurance. According to Table 4, Appellant, age 44 and living in Middlesex County, could have purchased private insurance for \$310 per month. Private insurance was considered affordable for Appellant in 2018.
19. According to Table 2 of Schedule HC for 2018, Appellant, earning more than \$36,180 would not have met the income eligibility guidelines for government subsidized insurance.

## **ANALYSIS AND CONCLUSIONS OF LAW**

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived, either in whole or in part.

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

Appellant has been assessed a tax penalty for eight months. To determine if the penalty should be waived in whole or in part, we must consider whether affordable insurance was available to Appellant before we consider whether Appellant suffered a financial hardship such that the purchase of insurance which met minimum

creditable coverage standards would have caused Appellant to experience a serious deprivation of basic necessities. See 956 CMR 6.

During 2018, Appellant was waiting for employer sponsored health insurance that had been promised to Appellant. Private insurance was considered affordable for Appellant, but Appellant did not sign up for private insurance. See Schedule HC for Healthcare, Tables 3 and 4 and Testimony of Appellant, which I find to be credible. Since Appellant potentially had access to affordable insurance, we need to consider whether Appellant experienced a financial hardship as defined by 956 CMR 6.08.

Appellant had started a job that was to include employer sponsored health insurance. Appellant’s employer did not provide the insurance until December 2018. Appellant was afraid that the purchase of private insurance would prevent Appellant from meeting financial obligations. Although Appellant was not legally obligated to provide for a partner’s adult children, Appellant felt obligated to help with their support. I find that for 2018, the purchase of health insurance would have caused Appellant a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08(1) (e).

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

**PENALTY ASSESSED**

Number of Months Appealed: 8

Number of Months Assessed: 0

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

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

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

**ADDENDUM**

**Appellant should be aware that this decision is based on that facts as I have found them for 2018 and that a similar decision may not be made if Appellant fails to have health insurance in the future.**

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-515

**Appeal Decision:** Penalty Overturned in Full  
**Hearing Issue:** Appeal of the 2018 Tax Year Penalty  
**Hearing Date:** September 13, 2019  
**Decision Date:** October 11, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

Appellant appeared at the hearing, which was held by telephone, on September 13, 2019. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

- Exhibit 1: Correspondence from the Health Connector, dated July 25, 2019
- Exhibit 2: Appeal Case Information from Schedule HC 2018
- Exhibit 3: Notice of Appeal, dated April 19, 2019
- Exhibit 4: Appeal Decision for 2017

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant was 35 years old in 2018. Appellant filed a Massachusetts 2018 tax return as single with no dependents claimed (Exhibit 2).
2. Appellant resided in Suffolk County, MA in 2018 (Exhibit 2).
3. Appellant had an Adjusted Gross Income for 2018 of \$69,731 (Exhibit 2).
4. Appellant was covered by employer sponsored health insurance from January through July 2018 (Testimony of Appellant and Exhibit 2).
5. Appellant was laid off in August 2018 and employer sponsored health insurance was no longer available (Testimony of Appellant).
6. Appellant was unemployed from August through December 2018 (Testimony of Appellant).
7. Appellant's only income from August through December 2018 was unemployment compensation (Testimony of Appellant).
8. Appellant looked into private health insurance while unemployed (Testimony of Appellant).

9. The least expensive plan that Appellant found would have cost \$200 per month. Appellant did not sign up for the health insurance due to the cost (Testimony of Appellant).
10. Appellant did not have health insurance from August through December 2018 (Testimony of Appellant and Exhibit 2).
11. During August through December, when Appellant was unemployed, Appellant struggled to pay the necessary bills (Testimony of Appellant).
12. Appellant's monthly bills included rent at \$1,100 per month and car payment and car insurance at \$575 per month (Testimony of Appellant).
13. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
14. According to Table 3 of Schedule HC for 2018 a person filing as single with no dependents with an adjusted gross income of \$69,731 could afford to pay \$468 per month for private insurance. According to Table 4, Appellant, aged 35 and living in Suffolk County could have purchased private insurance for \$290 per month.
15. Private insurance was considered to be affordable for Appellant in 2018 (Schedule HC for 2018).
16. Appellant has been assessed a penalty for two months for 2018 (Exhibit 2).
17. Appellant filed an Appeal on April 19, 2019 stating that the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities (Exhibit 3).

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

Appellant has been assessed a tax penalty for two 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 was covered by employer sponsored health insurance from January through July 2018. Appellant was uninsured after losing a job and the employer sponsored health insurance. Appellant was uninsured during August through December 2018. According to Tables 2, 3 and 4 of Massachusetts Schedule HC 2018, private health insurance was considered to be affordable for Appellant. However, Appellant did not sign up for private health 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.

Appellant struggled to pay the monthly bills during the time that Appellant was unemployed. Purchasing health insurance during the time when Appellant was not working would have caused a serious deprivation of food, shelter clothing or other necessities. 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 2018 should be waived in its entirety.

**PENALTY ASSESSED**

Number of Months Appealed: 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 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

**OR**

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

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

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

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-517

**Appeal Decision:** Penalty Overturned in Full

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** September 13, 2019

**Decision Date:** October 8, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

Appellant and Appellant Spouse appeared at the hearing, which was held by telephone, on September 13, 2019. The procedures to be followed during the hearing were reviewed with Appellants. Appellants were sworn in. Exhibits were marked and admitted in evidence with no objection from Appellants. The hearing record consists of the testimony of Appellants, and the following documents which were admitted in evidence:

- Exhibit 1: Correspondence from the Health Connector
- Exhibit 2: Appeal Case Information from Schedule HC 2018
- Exhibit 3: Notice of Appeal dated April 17, 2019
- Exhibit 4: Statement of Appellants in support of the Appeal

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellants were both 33 years old in 2018. Appellants filed a Massachusetts 2018 tax return as married filing jointly with one dependent claimed (Exhibit 2).
2. Appellants resided in Essex County, MA in 2018 (Exhibit 2).
3. Appellants had an Adjusted Gross Income for 2018 of \$50,376 (Exhibit 2).
4. Appellants' Massachusetts tax return indicated that Appellant had health insurance that met the Massachusetts creditable coverage standards for the entire year, but that Appellant Spouse did not have insurance (Exhibit 2).

5. Appellant Spouse was covered for the entire year by a federal health insurance plan that automatically met Massachusetts minimum creditable coverage standards (Schedule HC Health Care, Exhibit 4 and Testimony of Appellant Spouse).

6. Appellant Spouse was assessed a penalty for twelve months for 2018. Appellant was not assessed a penalty (Exhibit 2).

7. Appellants filed an Appeal appealing the assessment of the penalty. Appellants claimed that they were both insured in 2018 (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 2018, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector’s regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08 (1).

During 2018 both Appellants were covered by health insurance that met the Massachusetts minimum creditable coverage standards. See Exhibits 3 and 4 and Testimony of Appellants, which I find to be credible.

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

### **PENALTY ASSESSED**

Number of Months Appealed: 0/12

Number of Months Assessed: 0/0

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

### **OR**

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

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

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

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-518

**Appeal Decision:** Appeal Approved  
**Hearing Issue:** Appeal of the 2018 Tax Year Penalty  
**Hearing Date:** September 13, 2019  
**Decision Date:** October 9, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on September 13, 2019. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

Exhibit 1: Notice of Hearing sent to Appellant dated July 25, 2019  
Exhibit 2: Appeal Case Information Sheet from Schedule HC 2018  
Exhibit 3: Notice of Appeal, dated April 18, 2019  
Exhibit 4: Statement in support of Appeal

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant was 28 years old in 2018 and filed a 2018 Massachusetts tax return as single, with no dependents claimed (Exhibit 2).
2. Appellant lived in Essex County, MA in 2018 (Exhibit 2).
3. Appellant's Adjusted Gross Income for 2018 was \$19,891.00(Exhibit 2).
4. Appellant's income in 2018 was from the sale of an inheritance (Testimony of Appellant).
5. Appellant had completed graduate education and was seeking employment during 2018 (Testimony of Appellant).
6. Appellant looked at health insurance at the Health Connector but did not sign up due to the cost (Testimony of Appellant).
7. Appellant lived with family members in 2018 in order to save on expenses while unemployed (Testimony of Appellant).
8. Appellant's student loan payment in early 2018 was \$1,500 per month (Testimony of Appellant and Exhibit 4).

9. Appellant put the student loans into forbearance in the middle of 2018. At the end of 2018, Appellant was required to pay \$1,600 per month for the student loans (Testimony of Appellant and Exhibit 4).
10. Appellant did not have health insurance for all of 2018 (Testimony of Appellant and Exhibit 2).
11. Appellant was assessed a penalty for twelve months for 2018 (Exhibit 2).
12. Appellant filed a hardship appeal on April 18, 2019 (Exhibit 3).
13. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
14. According to Table 3 of Schedule HC for 2018 a person filing as single, with no dependents claimed and with a Federal Adjusted Gross Income of \$19,891 could afford to pay \$48 per month for health insurance. According to Table 4, Appellant, age 28 and living in Essex County, could have purchased private insurance for \$249 per month. Private insurance was not considered affordable for Appellant in 2018.
15. According to Table 2 of Schedule HC for 2018, Appellant, earning less than \$36,180 would 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 2018 should be waived, either in whole or in part.

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

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

During 2018, Appellant was unemployed. Appellant was income eligible for government subsidized health insurance but Appellant did not sign up for the insurance. See Schedule HC for Healthcare, Tables 2, and 3. 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 graduated from graduate school and was looking for a job in 2018. Appellant was unemployed for the entire year and Appellant lived with family members while searching for employment. Appellant’s only source of income was from an inheritance which Appellant sold. Appellant had a very high student loan amount, which Appellant put on forbearance for as long as possible. See Testimony of Appellant, which I find to be credible. I

find that for 2018, the purchase of health insurance would have caused Appellant a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08(1) (e).

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

**HOWEVER, Appellant is advised that this decision is based upon the facts as I have found them in 2018 and Appellant should not assume that a similar decision will be reached if Appellant fails to have health insurance in future years.**

**PENALTY ASSESSED**

Number of Months Appealed: 12

Number of Months Assessed: 0

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

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

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

**ADDENDUM**

**Appellant should contact the Health Connector (1 877 623-6765) so that Appellant can find out about health insurance options.**

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-535

**Appeal Decision:** Appeal Granted

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** September 10, 2019

**Decision Date:** October 3, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on September 10, 2019. 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 2018 Schedule HC (1 page)
- Exhibit 2: 4/16/19 Appeal (7 pages)
- Exhibit 3: 7/30/19 Hearing Notice (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 2018 income tax return. (Exhibit 1)
2. The Appellant's filing status for 2018 was Single with no dependents. The Appellant's federal AGI in 2018 was \$21,853. The Appellant resided in Suffolk County in 2018. The Appellant turned twenty-six years old in November 2018. (Exhibit 1)
3. The Appellant worked as a temporary employee during the first eight months of 2018. Her employer did not offer health insurance coverage to temporary employees. (Appellant's testimony)
4. The Appellant did not have health insurance coverage during the first two months of 2018, because she could not afford to pay for it. (Appellant's testimony)
5. The Appellant had health insurance coverage from March 2018 through June 2018. The Appellant's mother paid for the coverage. The Appellant's coverage terminated at the end of June 2018 because her mother no longer could afford to pay the cost of coverage. (Exhibit 1; Appellant's testimony)

6. At the end of August 2018, the Appellant’s employer told her that she no longer had a job. (Appellant’s testimony)
7. On October 15, 2018, the Appellant received notice from her service provider that her electrical service had been shut off that day. (Exhibit 2)
8. The Appellant has had employer-sponsored health insurance coverage through her new job since April 1, 2019. (Appellant’s testimony)

**ANALYSIS AND CONCLUSIONS OF LAW**

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

In this case, the Appellant had a three-month grace period at the start of 2018 to obtain insurance coverage. As the Appellant could not herself afford coverage at that time, the Appellant obtained coverage through her mother beginning in March 2018. The Appellant’s coverage continued through June 2018, when her mother realized that she could not afford to pay the premium for her daughter any longer. The Appellant then had a three-month grace period, through September 2018, to obtain new health insurance coverage. I find credible the Appellant’s testimony that she was in no position to afford health insurance coverage during the last three months of 2018, as she had lost her job at the end August 2018 and was on the verge of losing her electricity service due to her not having the funds to pay her electric bill. This led to her electricity provider actually terminating her service for nonpayment, on October 15, 2018.

Under these circumstances, I conclude that the Appellant could not have afforded health insurance coverage in 2018, under 956 CMR Section 6.08(1)(b).

Accordingly, the Appellant’s three-month penalty for 2018 shall be waived in full.

**PENALTY ASSESSED**

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

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

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-538

**Appeal Decision:** Appeal Granted

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** September 10, 2019

**Decision Date:** October 3, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on September 10, 2019. 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 2018 Schedule HC (1 page)
- Exhibit 2: 4/23/19 Appeal (15 pages)
- Exhibit 3: 7/30/19 Hearing Notice (3 pages)

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant appealed from the assessment of a five-month penalty on her 2018 income tax return, checking off that, during 2018, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter clothing or other necessities. (Exhibit 1)
2. The Appellant's filing status for 2018 was Single with no dependents. The Appellant's federal AGI in 2018 was \$53,152. The Appellant resided in Worcester County in 2018. The Appellant turned thirty-eight years old in 2018. (Exhibit 1)
3. The Appellant had health insurance coverage through HSN during the first eight months of 2018. The Appellant required regular medical services in 2018 and was able to use HSN to pay for those services until she received a letter in the summer of 2018, stating that she would not be eligible for HSN after August 2018. (Appellant's testimony; Exhibit 2)
4. The Appellant has nearly \$200,000 in student loan debt, after getting her degree in 2011. The Appellant has participated in the "public servant forgiveness program" since 2014, as a way to reduce her debt. (Appellant's testimony)

5. As of December 20, 2018, the Appellant had a \$77,000+ current loan balance on a 3/11/2015 student loan of \$69,000; and, a \$136,000+ current loan balance on a second 3/11/15 student loan of \$117,000. (Exhibit 2)
6. The Appellant's student loan balances went up in 2018 (and prior years) because she was not able to keep up with the accumulating interest. In 2018, \$5,412 outstanding interest was added to her loan balances. (Appellant's testimony; Exhibit 2)
7. The Appellant then applied to the Health Connector for coverage and enrolled in health insurance coverage for a monthly premium of \$350. The Appellant had this coverage from September 2018 through November 2018. (Appellant's testimony; Exhibit 1)
8. The Appellant currently has health insurance coverage through her employer. (Appellant's testimony)
9. The Appellant's basic monthly expenses in 2018 included: rent, \$850; electric, \$100; heat/hw, \$100; cable, \$50; phone, \$50; T Pass, \$100; food, \$420; car insurance, \$108; car m&r, \$166; gas, \$346; clothing, \$40; exercise, \$35; prescriptions, \$60; and \$550, student loan, for a total of \$2,875, monthly, and \$34,500 for the year. (Appellant's testimony)
10. According to Table 2 of the 2018 Schedule HC, the Appellant was not eligible for government-subsidized insurance in 2018, since her AGI for 2018 was more than \$36,180 for a family of one.
11. According to Table 3, Affordability, of the Schedule HC 2018, based on her 2018 AGI and Single tax filing status, the Appellant could have afforded to pay up to 8.05% percent of her income for health insurance in 2018, which calculates to a monthly premium of up to \$356 for coverage.
12. According to Table 4, Premiums, the Appellant could have purchased health insurance coverage in the private market in 2018 for \$290/monthly, based on her age and county of residence in 2018.
13. The Appellant never thought to look for coverage through the private market. (Appellant's testimony)

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

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

In this case, as the Appellant had a three-month grace period at the start of 2018 to obtain health insurance coverage and the Appellant had health insurance coverage in September, October and November 2018, the five months at issue here are those from April 2018 through August 2018. In view of the significant documentation submitted by the Appellant in support of her argument that her student loan debt overwhelmed her financial situation in 2018, I conclude that the Appellant made a good faith effort to obtain health insurance coverage in 2018, given her difficult financial circumstances. Although the Appellant could have applied to the Health Connector for coverage in March 2018 rather than wait until August 2018 to do so, the HSN program was apparently meeting her medical services needs and the Appellant did not want to add to her student debt burden. When informed that she no longer qualified for HSN, the Appellant immediately applied to the Health Connector for coverage and obtained coverage beginning in September 2018. In doing so, as her student loan debt had risen by \$5,412 in 2018 due to outstanding interest accrued during the year, the Appellant was in effect adding to her debt. Under these circumstances, I conclude that the Appellant could not have afforded health insurance coverage in 2018, under 956 CMR Section 6.08(1)(e).

Accordingly, the Appellant's five-month penalty for 2018 shall be waived in full.

### **PENALTY ASSESSED**

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

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

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA18-543

**Appeal Decision:** Appeal Approved In Part -- 2018 tax penalty reduced to 3 months.

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** September 12, 2019

**Decision Date:** October 10, 2019

**AUTHORITY**

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

**JURISDICTION**

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

**HEARING RECORD**

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant’s Statement of Grounds for Appeal – 2018;
3. Appellant’s Letter in Support of Appeal (1 page, dated 4/22); and
4. Health Connector’s Notice of Hearing (3 pages, dated 7/31/19).

**FINDINGS OF FACT**

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

1. The Appellant appealed from the Department of Revenue's assessment of a 12 month penalty for 2018. The basis for the penalty was that the Appellant was not insured at any time in 2018. Exhibits 1 and 2. Based on Exhibit 1 and the Appellant's hearing testimony, I find that the penalty assessment is accurate.
2. The Appellant filed a Massachusetts personal income tax return for 2018 as a single person with no dependents. The Appellant's federal adjusted gross income (AGI) for 2018 was \$49,541. Exhibit 1.
3. The Appellant was 28 years old at the beginning of 2018 and resided in [name of city or town omitted] in Middlesex County, Massachusetts. Exhibit 1.
4. The Appellant's AGI was more than 150% of the federal poverty level. On this basis I conclude that the Appellant was not automatically exempt from the assessment of a tax penalty in 2018. DOR Table 1.
5. The Appellant's 2018 AGI (\$49,541) was substantially more than 300% of the federal poverty level (\$36,180 for a one person household). DOR Table 2. On this basis I infer that that the Appellant would not satisfy the financial eligibility requirements for government-subsidized health insurance.
6. Based on DOR Table 3 the Appellant could afford to pay 8.05% of his income -- or \$332 per month -- for health insurance coverage in 2018. (The calculation is 8.05% multiplied by \$49,541 AGI = \$3,988.05 per year divided by 12 months = \$332.33 per month.)
7. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage at his age and location for \$249 per month in 2018.
8. The Appellant relocated from the west coast to Massachusetts in mid-2017. The Appellant had been living in his car on the west coast. In Massachusetts he initially lived with his aunt. He later rented a small single room to live in. Testimony and Exhibit 3.
9. In December 2017 the Appellant obtained the second job that he refers to in his supporting letter (Exhibit 3), and he continued to work at this job throughout 2018. Testimony.

10. The Appellant briefly shifted to the third job that he refers to in his letter (Exhibit 3), where he worked for December 2018 and January 2019. He then shifted to his current job, at the fourth employer that he refers to in his letter (Exhibit 3), where he says that he earns \$17 per hour.
11. The Appellant's aspiration is to become a nurse or to work as a medical technician which would require him to enroll in educational programs. The Appellant presents himself as being in a persistent struggle to stay afloat and trying nonstop to find the right job to build a foundation. Testimony.
12. The Appellant did not present any written evidence of living expenses or debt in support of his appeal, as requested in the Statement of Grounds for Appeal. Exhibit 2, page 2. In his appeal hearing testimony the Appellant referred to the \$10,000 balance that he owes on his car loan, a \$1,500 credit card balance, and need to fix or replace his car's transmission. Testimony.
13. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2018 Massachusetts income tax return.
14. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2018. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2018. (The DOR instructions are published online at <http://www.mass.gov/dor/2018ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2018.)

## **ANALYSIS AND CONCLUSIONS OF LAW**

The case is before me on the Appellant's appeal from the state Department of Revenue's (DOR) assessment of a tax penalty because the Appellant did not have health insurance coverage in 2018. See Exhibits 1 and 2. The issue to be decided is whether the penalty should be waived, either in whole or in part.

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

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

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

In this appeal the Appellant presents a fairly persuasive hardship case for 2017 when he was making the transition from the west coast to Massachusetts. His position is less persuasive starting in 2018 – the year at issue in this appeal -- when he switches to his third employer and moves on to his fourth (current) employer.

The Appellant's federal adjusted gross income for 2018 was \$49,541, the amount that he reported on his tax return (see Exhibit 1). At this income level the objective standards set forth in DOR Tables 3 and 4 indicate that the Appellant could afford health insurance. The Appellant could afford to pay \$332 per month for health insurance, while individual coverage was available for \$249 per month. See, e.g., Findings of Fact, Nos. 5 and 6, above.

The Appellant has offered little to offset the facts set forth in the preceding paragraph, limited to the outstanding balance on a car loan (\$10,000), a credit card balance (\$1,500) and car transmission work. See Findings of Fact, No. 12, above. What he does offer is a recent difficult past, a somewhat better present, and a determination to do better in the future that will require higher education. There is a hint that recent employers may have offered him health insurance coverage, but no evidence of the cost of those health plans or reasons why he did not enroll.

After considering all the circumstances, I have concluded that for 2018 it is appropriate to reduce the tax penalty assessment from 12 months to 3 months. The penalty is intended as a spur to complying with the legal obligation to obtain health insurance as required by law without impeding the Appellant's progress. See, e.g., 956 Code Mass. Regs. 6.08 (1) (e).

The Appellant should view this decision as an interim progress step and should not assume that penalties will also be reduced in the future unless there is a clear reason to do so. See my RECOMMENDATION below.

**PENALTY ASSESSED**

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

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

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

Hearing Officer

Cc: Connector Appeals Unit

**RECOMMENDATION.** Many employers have an “open enrollment” period in the Fall, which is the period when they will accept applications to enroll in health insurance coverage that will take effect in January 2020. You should check with your current employer to learn if it offers a health plan, what the health plan will cost you (employers typically share the cost of the monthly premium with the employee), and what you must do by what date to enroll. Otherwise, you risk paying a tax penalty for 2020.

The Health Connector also has an open enrollment period starting on November 1<sup>st</sup>. Although it is unlikely that you would qualify for a government-subsidized premium at your income level, you could shop among the insurance plans offered through the Health Connector and compare them to health plans offered by your employer (if any). You can apply online at [www.mahealthconnector.org](http://www.mahealthconnector.org). You can also call Customer Relations at 1-877-623-6765.

# Massachusetts Health Connector Appeals Unit

## Tax Penalty Appeal Decision—Docket No. PA18-544

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

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** September 12, 2019

**Decision Date:** October 10, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2018;
3. Appellant's List of 2018 Expenses (3 pages, undated);
4. Appellant's 2017 Final Appeal Decision (Docket No. PA17-699) (5 pages, dated 4/21/19); and
5. Health Connector's Notice of Hearing (3 pages, dated 9/12/19).

### **FINDINGS OF FACT**

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

1. The Appellant appealed from the Department of Revenue's assessment of a 12 month penalty for 2018. The basis for the penalty is that the Appellant was not insured at any time in 2018. Exhibits 1 and 2. Based on Exhibit 1 and the Appellant's hearing testimony, I find that the penalty assessment is accurate.
2. The Appellant filed a Massachusetts personal income tax return for 2018 as a single person with no dependents. The Appellant's federal adjusted gross income (AGI) for 2018 was \$33,953. Exhibit 1.

3. The Appellant was 20 years old at the beginning of 2018 and resided in [name of city or town omitted] in Barnstable County, Massachusetts. Exhibit 1.
4. The Appellant's AGI was more than 150% of the federal poverty level. On this basis I conclude that the Appellant was not automatically exempt from the assessment of a tax penalty in 2018. DOR Table 1.
5. The Appellant's 2018 AGI (\$33,953) was less than 300% of the federal poverty level (\$36,180 for a one person household). DOR Table 2. On this basis I infer that it is likely that the Appellant would satisfy the financial eligibility requirements for government-subsidized health insurance.
6. Based on DOR Table 3 the Appellant could afford to pay 5.00 % of his income -- or \$141 per month -- for health insurance coverage in 2018. (The calculation is 5.00 % multiplied by \$33,953 AGI = \$1,697.65 per year divided by 12 months = \$141.47 per month.)
7. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage at his age and location for \$249 per month in 2018.
8. The Appellant was employed in 2018, but his Employer did not offer him an employer-sponsored health care as a job benefit. Testimony.
9. The Appellant successfully appealed the 12 month penalty that the DOR assessed for 2017. See Exhibit 1. In the 2017 Final Appeal Decision the prior Hearing Officer waived the entire penalty assessed for 2017. Exhibit 4. I have compared the evidence presented in the 2017 appeal to the evidence presented in the 2018 appeal that is before me. I find that the Appellant's financial circumstances in the two years are substantially identical and that the same ground is asserted for the appeals in both years. The Appellant's federal adjusted gross income increased somewhat, from \$28,886 in 2017 to \$33,953 in 2018, but in both years the Appellant's AGI was less than 300% of the federal poverty level. In both the 2017 and 2018 appeals the Appellant represented that he did not have cable TV in the trailer that he rents to live in because he was no able to afford it.
10. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2018 Massachusetts income tax return.
11. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2018. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility

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

## **ANALYSIS AND CONCLUSIONS OF LAW**

The case is before me on the Appellant's appeal from the state Department of Revenue's (DOR) assessment of a tax penalty because the Appellant did not have health insurance coverage in 2018. See Exhibits 1 and 2. The issue to be decided is whether the penalty should be waived, either in whole or in part.

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

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

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

Since the evidence presented in the 2017 appeal is substantially identical to the evidence presented in this 2018 appeal I reach the same result as the prior hearing officer in the 2017 appeal (which was not decided until earlier this year, on April 21, 2019).

The objective standards set for in DOR Tables 3 and 4 demonstrate that the Appellant could not afford health insurance based on his 2018 income. The Appellant could afford to pay \$141 per month for health insurance but the monthly premium for individual coverage would cost substantially more at \$249 per month. See Mass. Gen. Laws, c. 111M, sec. 2 (a), above.

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

At the same time, I emphasize to the Appellant that he should not assume that the same result will be reached in future years if he continues to appeal tax penalties assessed by the DOR. If he has not already done so, the Appellant should submit an application for health insurance coverage to the Health Connector. That way the Appellant can learn if he is eligible for a government subsidy to reduce his insurance premium and will be in a better position to demonstrate why he can – or cannot – afford health insurance based on his situation in the current year. See my RECOMMENDATION below.

**PENALTY ASSESSED**

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

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

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

Hearing Officer

Cc: Connector Appeals Unit

RECOMMENDATION. I do not know your health insurance situation for the current year (2019). However, starting in less than a month – on November 1, 2019 -- the Health Connector will begin its open enrollment period when it accepts applications for health insurance for next year (2020).

I urge you to file an application promptly, so that you can provide any additional information if it is requested. You can apply online at [www.mahealthconnector.org](http://www.mahealthconnector.org) or by calling Customer Service at 1,877-623-6765. Most local hospitals or community health plans will also help you file an application. The Health Connector can also direct to other ways to get help if you need it.

# Massachusetts Health Connector Appeals Unit

## Tax Penalty Appeal Decision—Docket No. PA18-545

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

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** September 12, 2019

**Decision Date:** October 10, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2018;
3. Appellant's Letter in Support of Appeal (1 page, undated);
4. Appellant's Credit Card 2018 Year-End Summary (2 pages); and
4. Health Connector's Notice of Hearing (3 pages, dated 7/31/19).

### **FINDINGS OF FACT**

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

1. The Appellant appealed from the Department of Revenue's assessment of a 6 month penalty for 2018. The basis for the penalty was that the Appellant was not insured for the months of January – September 2018 (9 months) but was insured for the months of October – December 2018 (3 months). Exhibits 1 and 2. Based on Exhibit 1 and the Appellant's hearing testimony, I find that the penalty assessment is accurate. (The calculation is 12 months minus 3 months insured = 9 months uninsured minus 3-month administrative grace period = 6 penalty months.)

2. The Appellant filed a Massachusetts personal income tax return for 2018 as a single person with no dependents. The Appellant's federal adjusted gross income (AGI) for 2018 was \$33,161. Exhibit 1.
3. The Appellant was 27 years old at the beginning of 2018 and resided in [name of city or town omitted] in Middlesex County, Massachusetts. Exhibit 1.
4. The Appellant's AGI was more than 150% of the federal poverty level. On this basis I conclude that the Appellant was not automatically exempt from the assessment of a tax penalty in 2018. DOR Table 1.
5. The Appellant's 2018 AGI (\$33,161) was less than 300% of the federal poverty level (\$36,180 for a one person household). DOR Table 2. On this basis I infer that the Appellant would satisfy the financial eligibility requirements for government-subsidized health insurance.
6. Based on DOR Table 3 the Appellant could afford to pay 5.00% -- or \$138 per month -- for health insurance coverage in 2018. (The calculation is 5.00 % multiplied by \$33,161 AGI = \$1,658.05 per year divided by 12 months = \$138.17 per month.)
7. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage at his age and location for \$249 per month in 2018.
8. The Appellant obtained government-subsidized health insurance starting in October for the remainder of 2018. I base this finding on a combination of Exhibit 1, the Appellant's supporting letter (Exhibit 3) and the Appellant's hearing testimony. . I accept the Appellant's representation in Exhibit 3 that he made unsuccessful efforts earlier in 2018 to obtain coverage. (I note that the hearing record does not contain any documents from MassHealth or the Health Connector concerning applications, requests for information, eligibility decisions, or correspondence.)
9. In 2018 the Appellant was a part-time community college student who was not eligible for the student health insurance program. The Appellant's tuition for a recent semester was \$2,000. Testimony.
10. The Appellant has a five-year car loan for which he owes \$330 per month and owes approximately \$4,000 on credit cards. Testimony.
11. As the result of a car accident, the Appellant had to pay \$1,000 for restitution and \$3,000 for attorney's fees. Testimony.
12. The Appellant was effectively homeless for much of 2018, often living with friends, family or in hotels for short periods of time. The Appellant represented that he used a family friend's address on the papers in the hearing record. Exhibit 3 and Testimony.

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

## **ANALYSIS AND CONCLUSIONS OF LAW**

The case is before me on the Appellant's appeal from the state Department of Revenue's (DOR) assessment of a tax penalty because the Appellant did not have health insurance coverage for part of 018. See Exhibits 1 and 2. The issue to be decided is whether the penalty should be waived, either in whole or in part.

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

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

The Health Connector's regulations also provide for a "hardship" appeal from the assessment of a penalty. 956 Code Mass. Regs. 6.07 and 6.08. The grounds for a hardship appeal are summarized in

the Statement of Grounds for Appeal – 2017 that the Appellant signed and filed in this case. See Exhibit 2.

The evidence presented in this appeal – including the document prepared by the state Department of Revenue (Exhibit 1) -- demonstrates that the Appellant had health insurance coverage for the months of October – December 2018. I accept the Appellant’s representations – in Exhibit 3 and in his appeal hearing testimony – that he was insured through MassHealth and had made efforts earlier in 2018 (when he was uninsured) to obtain MassHealth coverage.

The question, then, is whether a penalty should be assessed for the months of January through June (the months of July – September are covered by the three month administrative grace period). Apart from the fact that it appears the Appellant was seeking government-subsidized health insurance earlier in 2018 based on his low income, the evidence presented by the Appellant shows some special expenses in 2018, including the car accident expenses and the credit card balance in addition to the car loan and tuition payments. In addition, the Appellant presented evidence that he was homeless in 2018.

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

**PENALTY ASSESSED**

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

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

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

Hearing Officer

Cc: Connector Appeals Unit



# Massachusetts Health Connector Appeals Unit

## Tax Penalty Appeal Decision—Docket No. PA18-548

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

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** September 12, 2019

**Decision Date:** October 10, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2018 (with Appellant's handwritten comments);
4. National Grid Utility Termination Notice 2 (2 pages, 1/1/19);
4. Health Connector's Notice of Hearing (3 pages, dated 7/31/19); and
5. Health Connector's Second Notice of Hearing (3 pages, dated 7/31/19).

### **FINDINGS OF FACT**

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

1. The Appellant appealed from the Department of Revenue's assessment of a 5 month penalty for 2018. The basis for the penalty was that the Appellant was not insured for the months of January – August 2018 (8 months) but was insured for the months of September – December 2018 (4 months). Exhibits 1 and 2. Based on Exhibit 1 and the Appellant's hearing testimony, I find that the penalty assessment is accurate. (The calculation is 12 months minus 4 months insured = 8 months uninsured minus 3-month administrative grace period = 5 penalty months.)

2. The Appellant filed a Massachusetts personal income tax return for 2018 as a single person with no dependents. The Appellant's federal adjusted gross income (AGI) for 2018 was \$27,075. Exhibit 1.
3. The Appellant was 34 years old at the beginning of 2018 and resided in [name of city or town omitted] in Worcester County, Massachusetts. Exhibit 1.
4. I find that the Appellant resided in Massachusetts all of 2018. Testimony and Exhibit 1 (listing Massachusetts address). In 2019 the Appellant relocated to another state. Testimony and Exhibits 2 and 4 (listing Maryland address).
5. The Appellant's AGI was more than 150% of the federal poverty level. On this basis I conclude that the Appellant was not automatically exempt from the assessment of a tax penalty in 2018. DOR Table 1.
6. The Appellant's 2018 AGI (\$27,075) was less than 300% of the federal poverty level (\$36,180 for a one person household). DOR Table 2.
7. I find that the Appellant was unemployed for the months of January – May 2018. When the Appellant found a new job she enrolled in the health plan offered by her new employer effective in September after a three month waiting period (June – August). Testimony, Exhibit 1, and Exhibit 2, page 2.
8. In 2018 the Appellant lived off savings (including an individual retirement plan early withdrawal made in a prior year) and income provided by her parents. She did not receive unemployment insurance benefits while she was unemployed. Testimony.
9. The Appellant received a second utility termination notice from National Grip dated January 7, 2019, showing that she had a \$141.18 past due balance from 2018 and a total balance due of \$294.42 from 2018. Exhibit 3, page 1, and Testimony.
10. The Appellant had approximately \$10,000 in student loans and \$40,000 credit card balance. She had no car after her car was totaled by another driver. Testimony.
11. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2018 Massachusetts income tax return.
12. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2018. See 956 Code

Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2018. (The DOR instructions are published online at <http://www.mass.gov/dor/2018ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2018.)

## **ANALYSIS AND CONCLUSIONS OF LAW**

The case is before me on the Appellant's appeal from the state Department of Revenue's (DOR) assessment of a tax penalty because the Appellant did not have health insurance coverage in 2018 for the months of January through August. See Exhibits 1 and 2. The issue to be decided is whether the penalty should be waived, either in whole or in part.

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

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

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

The evidence presented in this appeal shows that the Appellant was insured for the months of September – December 2018. She obtained this health insurance coverage when she obtained a new job starting in June 2018. The Appellant enrolled in the health plan offered by her new employer starting in September after the employer's three month waiting period expired. The three month administrative grace period referred to earlier covers the employer's wait period, and the DOR did not assess a penalty for either the months of June – August (the wait period) or September – December (the insured months).

The question, then, is the period January – May 2018 when the Appellant was not insured and DOR imposed a tax penalty. The evidence shows that the Appellant was not employed during this period, when she had neither earned income nor unemployment insurance benefits. See Findings of Fact, Nos. 7 and 8, above. The Appellant did, however, run up a past-due balance on her National Grid utility bill (see Exhibit 3 and Findings of Fact, No. 9, above). In addition, the Appellant has substantial outstanding student loan balances and credit card balances. See Findings of Fact, No. 10, above.

After considering all the circumstances, I conclude that it is appropriate to waive the entire penalty assessed against the Appellant for 2018 under the Health Connector’s financial hardship regulation. See, e.g., 956 Code Mass. Regs. 6.08 (1) (b) (“received a shut-off notice . . . [for] essential utilities (gas, electric, oil water or telephone” and 6.08 (1) (e) ([The Appellant] experienced financial circumstances such that the expense of purchasing health insurance that met minimum creditable coverage standards would have caused [her] to experience a serious deprivation of food, shelter, clothing or other necessities.”).

**PENALTY ASSESSED**

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

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

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18549

**Appeal Decision :** Penalty waived in full  
**Hearing Issue:** Appeal of the 2018 Tax Year Penalty  
**Hearing Date:** September 13, 2019  
**Decision Date:** October 15, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The appellant's representative appeared at the hearing which was held by telephone on September 13, 2019. The appellant was not present. The procedures to be followed during the hearing were reviewed with Appellant's representative who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the representative. The representative testified.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2018
- Exhibit 2: Statement of Grounds for Appeal 2018 signed and dated by Appellant on April 30, 2019 with letters in support attached
- Exhibit 3: Notice of Hearing sent to Appellant dated July 31, 2019 for hearing on September 13, 2019
- Exhibit 4: Durable Power of Attorney, dated November 14, 2007 signed by Appellant

### **FINDINGS OF FACT:**

The record shows, and I so find:

1. Appellant was 34 years old in 2018. He filed a 2018 Massachusetts tax return as a single individual with no dependents. He filed as a resident of Bristol County, Massachusetts where his parents reside (Exhibit 1, Testimony of Representative).
2. Appellant was out of the Commonwealth for all of 2018 except for a brief visit in the fall. He left Massachusetts in November, 2013. In 2018, he lived on a boat, traveling to Australia, Fiji, and Indonesia (Testimony of Representative, Exhibit 4).
3. Appellant had an adjusted gross income of \$120,962 in 2018. Appellant was not employed. His income came from investments (Exhibit 1, Testimony of Representative).
4. Appellant has been assessed a penalty for all of 2018. Appellant has appealed this assessment (Exhibits 1 and 2).

**ANALYSIS AND CONCLUSIONS OF LAW**

The appellant has been assessed a tax penalty for twelve months, all of 2018. 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’s representative testified that the appellant resided out of the Commonwealth all of 2018, except for several weeks in the fall when he returned for a visit. Appellant has been living out of the United States since November, 2013. He lives on his boat; in 2018 he was sailing near Australia, Fiji, and Indonesia. See the testimony of the representative which I find to be credible.

Under Massachusetts law, only residents of the Commonwealth are required to have health insurance which meets the state’s minimum creditable coverage standards. See Massachusetts General Laws, Chapter 111M, Section 2. Based upon the testimony of the appellant and Exhibit 4, I determine that the appellant did not reside in Massachusetts in 2018 and was, therefore, not subject to the requirements of Chapter 111M during this period. The penalty is waived in full.

Appellant should note that this waiver of the penalty is based upon the facts that I have determined to be true for this 2018 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 Months Appealed:   12   Number of Months Assessed:   0  

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

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

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

CC. Connector Appeals Unit

Hearing Officer

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18550

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

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** September 13, 2019

**Decision Date:** October 21, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The appellant appeared at the hearing which was held by telephone on September 13, 2019. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2018
- Exhibit 2: Statement of Grounds for Appeal 2018 signed and dated April 17, 2019
- Exhibit 3: Notice of Hearing sent to Appellant dated July 31, 2019 for September 13, 2019 hearing
- Exhibit 4: Letter dated August 31, 2018 to Appellant from debt collection agency

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, who filed a 2018 Massachusetts tax return as Head of Household with two dependents claimed, was 48 years old in 2018. Her dependents were her daughter who was a college student in 2018 and her mother who was disabled. Appellant provided in-home care for her mother who suffers from dementia (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Plymouth County in 2018 (Exhibit 1, Testimony of Appellant).
3. Appellant had a Federal adjusted gross income for 2018 of \$33,188 (Exhibit 1, and Testimony of Appellant).
4. Appellant worked all year as a personal care assistant providing care for her mother. Appellant received her pay under a MassHealth program (Testimony of Appellant).
5. Appellant was not offered health insurance for her work (Testimony of Appellant).

6. Appellant had no health insurance in 2018. She has been assessed a tax penalty for all of 2018. Appellant has appealed the assessment. Her mother had Medicare coverage and her daughter had insurance through the college she attended. As of September 1, 2019, Appellant had coverage through the Connector. (Exhibits 1 and 2).

7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.

8. According to Table 3 of Schedule HC for 2018, the appellant who filed her Massachusetts taxes as Head of Household with two dependents claimed with a Federal adjusted gross income of \$33,188 could afford to pay \$95 per month for health insurance. According to Table 4, Appellant, 48 years old and living in Plymouth County, could have purchased insurance for \$354 per month for a plan for an individual. Insurance on the individual market was not affordable to the appellant (Schedule HC for 2018, Tables 3 and 4, Exhibit 1).

9. According to Table 2 of Schedule HC for 2018, Appellant earning less than \$61,260 (the income limit for a tax household of three) per year, would have been eligible for the ConnectorCare program based upon income. She would also be eligible because she had no access to employer-sponsored coverage (Table 2 of Schedule HC-2018, Exhibit 1, 956 CMR12.00 et seq.).

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 2018 (Testimony of Appellant).

11. Appellant fell more than 30 days behind in her rent payments once during 2018 (January and February) (Testimony of Appellant).

12. Appellant received a shut-off notice for her electricity and had her gas service turned off in 2018 (Testimony of Appellant).

13. Appellant had the following monthly expenses for basic necessities in 2018: rent-\$1,100 on average; heat-\$195; electricity-\$118; phone-\$89; food and personal items-\$600; car insurance-\$189; gas-\$80; car payments-\$369; clothes-\$50. Appellant provides support for her mother who is deaf, mute, legally blind, and who suffers from dementia. Appellant has cared for her mother for the last 27 years. (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 2018 should be waived, either in whole or in part.

G.L. c. 111M, § 2, also called the “individual mandate,” requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable” under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for “each of the months” that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 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 2018. The appellant has appealed the assessment. Exhibits 1, 2. To determine if the rest of the penalty should be waived in whole or in part, we must consider whether affordable insurance which met minimum creditable coverage standards was available to the appellant through employment, through the individual market, or through a government-sponsored program during the months the appellant was uninsured. If affordable insurance was available, we must determine if such insurance was, in fact, not affordable to the appellant because Appellant experienced a financial hardship as defined in 956 CMR 6.08.

According to Table 3 of Schedule HC for 2018, the appellant who filed her Massachusetts taxes as Head of Household with two dependents claimed with a Federal adjusted gross income of \$33,188 could afford to pay \$95 per month for health insurance. According to Table 4, Appellant, 48 years old and living in Plymouth County, could have purchased insurance for \$354 per month for a plan for an individual. Insurance on the individual market was not affordable to the appellant. See Schedule HC for 2018, Tables 3 and 4, Exhibit 1.

Appellant worked as a personal care assistant during 2018. She was not offered health insurance. See the testimony of the appellant which I find to be credible.

Appellant was income-eligible for ConnectorCare coverage. She earned less than \$61,260, the income limit for a tax household of three. She was also eligible because she was not offered insurance through her job. See the testimony of the appellant which I find to be credible, Exhibit 1, Table 2 of Schedule HC for 2018 and 956 CMR 12.00 et.seq.

Since the appellant could have had ConnectorCare coverage, 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 2018: rent-\$1,100; heat-\$195; electricity-\$118; phone-\$89; food and personal items-\$600; car insurance-\$189; gas-\$80; car payments-\$369; clothes- \$50. Appellant provides support for her mother who is deaf, mute, legally blind, and who suffers from dementia. Appellant has cared for her mother for the last 27 years. See Testimony of Appellant, which I find to be credible.

Based upon Appellant's adjusted gross income, she had income of about \$2,700 before taxes a month. Her monthly expenses amounted to approximately \$2,800. After paying her expenses for basic necessities, Appellant had no disposable income. In fact, she ran a deficit each month. Based upon theses facts, 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), such that the appellant had a serious financial hardship so that the cost of purchasing health insurance was not affordable for the appellant.

In addition, during 2018 Appellant received a shut-off notice for her electricity, fell more than 30 days behind in her rent payments once, and had her gas service shut off. See the testimony of the appellant which I find to be credible. Receiving shut off notices, falling more than 30 days behind in rent payments, and having a basic utility terminated constitute financial hardships which make the cost of purchasing health insurance unaffordable. See 956 CMR 6.08(1)(a) and (b).

Appellant's penalty is fully waived because of financial hardship. I also note that as of September 1, 2019, the appellant had obtained coverage through the Connector.

Appellant should note that any waiver granted here is for 2018 only and is based upon the specific facts I have found to be true and should not assume that the same determination will be made should Appellant be assessed a penalty in the future.

**PENALTY ASSESSED**

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

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

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

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

CC. Connector Appeals Unit

Hearing Officer

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18554

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

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** September 13, 2019

**Decision Date:** October 16, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The appellant appeared at the hearing which was held by telephone on September 13, 2019. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

Exhibit 1: Appeal Case Information from Schedule HC 2018

Exhibit 2: Statement of Grounds for Appeal 2018 signed and dated April 22, 2019 with letter in support attached

Exhibit 3: Notice of Hearing sent to Appellant dated July 31, 2019 for September 13, 2019 hearing

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant, who filed a 2018 Massachusetts tax return as a single person with no dependents claimed, was 46 years old in 2018 (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Middlesex County in 2018 (Exhibit 1, Testimony of Appellant).
3. Appellant had a Federal adjusted gross income for 2018 of \$25,946 (Exhibit 1, and Testimony of Appellant).
4. Appellant had a job from January until June. She earned \$11.00 an hour. In June, she got a new job where she earned \$4.35 an hour and tips. She had this job for the rest of the year (Testimony of Appellant, Exhibit 2 attachment).
5. Appellant was not offered health insurance at either job she had in 2018. She tried to find coverage through the Connector. She thought the cheapest plan she could obtain would cost \$300 a month. Appellant felt she could not afford to pay that much (Testimony of Appellant).

6. Appellant had no health insurance in 2018. She has been assessed a tax penalty for all of 2018. 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 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
8. According to Table 3 of Schedule HC for 2018, the appellant who filed her Massachusetts taxes as an individual with no dependents claimed with a Federal adjusted gross income of \$25,946 could afford to pay \$90 per month for health insurance. According to Table 4, Appellant, 46 years old and living in Middlesex County, could have purchased insurance for \$354 per month for a plan for an individual. Insurance on the individual market was not affordable to the appellant (Schedule HC for 2018, Tables 3 and 4, Exhibit 1).
9. According to Table 2 of Schedule HC for 2018, Appellant earning less than \$36,180 per year, would have been eligible for the ConnectorCare program based upon income. She would also be eligible because she had no access to employer-sponsored coverage (Table 2 of Schedule HC-2018, Exhibit 1, 956 CMR12.00 et seq.).
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 2018 (Testimony of Appellant).
11. Appellant fell more than 30 days behind in her rent payments twice during 2018 (January and February) (Testimony of Appellant).
12. Appellant received shut-off notices for her electricity in 2018 (Testimony of Appellant).
13. Appellant had the following monthly expenses for basic necessities in 2018: rent-\$750 heat-\$125; electricity-\$100; phone and internet-\$50; food and personal items-\$500; car insurance-\$75; gas-\$100; car payments-\$515; clothes- \$50 (Testimony of Appellant, Exhibit 2 attachment).

## **ANALYSIS AND CONCLUSIONS OF LAW**

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived, either in whole or in part.

G.L. c. 111M, § 2, also called the “individual mandate,” requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable” under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for “each of the months” that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 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 2018. The appellant has appealed the assessment. Exhibits 1, 2. To determine if the rest of the penalty should be waived in whole or in part, we must consider whether affordable insurance which met minimum creditable coverage standards was available to the appellant through employment, through the individual market, or through a government-sponsored program during the months the appellant was uninsured. If affordable insurance was available, we must determine if such insurance was, in fact, not affordable to the appellant because Appellant experienced a financial hardship as defined in 956 CMR 6.08.

According to Table 3 of Schedule HC for 2018, the appellant who filed her Massachusetts taxes as an individual with no dependents claimed with a Federal adjusted gross income of \$25,946 could afford to pay \$90 per month for health insurance. According to Table 4, Appellant, 46 years old and living in Middlesex County, could have purchased insurance for \$354 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 2018, Tables 3 and 4, Exhibit 1.

Appellant had two jobs during 2018. She was not offered health insurance by either employer. See the testimony of the appellant which I find to be credible.

Appellant was income-eligible for ConnectorCare coverage. She earned less than \$36,180, the income limit for an individual. She was also eligible because she was not offered insurance through her job. See the testimony of the appellant which I find to be credible, Table 2 of Schedule HC for 2018 and 956 CMR 12.00 et.seq.

Since the appellant could have had ConnectorCare coverage, 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 2018: rent-\$750 heat-\$125; electricity-\$100; phone and internet-\$50; food and personal items-\$500; car insurance-\$75; gas-\$100; car payments-\$515; clothes-\$50. See Testimony of Appellant, which I find to be credible, and Exhibit 2 attachment.

Based upon Appellant's adjusted gross income, she had income of about \$2,100 before taxes a month. Her monthly expenses amounted to approximately \$2,265. After paying her expenses for basic necessities, Appellant had no disposable income. Based upon theses facts, 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.

In addition, during 2018 Appellant received shut off notices for her electricity and fell more than 30 days behind in her rent payments twice. See the testimony of the appellant which I find to be credible. Receiving shut off notices and falling more than 30 days behind in rent payments constitute financial hardships which make the cost of purchasing health insurance unaffordable. See 956 CMR 6.08(1)(a) and (b).

Appellant's penalty is fully waived because of financial hardship.

Appellant should note that any waiver granted here is for 2018 only and is based upon the specific facts I have found to be true and should not assume that the same determination will be made should Appellant be assessed a penalty in the future.

## **PENALTY ASSESSED**

Number of Months Appealed:   12  

Number of Months Assessed:   0

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

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

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

CC. Connector Appeals Unit

Hearing Officer

Addendum: If Appellant still does not have health insurance, she may wish to contact the Connector by telephone at 1-877-623-6765 or on line at [MAhealthconnector.org](http://MAhealthconnector.org) to see if she might be eligible for ConnectorCare coverage or other Connector health plans.

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18556

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

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** September 13, 2019

**Decision Date:** October 23, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

One of the appellants appeared at the hearing which was held by telephone on September 13, 2019. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2018
- Exhibit 2: Statement of Grounds for Appeal 2018 signed and dated by Appellants on April 24, 2019 with letter in support attached
- Exhibit 3: Notice of Hearing sent to Appellant dated July 31, 2019 for September 13, 2019 hearing
- Exhibit 4: Appellants' Form MA 1099-HC
- Exhibit 5: Appellant's 1099-G 2018
- Exhibit 6: Appellant's earning statements, February and March, 2019
- Exhibit 7: Appellants' mortgage payment receipt, April, 2019
- Exhibit 8: Appellants' electric bill, February, 2019
- Exhibit 9: Appellants' gas bill, February, 2019
- Exhibit 10: Appellants' water bill, August, 2018-February, 2019
- Exhibit 11: Appellants' Home Owners Insurance bill, March, 2019
- Exhibit 12: Appellants' auto loan bill, 2019
- Exhibit 13: Appellants' auto insurance bill, 2019
- Exhibit 14: Appellant's 2018 W-2 form
- Exhibit 15: Appellant's earning statement, March, 2019

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellants, who filed a 2018 Massachusetts tax return jointly with one dependent claimed, were 54 and 36 years old in 2018. The dependent was the appellants' minor child (Exhibit 1, Testimony of Appellant).

2. Appellants lived in Essex County in 2018 (Exhibits 1, Testimony of Appellant).
3. Appellants' Federal Adjusted Gross Income for 2018 was \$82,490 (Exhibit 1, Testimony of Appellant).
4. One of the appellants worked part-time during 2018. She was not offered health insurance through her job. She earned about \$7,000 during the year (Testimony of Appellant, Exhibits 1, 2, 14).
5. The other appellant was employed in January through mid-February, and part of October through the end of the year. He was unemployed the rest of the year. Appellant had health insurance which met the Commonwealth's standards for him, his spouse, and his child through his job during January, February, November, and December, 2018 (Testimony of Appellant, Exhibits 2, 4, and 5).
6. After the appellant who was offered health insurance through his job was laid off, he was offered COBRA coverage. It would have cost \$2,600 a month for a family plan (Exhibit 2, Testimony of Appellant).
7. The appellants have each been assessed a penalty for five months of 2018, March through July. The appellants have 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 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
9. According to Table 3 of Schedule HC for 2018, the appellants with one dependent claimed with an adjusted gross income of \$82,490 could afford to pay \$553 per month for health insurance. According to Table 4, Appellants, ages 54 and 36 and living in Essex County, could have purchased insurance for \$979 per month for a family plan. Insurance on the non-group market was not affordable for the appellants (Schedule HC for 2018-Tables 3 and 4, Exhibit 1).
10. According to Table 2 of Schedule HC for 2018, Appellants earning more than \$61,260, the income limit for a family of three, would have been ineligible for the ConnectorCare program based upon income (Exhibit 1, Table 2 of Schedule HC-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" 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.

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for each appellant for five months of 2018 should be waived, either in whole or in part. Appellants have appealed the penalty. See Exhibits 1, 2.

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

According to Table 3 of Schedule HC for 2018, the appellants with one dependent claimed with an adjusted gross income of \$82,490 could afford to pay \$553 per month for health insurance. According to Table 4, Appellants, ages 54 and 36 and living in Essex County, could have purchased insurance for \$979 per month for a family plan. Insurance on the non-group market was not affordable for the appellants See Schedule HC for 2018-Tables 3 and 4, Exhibit 1.

Neither appellant had access to insurance through employment from March through July. One worked part-time and was not offered coverage and the other was unemployed from March through mid-October. After one of the appellants lost his job, he was offered coverage through COBRA for him and his family. The coverage would have cost \$2,600 a month. This was not affordable for the appellants. See Schedule HC 2018, Tables 3 and 4; Exhibits 2 and 5.

The appellants had no access to health insurance through the ConnectorCare program in 2018. The income cap for a family of three was \$61,260. Appellants earned more than that. See Table 2 of Schedule HC, and Exhibit 1. There is no evidence in the record of the appellants being eligible for any other government-sponsored program.

Appellants had no access to affordable health insurance from March through July, 2018. They had no access to affordable insurance through employment, through a government-sponsored program, or through the individual market. According to Massachusetts General Laws, Chapter 111M, Section 2, the appellants' penalty must be waived. A penalty is imposed only when an individual has access to affordable coverage and does not obtain the coverage. Given that their penalty is waived in full, there is no need to determine if the appellants experienced a financial hardship.

Appellants should note that any waiver granted here is for 2018 only and is based upon the specific facts I have found to be true; they should not assume that the same determination will be made should Appellants be assessed a penalty in the future.

## **PENALTY ASSESSED**

Number of Months Appealed:   10        Number of Months Assessed:   0  

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

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

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

Cc: Connector Appeals Unit

Hearing Officer

# Massachusetts Health Connector Appeals Unit

## Tax Penalty Appeal Decision—Docket No. PA18-557

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

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** September 16, 2019

**Decision Date:** October 1, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2018;
3. Employer's Letter Concerning Health Insurance (1 page, dated 4/25/19);
4. 2017 Final Appeal Decision (Docket No. PA17-479) (3 pages, dated 12/3/18); and
5. Health Connector's Notice of Hearing (3 pages, dated 8/6/19).

### **FINDINGS OF FACT**

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

1. The Appellant appealed from the Department of Revenue's assessment of a 12 month penalty for 2018. The basis for the penalty was that the Appellant was not insured at any time in 2018. Exhibits 1 and 2. Based on Exhibit 1 and the Appellant's hearing testimony, I find that the penalty assessment is accurate.

2. The Appellant filed a Massachusetts personal income tax return for 2018 as a single person with no dependents. The Appellant's federal adjusted gross income (AGI) for 2018 was \$29,326. Exhibit 1.
3. The Appellant was 26 years old at the beginning of 2018 and resided in [name of city or town omitted] in Middlesex County, Massachusetts. Exhibit 1.
4. The Appellant's AGI was more than 150% of the federal poverty level. On this basis I conclude that the Appellant was not automatically exempt from the assessment of a tax penalty in 2018. DOR Table 1.
5. The Appellant's 2018 AGI (\$29,326) was less than 300% of the federal poverty level (\$36,180 for a one person household). DOR Table 2. On this basis I infer that the Appellant would satisfy the financial eligibility requirements for government-subsidized health insurance.
6. Based on DOR Table 3 the Appellant could afford to pay \$4.20% of his income per month – or \$103 per month -- for health insurance coverage in 2018. (The calculation is 4.20 % multiplied by \$29,326 AGI = \$1,231.69 per year divided by 12 months = \$102.64 per month.)
7. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage from an insurer through the Health Connector at his age (under 30 years) and location for \$249 per month in 2018.
8. The Appellant has worked for the same small employer (12 employees) for approximately 8 years, including 2017 (the year involved in his prior tax penalty appeal), 2018 (the year involved in the current tax penalty appeal), and 2019 (the calendar year after the year that is the subject of this appeal). Testimony.
9. The Appellant's employer offers health insurance coverage to its employees, but the Appellant did not enroll in the employer's health plan in 2018 due to its cost. According to the Appellant, only his supervisor has enrolled in the employer's health plan. Testimony.
10. I find that the Appellant would have to pay \$406.10 per month to enroll in his employer's health plan. I base this finding on the letter from the Appellant's employer that he submitted in support of his appeal (Exhibit 3).
11. I find that the Appellant could not afford private health insurance in 2018 because the monthly premium under his employer's health plan (\$406 per month) and under an unsubsidized health plan available through the Health Connector (\$249 per month) is greater than the amount that the Appellant could afford to pay based on his income (\$103 per month). See Findings of Fact, Nos. 6, 7 and 10, above.
12. The Appellant filed a successful appeal from the 12 month penalty that the DOR assessed for 2017 because the Appellant was not insured. Exhibit 4. In the 2017 appeal decision, the Hearing

Officer determined that the Appellant could not afford the \$400 monthly premium for the employer's health plan based on his \$26,174 AGI for 2017 and the affordability tables in effect for 2017 (DOR Tables 3 and 4). See, e.g., Exhibit 4 at paragraphs 7, 8 and 10.

13. In the 2017 tax penalty appeal, the Hearing Officer determined that the Appellant was "not aware" that he could have applied for health insurance through the Health Connector due to the high cost of his employer's health plan. See Exhibit 4 at paragraph 10. The decision in the 2017 appeal was not rendered until December 3, 2018, when it was too late for the Appellant to apply to the Health Connector for health insurance coverage for 2018 (the year at issue in this appeal). See Exhibit 4, page 1 (The decision was rendered promptly after the appeal hearing held on November 19, 2018).
14. I take administrative notice of a "hardship exemption" issued to the Appellant by the United States Department of Human Services that covers the period October 2016 through December 2018, as referenced by the Hearing Officer's 2017 tax penalty appeal decision. See Exhibit 4 at paragraph 9 and Exhibit 4.
15. In 2018 the Appellant had to replace the brake linings, head gasket and alternator on his truck. He paid for a portion of the repairs with a loan from his employer. The Appellant was also behind in payments on two credit cards and substantially reduced the outstanding balance on one of the credit cards. I also take notice of the list of expenses in the 2017 appeal decision that repeated in 2018, except that the rent payments increased to \$1,094 per month. Exhibit 4 at paragraph 11 and 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 2018 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 2018. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2018. (The DOR instructions are published online at <http://www.mass.gov/dor/2018ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2018.)

## ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the state Department of Revenue's (DOR) assessment of a tax penalty because the Appellant did not have health insurance coverage in 2018. See Exhibits 1 and 2. The issue to be decided is whether the penalty should be waived, either in whole or in part.

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

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

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

The decision in the Appellant's appeal from the 2018 tax penalty assessment turns on the affordability provision in Massachusetts law. See Mass. Gen. Laws c. 111M, sec. 2 (a), above. Under the objective standards set forth in DOR Table 3 the Appellant could afford to pay \$103 per month for health insurance. However, he would have to pay \$406 per month for coverage under the health plan that his employer offered or \$249 per month for coverage available through the Health Connector. Either way, the evidence establishes that the Appellant could not afford unsubsidized health insurance. See, e.g., Findings of Fact, Nos. 6, 7 and 10.

During the 2017 tax penalty appeal process the Appellant learned that government-subsidized health insurance might be available to him through the Health Connector even though his employer offered a health plan that he could not afford. However, it was too late to apply for coverage for 2018 since the 2017 appeal decision was not issued until December 3, 2018. See Findings of Fact, No. 13, above. Accordingly I do not consider the possible availability of government-subsidized health insurance in reaching my decision for 2018.

For the foregoing reasons – including the desirability of consistent decisions in administrative appeals – I waive the entire 12 month penalty that the DOR assessed for 2018. The Appellant should not assume, however, that the result I have reached for 2018 will also apply in future years. Accordingly, the Appellant should take steps to obtain health insurance coverage as required by Massachusetts law. See my RECOMMENDATION below.

**PENALTY ASSESSED**

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

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

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

Hearing Officer

Cc: Connector Appeals Unit

RECOMMENDATION. Even though it was too late to apply for health insurance coverage for 2018 by the time your 2017 tax penalty appeal was decided, it is likely that your situation for 2019 and for 2020 may be different.

If the DOR assesses another penalty when you file your 2019 state income tax return in early 2020 I recommend that you file copies of any Health Connector (or MassHealth) eligibility decision or other correspondence with your appeal papers, along with any letter or documents concerning health insurance offered by your employer.

At this point you should also be addressing your health insurance coverage for 2020. In just one month – starting on November 1, 2019 – the Health Connector will begin the “open enrollment” period for health insurance that takes effect in January 2020. Only by filing an application can you learn what options are available for you, what it will cost, select the best insurer for you, and get enrolled in a plan.

You can file an application using the Health Connector’s website at [www.mahealthconnector.org](http://www.mahealthconnector.org) or you can call Customer Service at 1-877-623-6765. Most local hospitals and community health centers will also help you file an application, and the Health Connector’s website will also list other ways to get help if you need it.

# Massachusetts Health Connector Appeals Unit

## Tax Penalty Appeal Decision—Docket No. PA18-559

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

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** September 16, 2019

**Decision Date:** October 11, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant (Husband) appeared for the hearing, which I conducted by telephone. His Wife, the Co-Appellant, was not present. A document was submitted on behalf of the Massachusetts Department of Revenue (DOR) prior to the hearing (Exhibit 1). The hearing record consists of the Husband's testimony under oath on behalf of both Appellants and the following documents that were admitted into evidence as exhibits.

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellants' Statement of Grounds for Appeal – 2018;
3. Appellants' Letter in Support of Appeal (1 page, undated);
4. Husband's 2018 IRS Form 1095-B (1 page);
5. Appellants' 2018 MA Schedule HC (1 page);
6. Appellants' 2018 MA Schedule B (4 pages);
7. Health Connector's Notice of Hearing (3 pages, dated 9/16/19).

### **FINDINGS OF FACT**

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

1. The Appellants appealed from the Department of Revenue's assessment of an 8 month penalty for 2018 (4 months against Husband + 4 months against Wife). The basis for the penalty assessment is not entirely clear from the information that the DOR reported in Exhibit 1.

2. I find that the Appellant's were part-year residents of Massachusetts in 2018 from January 1 through July 31. The Husband's appeal hearing testimony to this effect is supported by the part-year residence reported in the Appellants' 2018 Massachusetts personal income tax return that states that the Appellants' part-year residence started on 1/1/2018 and ended on 8/1/2018. Exhibit 1. See also Exhibit 3 ("moved to North Carolina in in July"). See also Exhibit 1 (N.C. address); Exhibit 2 (N.C. address), and Exhibit 7 (N.C. address).
3. The Husband was employed in Massachusetts while the Appellants were Massachusetts residents. The Husband had Blue Cross Blue Shield of Massachusetts health insurance coverage through his Massachusetts employer that covered both Husband and Wife. The Appellants were both insured in Massachusetts for the months of January – July 2018. I base this finding on the 2018 IRS Form 1095-B that the employer issued to the Husband as evidence of coverage under an employer-sponsored health plan. Exhibit 4. See also Exhibit 5 (2018 Schedule HC reports Blue Cross coverage for both Husband and Wife, at lines 4f and 4g).
4. The Appellants correctly state in Exhibit 3 that their North Carolina tax preparer mistakenly checked on the 2018 MA Form HC that Husband and Wife both had "Full-year MCC" in Massachusetts. Exhibit 5, at lines 3a and 3b. Later in 2018 the Appellants' purchased health insurance in North Carolina. Exhibit 3 and Testimony.
5. Based on the foregoing Findings of Fact, I find that the Appellants (both Husband and Wife) had health insurance coverage in Massachusetts for every month in 2018 in which they were Massachusetts residents.
6. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2018 Massachusetts income tax return.
7. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2018. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2018. (The DOR instructions are published online at <http://www.mass.gov/dor/2018ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2018.)

**ANALYSIS AND CONCLUSIONS OF LAW**

The case is before me on the Appellants’ (Husband and Wife) appeal from the state Department of Revenue’s (DOR) assessment of a four-month tax penalty against Husband and Wife (total penalty = 8 months) because the Appellant did not have health insurance coverage in Massachusetts for all of 2018. See Exhibits 1 and 2. The issue to be decided is whether the penalty should be waived, either in whole or in part.

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

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

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

The appeal in this case is resolved under the provision in state law that Massachusetts residents must have health insurance coverage or face a tax penalty. See Mass. Gen. Laws c. 111M, sec. 2 (a), above. The evidence that the Appellants presented in support of their appeal shows convincingly that they were residents of Massachusetts for the months of January through July 2018 and that both Husband and Wife had health insurance coverage through the Husband’s employer for all of the months that they resided in Massachusetts. See, e.g., Findings of Fact, No. 5, above. The Appellants had no legal obligation to purchase health insurance in Massachusetts after they moved out-of-state.

For the foregoing reason, the entire penalty assessed against both Husband and Wife for 2018 is vacated. See Mass. Gen. Law, c. 111M, sec. 2 (a), and the 2018 Massachusetts Schedule HC Health Care instructions issued by the state Department of Revenue, at page HC-2 concerning part-year residents.

**PENALTY ASSESSED**

Number of Months Appealed:   4   (Husband)\_\_\_\_\_ Number of Months Assessed:   -0-  \_\_\_\_\_  
Number of Months Appealed:   4   (Wife)\_\_\_\_\_ Number of Months Assessed:   -0-  \_\_\_\_\_

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

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

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA18-563

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

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** September 16, 2019

**Decision Date:** October 11, 2019

**AUTHORITY**

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

**JURISDICTION**

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

**HEARING RECORD**

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2018;
3. Family Court Child Custody Order (3 pages, dated 6/11/18);
4. Family Court Divorce Judgment Nisi (2 pages, dated 10/4/18);
5. National Grid Utility Termination Notice (1 page, dated 7/20/18); and
6. Health Connector's Notice of Hearing (3 pages, dated 9/16/19).

## **FINDINGS OF FACT**

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

1. The Appellant appealed from the Department of Revenue's assessment of a 3 month penalty for 2018. The basis for the penalty was that the Appellant was insured for the months of April, May and June 2018 (3 months) and not insured for the months of January – March (3 months) or the months of July – December 2018 (6 months). Exhibits 1 and 2. Based on Exhibit 1 and the Appellant's hearing testimony, I find that the penalty assessment is accurate. (The calculation is 12 months minus 3 months insured = 9 months uninsured minus 3-month administrative grace period (Jan. – March) and a second 3-month administrative grace period (July – Sept) = 3 penalty months (Oct. – Dec.)).
2. The Appellant filed a Massachusetts personal income tax return for 2018 as a Head of Household with 1 dependent. The Appellant's federal adjusted gross income (AGI) for 2018 was \$73,050. Exhibit 1.
3. The Appellant was 35 years old at the beginning of 2018 and resided in [name of city or town omitted] in Norfolk County, Massachusetts. Exhibit 1.
4. The Appellant's AGI was more than 150% of the federal poverty level. On this basis I conclude that the Appellant was not automatically exempt from the assessment of a tax penalty in 2018. DOR Table 1.
5. The Appellant's 2018 AGI (\$73,050) was more than 300% of the federal poverty level (\$48,720 for a two person household). DOR Table 2. On this basis I infer that the Appellant would not satisfy the financial eligibility requirements for government-subsidized health insurance.
6. The Appellant has full legal and physical custody of his son as the result of orders entered by the Massachusetts Probate and Family Court in 2018, including a Separate Support Order entered on June 11, 2018, and a Judgment of Divorce Nisi entered on October 4, 2018. Exhibit 3, pages 1 and 2, and Exhibit 4, pages 1 and 2.

7. Under the terms of the Court Order the Appellant is responsible for both his own medical and dental expenses and for medical health insurance coverage for his son. Exhibit 4, page 1, at paragraphs 2 and 3. Neither party pays alimony to the other party. Exhibit 4, page 1, at paragraph 6.
8. The court custody orders were entered on an emergency basis when the Appellant's son moved in with him. The son's clothes and other belongings were lost in this process. The situation caused additional expenses to the Appellant. Testimony.
9. In 2018 the Appellant was employed by a landscape design firm in a seasonal job. The Appellant was on lay off at the beginning of 2018 and again starting in December 2018.
10. The Appellant thought that he had health insurance coverage at the beginning of 2018 but the insurance was not in effect until April – June. Testimony and Exhibit 1. After June the Appellant could not afford to continue the health insurance due to the issues surrounding his son.
11. On July 20, 2018, National Grid sent the Appellant a utility shut off notice that stated \$2,597.52 was the amount that the Appellant owed to avoid disconnection of his utility service. Exhibit 5.
12. Based on DOR Table 3 the Appellant could afford to pay 8.05% of his income -- or \$490 per month -- for health insurance coverage in 2018. (The calculation is 8.05 % multiplied by \$73,050 AGI = \$5,880.52 per year divided by 12 months = \$490.04 per month.)
13. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage for himself at his age and location for \$290 per month or family coverage for himself and his son \$736 per month.
14. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2018 Massachusetts income tax return.

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

## **ANALYSIS AND CONCLUSIONS OF LAW**

The case is before me on the Appellant's appeal from the state Department of Revenue's (DOR) assessment of a three month tax penalty because the Appellant did not have health insurance coverage for all of 2018. See Exhibits 1 and 2. The issue to be decided is whether the penalty should be waived, either in whole or in part.

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

If these requirements are not met, a tax penalty is assessed for "each of the months" that the person did not have health insurance, as required by the individual mandate. Mass. Gen. Laws 111M, sec. 2(b). See Exhibit 1. There is, however, a three-

month grace period for any lapse in coverage to allow the taxpayer to make a transition between health insurance policies. Health Connector’s Administrative Bulletin 03-10, applying Mass. Gen. Laws 111M, sec. 2(b). See also DOR Instructions, at page HC-3. A tax penalty will not be assessed during the 3-month administrative grace period.

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

In this case, as the court orders and findings of fact suggest, the Appellant’s situation was changing quickly and unexpectedly in 2018. The Appellant’s situation may be quite different and less volatile in 2019 and on into 2020.

Under these circumstances I feel that it is best to rest my decision on the narrowest ground available under the Health Connector’s financial hardship regulation. Accordingly I have concluded that it is appropriate to waive the entire three month penalty due to the utility shut off notice based on the large \$2,597 balance that the Appellant owed to National Grid. 956 Code Mass. Regs. 6.08 (1) (b). See also 956 Code Mass. Regs. 6.08 (1) (d) (“incurred a significant, unexpected increase in essential expenses resulting directly from the consequences of: . . . the sudden responsibility of providing full care for an aging parent or other family member . . .”). See my RECOMMENDATION below.

**PENALTY ASSESSED**

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

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

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

Hearing Officer

Cc: Connector Appeals Unit

RECOMMENDATION. I do not know your situation for the current year (2019) and it is time to consider your health insurance options for this coming year (2020). Most employers hold an “open enrollment” period sometime in the Fall, when you must apply for health insurance starting in January. If your employer offers health insurance as a job benefit you should learn when the open enrollment period is and apply for coverage or renew your existing coverage.

The Health Connector can also be a source of subsidized and also for unsubsidized health insurance which allows you to shop for an alternative to your employers health plan. You can apply online at [www.mahealthconnector.org](http://www.mahealthconnector.org) or call Customer Service at 1-877-623-6765. The Health Connector’s open enrollment period begins on November 1.

You should also learn whether MassHealth might cover your son, which would offer the best coverage at the lowest cost. Customer Service can help you with this.

Finally, if you would like to obtain advice outside the government, I suggest that you contact Health Care For All, a private, nonprofit organization. You can use the website at [www.hcfama.org](http://www.hcfama.org) or call the free consumer helpline at 1-800-272-4636.

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-566

**Appeal Decision:** Penalty Overturned in Full

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** September 17, 2019

**Decision Date:** October 14, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The appellant appeared at the hearing which was held by telephone on September 17, 2019, 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-2018

Ex. 1A—Notice from the Massachusetts Department of Revenue dated February 7, 2019

Ex. 1B—Massachusetts Department of Revenue Notice of Dismissal dated April 30, 2019

Ex. 1C—Appellant's request to vacate dismissal of her appeal dated May 10, 2019

Ex. 1D—Letter from the appellant, undated

Ex. 1E—2018 Form 1099-HC

Ex. 1F--2018 W-2 Wage and Tax Statement

Ex. 1G—Residential Lease dated August 14, 2017

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

Ex. 3—Notice of Hearing

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The appellant is 31-years-old, is single, and does not have children. In 2018, she resided in Hampden County, MA. She had minimum creditable coverage (MCC) health insurance from July through December, 2018. (Testimony, Exs. 1E, 2)

---

<sup>1</sup> Ex. 2 is a computer printout that extracts information submitted by the appellant on Schedule HC as part of her 2018 Massachusetts income tax return. It also contains information about prior appeals, if any.

2. The appellant moved to Massachusetts in August, 2017 and purchased health insurance on the private market for a few months which ended in December, 2017. She leased an apartment from September 1, 2017 through March 31, 2018 for a monthly rent of \$1900.00. (Testimony, Ex. 1G)
3. The appellant began employment with a photography shop in January, 2018 and worked until May, 2018. The employer did not offer health insurance. During her period of employment, she earned \$3241.00. Due to the small amount of money she was earning, she was unable to cover any of her expenses, including rent, and dipped into her savings. (Testimony)
4. The appellant investigated health insurance options at the beginning of 2018 and learned that she had been blocked from obtaining insurance because she had missed the open enrollment period. She also determined that even if she were eligible, any premium would have been beyond her means. (Testimony)
5. The appellant was unable to afford her rent and moved to another apartment with a roommate in June, 2018 for a monthly rent of \$800.00. She looked for other employment and started a new job in July, 2018. The employer offered health insurance and she enrolled in a plan effective July 1, 2018 for the remainder of the year. (Testimony, Ex. 1E)
6. The appellant reported an adjusted gross income of \$25,911.00 on her 2018 federal tax return, and reported that she was single with no dependents. (Ex. 2)
7. From January through June, 2018, when the appellant was uninsured, she had regular monthly expenses of approximately \$2690.00 for her rent (\$1900.00), heat (\$250.00), electricity (\$60.00), internet (\$40.00), cell phone (\$110.00), automobile insurance (\$130.00) and food (\$200.00). In addition, she paid approximately \$100.00/month for credit card debt. (Testimony)

In addition to the foregoing, I take administrative notice of the 2018 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov/dor/docs/dor/health-care/2018>, and in particular, Tables 1-6 which, as discussed below, include the Affordability Schedule and other financial information used in making 2018 individual mandate tax penalty determinations.

## **ANALYSIS AND CONCLUSIONS OF LAW**

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 2018 because the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. She also submitted a letter (Ex. 1D) with her statement in which she stated in part that she earned \$3242.00 from January through June, 2018, and that health insurance was out of the question because she could not afford to cover her monthly expenses.

The appellant did not have insurance from January through June. 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 2018, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, 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 six months, she was assessed and is appealing a penalty of three months (i.e. the months of uninsurance less the gap period of three months).

The appellant testified credibly that she was employed by a photography shop from January through June and health insurance was not offered by the employer. She testified that she investigated her health insurance options at the beginning of the year and determined that she was blocked from purchasing insurance because she had missed the open enrollment period. She testified that she earned a total of \$3240.00 during her six months of employment and could not cover any of her monthly expenses, causing her to dip into savings. She testified that she could not afford her rent and moved into another apartment in June with a roommate. Finally, she testified that she found a new job which began in July and was able to enroll in employer insurance for the rest of the year.

The appellant's testimony regarding her salary during the first six months of 2018 was corroborated by documentation which established that she earned \$3240.00 during that period. That amount is less than 150% of the federal poverty level, which for 2018 was \$18,090.00 for a single person. The instructions for the 2018 Massachusetts Schedule HC (page HC-6) indicate that if an individual's income is at or below 150% of the federal poverty level, the penalty does not apply. Accordingly, the appellant is not subject to a penalty for the months during which she was not insured.<sup>2</sup>

Based upon the foregoing, 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 2018, only and is based upon the extent of information submitted by her in this appeal.

**PENALTY ASSESSED**

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

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

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

---

<sup>2</sup> It is also noted that the appellant's monthly expenses during the time in which she was uninsured were \$450.00 less than the entirety of what she earned during that six-month period, thereby underscoring that she could not have afforded health insurance.

Hearing Officer

Cc: Connector Appeals Unit

**ADDENDUM**

Based on the appellant's testimony regarding her income during the first six months of 2018, she would have qualified to enroll in either MassHealth or ConnectorCare, if she met other eligibility criteria. It is unclear who advised her that she was not eligible because she had missed the open enrollment period.

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-567

**Appeal Decision:** Penalty Overturned in Full

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** September 17, 2019

**Decision Date:** October 15, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The appellant husband appeared at the hearing which was held by telephone on September 17, 2019, 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—2018
- Ex. 1A—Letter from the appellant, undated
- Ex. 1B—Earnings statement dated April 14, 2017
- Ex. 1C—Earnings statement dated December 29, 2017
- Ex. 1D—Earnings statement dated January 5, 2018
- Ex. 1E—Earnings statement dated December 28, 2018
- Ex. 1F—Letter from MassHealth dated January, 2019
- Ex. 1G—Notice to Quit dated September 30, 2015
- Ex. 1H—Summary Process Summons and Complaint dated October 26, 2015
- Ex. 1I—Agreement for Judgment dated November 5, 2015
- Ex. 1J—Monthly Rental Agreement dated January 15, 2008
- 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 2018

---

<sup>1</sup> Ex. 2 is a computer printout that extracts information submitted by the appellants on Schedule HC as part of their 2018 Massachusetts income tax return. It also contains information about prior appeals, if any.

## **FINDINGS OF FACT**

The record shows, and I so find:

1. The appellant husband is 63-years-old, the appellant wife is 43-years-old, and they have one minor child. They resided in Suffolk County, MA in 2018. They did not have health insurance in 2018. (Testimony, Ex. 2)
2. The appellant believes that he and his wife last had health insurance through MassHealth in 2016. They paid a penalty for not having insurance for the 2017 tax year. They filed an appeal of the penalty for the 2014 tax year, and it was waived after internal review by the Health Connector Appeals Unit. (Testimony, Ex. 2)
3. The appellant husband was employed in 2018 and was eligible for employer provided health insurance, but did not enroll because the cost was too high. The plan offered by the employer met Minimum Creditable Coverage (MCC) standards. The appellant's share of the premium for the lowest cost individual plan would have been \$91.50/week, and \$429.00/week for a family plan. (Testimony, Ex. 4)
4. The appellant wife was employed as a babysitter in 2018 and health insurance was not offered by the employer. (Testimony)
5. The appellants have lived in the wife's mother's house for the past three years. In 2018, they contributed \$200.00/month towards the rent, but did not pay for heat, electricity or other utilities. (Testimony)
6. The appellants have been enrolled in health insurance since January, 2019, through the husband's employer. The appellant got a raise in 2019 which enabled him to cover the cost of the insurance. (Testimony, Ex. 1A)
7. The appellants reported an adjusted gross income of \$70,941.00 on their jointly filed 2018 federal tax return, and reported that they were married with one dependent. (Ex. 2)
8. In 2018, the appellants had regular monthly expenses of approximately \$1300.00 for rent (\$200.00), automobile loan (\$400.00), automobile insurance (\$150.00), gasoline (\$200.00), and food (\$350.00). In addition, they paid approximately \$375.00 for their daughter's school expenses and contributed \$180.00 to a college fund for her. (Testimony)

In addition to the foregoing, I take administrative notice of the 2018 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov.dor/docs/dor/health-care/2017>, and in particular, Tables 1-6 which, as discussed below, include the Affordability Schedule and other financial information used in making 2018 individual mandate tax penalty determinations.

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

The appellants submitted a statement of grounds for appeal (Ex. 1), claiming that the individual mandate did not apply to them during 2018 because 1) they were homeless, more than 30 days in arrears in rent or mortgage payments; or received an eviction or foreclosure notice; and 2) the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. They also submitted a letter (Ex. 1A) with their statement in which they stated in part that they were not in a position to pay for health insurance until 2019 when they enrolled in a plan through the husband's employer.

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 2018, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, 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 each.

The appellant husband testified credibly that he was employed in 2018 and was eligible for employer health insurance, but did not enroll because he could not afford the cost. He testified that his wife was employed as a babysitter, but no health insurance was offered by her employer. He testified that they last had insurance in 2016 through MassHealth and paid a penalty for not having insurance for the 2017 tax year. Finally, he testified that he got a raise in 2019 and was able to enroll himself and his wife in his employer's health insurance.

The evidence provided by the appellants established that their income for 2018, \$70,941.00 was greater than 300% of the federal poverty level, which for 2018 was \$61,260.00 for a family of three people. 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 a married couple filing jointly with one or more dependents with a federal adjusted gross income between \$61,261.00 and of \$71,470.00 is deemed to be able to afford a monthly premium of \$440.43 (7.45% of \$70,941.00/12). Table 4 of the Premium Schedule indicates that a 62-year-old individual (the older of the two appellants' ages in 2018) in Suffolk County (where the appellants resided in 2018) filing as a married couple with dependents could have purchased private health insurance for \$1003.00 per month, more than the monthly amount deemed affordable from Table 3. Thus, according to the foregoing analysis, the appellants could not have purchased affordable health insurance in 2018.

The next issue to consider is whether the appellants had access to affordable employer health insurance in 2018. The employer provided information which indicated that the lowest cost for an individual plan was \$91.50/week or \$366.00/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 2018 is considered to be affordable if the employee's contribution for an individual plan is 9.56 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 husband's employer was \$366.00. That cost is less than 9.56 percent of the appellant's projected household MAGI for 2018 (i.e. 9.56 percent of \$70,941.00 is \$6781.96 or \$565.16/month).<sup>2</sup> Hence, since the cost of employer insurance is less than \$565.16/month, they are 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 appellants under the law, they may nevertheless not be subject to a penalty for failing to get health insurance for the months in question if they can show that they experienced a hardship during 2018. 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 appellants' tax penalty for 2018 could be waived if they experienced financial circumstances such that the expense of purchasing health insurance would have caused them to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08.

The evidence presented by the appellants in this case is insufficient to establish that they experienced a financial hardship as defined by law so as to waive their penalty for the months in question. With respect to the first ground on which they appealed, the appellants failed to establish that they were homeless, in arrears or subject to eviction in 2018. The documentation that they submitted with respect to their housing situation was for 2015, and is simply not relevant to an analysis pertaining to 2018. With regard to the second ground of their appeal, the husband testified that in 2018 they incurred basic monthly expenses of approximately \$1300.00. Those expenses were less than their regular monthly pre-tax income of approximately \$5912.00, thereby making an employer health insurance premium of \$366.00/month seemingly manageable. While it is recognized that an approximate difference between income and expenses of \$4612.00 per month is not a panacea, it does not appear on its face that the payment of \$366.00/month for health insurance would have caused an undue hardship.

Based on the foregoing, it is concluded that the appellants could have afforded employer health insurance and failed to establish that they experienced a financial hardship that would entitle them to a waiver of the penalty. Notwithstanding this conclusion, the penalty will be waived for the following reasons. First, while the documentation submitted was irrelevant with respect to their housing situation, it does suggest a level of financial hardship in their recent history from which they are evidently still recovering. Second, the appellants enrolled in health insurance in 2019, thereby demonstrating that the mandate to obtain insurance has not been lost on them.

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 2018, only and is based upon the extent of information submitted by them in this appeal.

#### **PENALTY ASSESSED**

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

---

<sup>2</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.

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

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

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

Hearing Officer

Cc: Connector Appeals Unit

**ADDENDUM**

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

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-568

**Appeal Decision:** Penalty Overturned in Full

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** September 17, 2019

**Decision Date:** October 15, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The appellant appeared at the hearing which was held by telephone on September 17, 2019 and testified under oath. The hearing record consists of her testimony and the following documents were admitted into evidence without her objection:

- Ex. 1—Statement of Grounds for Appeal—2018
- Ex. 1A—Letter from the appellant dated April 15, 2019
- Ex. 1B—College curriculum
- Ex. 2—Appeal Case Information from Schedule HC <sup>1</sup>
- Ex. 3—Notice of Hearing
- Ex. 4—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. 5—2018 Form 1095-C
- Ex. 6—2018 Form MA 1099-HC

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The appellant is 25-years-old, is single and does not have children. She lived in Barnstable County from January through August and in Suffolk County from September through December, 2018. She had minimum creditable coverage (MCC) health insurance from March through August and for December, 2018. (Testimony, Exs. 2,5,6)

---

<sup>1</sup> Ex. 2 is a computer printout that extracts information submitted by the appellant on Schedule HC as part of her 2018 Massachusetts income tax return. It also contains information about prior appeals, if any.

2. The appellant was a full-time student in 2018 and her school did not offer health insurance. (Testimony)
3. The appellant was employed from January through August, 2018, and had employer provided health insurance from March through August, 2018. She subsequently enrolled in insurance through MassHealth for the month of December and has remained enrolled since then. (Testimony, Exs. 2,5,6)
4. The appellant lived in an apartment in Barnstable County from January through September and then moved to another apartment in Suffolk County for the remainder of the year. (Testimony)
5. The appellant mistakenly indicated on her Schedule HC that she only had health insurance for the month of December, 2018. (Testimony, Ex. 2)
6. The appellant reported an adjusted gross income of \$26,758.00 on her 2018 federal tax return, and reported that she was single with no dependents. (Ex. 2)
7. From January through August, 2018, the appellant had regular monthly expenses of approximately \$1775.00 for rent which included heat (\$700.00), utilities (\$25.00), cell phone (\$120.00), car payment (\$260.00), car insurance (\$160.00), food (\$350.00), and gasoline (\$160.00). From September through December, her rent was \$900.00/month including heat, and her regular monthly expenses were \$1975.00. In addition, the appellant paid approximately \$100.00/month for credit card debt. (Testimony)

In addition to the foregoing, I take administrative notice of the 2018 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov.dor/docs/dor/health-care/2018>, and in particular, Tables 1-6 which, as discussed below, include the Affordability Schedule and other financial information used in making 2018 individual mandate tax penalty determinations.

## **ANALYSIS AND CONCLUSIONS OF LAW**

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 2018 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 she was a full-time student in 2018 and her school did not offer health insurance. She further stated that she was unemployed during the months that she did not have insurance and could not afford it.

The appellant had health insurance from March through August, and for the month of December, but indicated on her Schedule HC that she was only insured for the month of 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 2018, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, 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 insured for seven months, she was assessed and is appealing a penalty of eight months based on the information she provided on her Schedule HC (i.e. the number of months of uninsurance less the gap period of three months). However, since the documentation she submitted as part of

the Open Record Request corroborated that she had MCC insurance from March through August, the only remaining months in question are January and February, and September through November when she was uninsured. Accordingly, she should only have been assessed a penalty of two months (i.e. the months of uninsured less the gap period of three months).

The evidence provided by the appellant established that her income for 2018, \$26,758.00, was less than 300% of the federal poverty level (FPL), which for 2018 was \$36,180.00 for a single person. Table 3 of the Affordability Schedule indicates that an individual filing separately with no dependents with a federal adjusted gross income between \$24,121.00 and \$30,150.00 is deemed to be able to afford a monthly premium of \$93.65 (4.20% of \$26,758.00/12). Table 4 of the Premium Schedule indicates that a 24-year-old individual (the appellant's age in 2018) in Suffolk County and Barnstable County (where the appellant resided in 2018) could have purchased private health insurance for \$249.00 per month, more than the monthly amount deemed affordable from Table 3. Thus, according to the foregoing analysis, the appellant could not have purchased affordable private health insurance in 2018.

Since the appellant's income was within 300% of the FPL, she should have qualified for subsidized health insurance through the Health Connector, assuming she met all other eligibility criteria, and for which she would have been subject to a subsidized premium of approximately \$93.65 per month, pursuant to the aforementioned Affordability Schedule in Table 3.

Even though subsidized health insurance may have been affordable to the appellant under the law, she may nevertheless not be subject to a penalty for failing to get health insurance for the months in question if she can show that she experienced a hardship during 2018. 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 2018 could be waived if she experienced financial circumstances such that the expense of purchasing health insurance would have caused her to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08.

The evidence presented by the appellant in this case is sufficient to establish that she experienced a financial hardship as defined by law so as to waive her penalty for the months in question. The appellant testified that in 2018 she incurred basic monthly expenses of approximately \$1875.00 for the first part of the year and \$2075.00 for the latter part (including credit card debt). Although those expenses were less than her regular monthly pre-tax income of approximately \$2229.00, there was an inadequate cushion to make a subsidized health insurance premium of \$93.65/month manageable, particularly given unforeseen expenses which inevitably arise. Hence, it is concluded that the totality of the evidence presented by the appellant established that she experienced financial circumstances such that the expense of purchasing health insurance that met minimum creditable coverage standards would have caused her to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08 (1)(e).

Based on the foregoing, the appellant's request for a waiver from the penalty is **granted**. The determination that the appellant is eligible for a hardship waiver is with respect to 2018, only and is based upon the extent of information submitted by her in this appeal.

**PENALTY ASSESSED**

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

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

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-569

**Appeal Decision:** Penalty Overturned in Full

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** September 17, 2019

**Decision Date:** October 18, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The appellant appeared at the hearing which was held by telephone on September 17, 2019 and testified under oath. The hearing record consists of her testimony and the following documents which were admitted into evidence without her objection:

Ex. 1—Statement of Grounds for Appeal—2018

Ex. 1A—Letter from the appellant, undated

Ex. 1B—Insurance claim information for date of service on April 20, 2018

Ex. 1C—Insurance claim information for date of service on December 20, 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. The documentation was filed in a timely manner and was marked as follows:

Ex. 4—2018 Form 1095-C

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The appellant is 23-years-old, is single and does not have children. In 2018, she had health insurance for the entire year. (Testimony, Ex. 4)

---

<sup>1</sup> Ex. 2 is a computer printout that extracts information submitted by the appellant on Schedule HC as part of her 2018 Massachusetts income tax return. It also contains information about prior appeals, if any.

2. The appellant was insured under her parents' health insurance plan in 2018. They reside in Illinois and the insurance was provided by a company from that state. (Testimony, Exs. 1A, 4)
3. The appellant's 2018 tax return was prepared by H&R Block, and she was advised that their tax software did not allow for the entry of information about an out-of-state insurance company on her Schedule HC. The preparer was limited to entering information about coverage from a Massachusetts based insurer or no coverage at all. (Testimony, Ex. 1A)

### **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 2018 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 she had health insurance through her parents in 2018, but was only given the option on her Schedule HC to provide information from a Massachusetts insurer or to indicate that she had no insurance at all. She further stated that she chose the latter option and filed an appeal, as there was no other option available.

The appellant had health insurance for the entire year, but indicated on her Schedule HC that she was uninsured for the year. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a tax penalty; for Tax Year 2018, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, 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 insured for the entire year, she was assessed and is appealing a penalty of twelve months based on the information she provided on her Schedule HC.

The appellant submitted a Form 1095-C with information about employer provided health insurance coverage, and it corroborated that she was covered for twelve months in 2018. Accordingly, she is not liable for a penalty for any part of the year.

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 2018, only and is based upon the extent of information submitted by her in this appeal.

### **PENALTY ASSESSED**

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

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

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-576

**Appeal Decision:** Appeal Approved  
**Hearing Issue:** Appeal of the 2018 Tax Year Penalty  
**Hearing Date:** September 23, 2019  
**Decision Date:** October 25, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on September 23, 2019. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

Exhibit 1: Notice of Hearing sent to Appellant dated August 7, 2019  
Exhibit 2: Appeal Case Information Sheet from Schedule HC 2018  
Exhibit 3: Notice of Appeal, dated April 17, 2019  
Exhibit 4: Statement in Support of Appeal

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant was 27 years old in 2018 and filed a 2018 Massachusetts tax return as single, with no dependents claimed (Exhibit 2).
2. In early 2018 Appellant resided in another state. Appellant moved to Plymouth County Massachusetts in June 2018 (Testimony of Appellant).
3. Appellant looked for jobs in Massachusetts and Appellant began working in late 2018 (Testimony of Appellant).
4. Appellant's job offered employer sponsored health insurance, but there was a waiting period before Appellant could enroll (Testimony of Appellant).
5. Appellant enrolled in the employer sponsored health insurance in 2019 and was insured at the time of the hearing (Testimony of Appellant).
6. Appellant's Adjusted Gross Income for 2018 was \$21,115 (Exhibit 2).
7. Appellant lived with family members when Appellant moved to Massachusetts in 2018 so that living expenses would be low (Testimony of Appellant).

8. Appellant struggled to pay for basic expenses when Appellant lived in Massachusetts (Testimony of Appellant).
9. Appellant did not have health insurance for the time that Appellant lived in Massachusetts in 2018 (Testimony of Appellant and Exhibit 2).
10. Appellant was assessed a penalty for twelve months for 2018 (Exhibit 2).
11. Appellant filed a hardship appeal on April 17, 2019 (Exhibit 3).
12. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
13. According to Table 3 of Schedule HC for 2018 a person filing as single, with no dependents claimed and with a Federal Adjusted Gross Income of \$21,115 could afford to pay \$51 per month for health insurance. According to Table 4, Appellant, age 27 and living in Plymouth County, could have purchased private insurance for \$249 per month. Private insurance was not considered affordable for Appellant in 2018.
14. According to Table 2 of Schedule HC for 2018, Appellant, earning less than \$36,180 would 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 2018 should be waived, either in whole or in part.

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

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

During the six months that Appellant lived in Massachusetts in 2018, employer sponsored health insurance was not available to Appellant. Appellant was considered to be income eligible for government subsidized health insurance. See Schedule HC for Healthcare, Tables 2 and 3 and Testimony of Appellant, which I find to be credible. Since Appellant potentially had access to affordable insurance, we need to consider whether Appellant experienced a financial hardship as defined by 956 CMR 6.08.

Appellant moved to Massachusetts in June 2018. Appellant lived with family members so that costs would be low while Appellant looked for a job. During the time that Appellant lived in Massachusetts, Appellant struggled to meet basic living expenses. I find that for 2018, the purchase of health insurance would have caused Appellant a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08(1) (e).

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

**PENALTY ASSESSED**

Number of Months Appealed: 12

Number of Months Assessed: 0

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

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

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

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-577

**Appeal Decision:** Appeal Approved  
**Hearing Issue:** Appeal of the 2018 Tax Year Penalty  
**Hearing Date:** September 23, 2019  
**Decision Date:** October 23, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

Appellant appeared at the hearing, which was held by telephone, on September 23, 2019. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

- Exhibit 1: Notice of Hearing sent to Appellant dated August 7, 2019
- Exhibit 2: Appeal Case Information Sheet from Schedule HC 2018
- Exhibit 3: Notice of Appeal dated April 22, 2019
- Exhibit 4: Statement in Support of Appeal

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant filed a 2018 Massachusetts tax return as single, with no dependents claimed (Exhibit 2).
2. Appellant's Adjusted Gross Income for 2018 was \$20,265(Exhibit 2).
3. Appellant had lived in Massachusetts until 2017, when Appellant divorced Appellant's spouse and moved out of the country (Testimony of Appellant).
4. Appellant left the U.S. in late 2017 and did not live in the U.S. in 2018 (Testimony of Appellant).
5. Appellant's only income in 2018 was from a bank account from the time that Appellant had lived in Massachusetts(Testimony of Appellant).
6. Appellant was assessed a penalty for twelve months for 2018 (Exhibit 2).

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

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived, either in whole or in part.

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

Appellant was not a resident of Massachusetts during the entire year of 2018. Therefore I find that the penalty assessed against Appellant for 2018 should be waived in its entirety.

**PENALTY ASSESSED**

Number of Months Appealed: 12

Number of Months Assessed: 0

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

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

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

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-587

**Appeal Decision:** Appeal Granted

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** September 26, 2019

**Decision Date:** October 10, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on September 26, 2019. 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 2018 Schedule HC (1 page)
- Exhibit 2: 4/30/19 Appeal (23 pages)
- Exhibit 3: 8/8/19 Hearing Notice (3 pages)

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant appeals the assessment of a twelve-month penalty on her 2018 income tax return, checking off that, during 2018, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter clothing or other necessities. (Exhibit 1)
2. The Appellant's filing status for 2018 was Single with no dependents. The Appellant's federal AGI in 2018 was \$32,436. The Appellant resided in Middlesex County in 2018. The Appellant turned fifty-eight years old in 2018. (Exhibit 1)
3. The Appellant had no health insurance coverage during 2018. The Appellant last had health insurance coverage about five years ago. (Appellant's testimony)
4. The Appellant has worked full time for the same large department store chain for the past fifteen years. Her employer offers health insurance coverage to employees, and the Appellant is eligible for the coverage. The monthly premium for the coverage is \$100/month. The Appellant enrolled in the coverage initially but dropped it about five years ago because she could not afford the coverage. (Appellant's testimony)

5. In November 2017, the Appellant began suffering from tooth pain. The Appellant had to seek emergency treatment for her dental issues at that time and continuing through most of 2018, as the problems recurred. In April 2018, the Appellant had to have several teeth removed in an emergency setting. The Appellant incurred \$5,593 in costs for her dental treatment in 2017 and 2018. (Appellant’s testimony; Exhibit 2)
6. During 2018, the Appellant was making minimum monthly payments of \$25 to \$96 to seven different creditors on a total balance due of \$12,325. (Exhibit 2: Appellant’s testimony)
7. By letter dated September 26, 2018, MassHealth notified the Appellant that she did not qualify for MassHealth benefits because her income was too high. (Exhibit 2)
8. The Appellant’s basic monthly expenses in 2018 included: rent, \$1,150; electric, \$100; heat/hw, \$50; public transport, \$15; phone, \$60; food, \$300; clothing, \$75; cable/Internet, \$176; and, \$300 minimum payments to creditors for outstanding debt, for a total of \$2,226/monthly and \$26,712 for the year. (Appellant’s testimony)
9. According to Table 2 of the 2018 Schedule HC, the Appellant was eligible for government-subsidized insurance in 2018, since her AGI for 2018 was less than \$36,180 for a family of one.
10. According to Table 3, Affordability, of the Schedule HC 2018, based on her 2018 AGI and Single tax filing status, the Appellant could have afforded to pay up to 8.05% percent of her income for health insurance in 2018, which calculates to a monthly premium of up to \$135 for coverage.
11. According to Table 4, Premiums, the Appellant could have purchased health insurance coverage in the private market in 2018 for \$423/monthly, based on her age and county of residence in 2018.

**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.”

Although the 2018 Schedule HC tables indicate that the Appellant could have afforded to pay a monthly premium of up to \$135 for health insurance coverage in 2018 and her long-time employer offered coverage at a monthly premium of \$100, the Appellant provided credible testimony and substantial documentation to support her contention that she could not have afforded to pay even \$100/monthly for coverage in 2018. From the very start of the year, the Appellant was burdened with unexpected dental issues that persisted through most of 2018 and cost her \$5,593 for treatment. This necessary expense plus her other expenses for basic needs in 2018 add up to \$32,305. This is just short of the Appellant’s 2018 AGI of \$32,436, leaving the Appellant with virtually no income left to purchase health insurance coverage in 2018.

Under these circumstances, I conclude that the Appellant could not have afforded health insurance coverage in 2018, under 956 CMR Section 6.08(1)(e).

Accordingly, the Appellant’s twelve-month penalty for 2018 shall be waived in full.

**PENALTY ASSESSED**

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

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

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-588

**Appeal Decision:** Appeal Granted

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** September 26, 2019

**Decision Date:** October 10, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant's husband and the Appellant's representative appeared at the hearing, which was held by telephone, on September 26, 2019. The Appellant's husband 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's husband and the following documents which were admitted into evidence:

- Exhibit 1: Appeal Case Information from 2018 Schedule HC (1 page)
- Exhibit 2: 4/18/19 Appeal (59 pages)
- Exhibit 3: 9/24/19 Fax/Entry Documents (11 pages)
- Exhibit 4: 8/8/19 Hearing Notice (3 pages)

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellants appealed from the assessment of a twelve-month penalty against the Appellant/wife on their 2018 income tax return. (Exhibit 1)
2. The Appellants' filing status for 2018 was Married Filing Jointly with no dependents. The Appellants' federal AGI in 2018 was \$104,583.
3. The Appellant/wife resided overseas in 2017 and 2018. The Appellant/wife visited her husband briefly in Massachusetts from December 18, 2017, until January 5, 2018, when she returned to her overseas residence. (Exhibit 3; Appellant/husband's testimony)
4. The Appellant/wife did not return to Massachusetts in 2018 until October 9, 2018, when she began residing in Massachusetts. (Exhibit 3; Appellant/husband's testimony)
5. The Appellant/wife has had health insurance coverage in Massachusetts since January 1, 2019. (Appellant/husband's testimony)

**ANALYSIS AND CONCLUSIONS OF LAW**

M.G.L c. 111M, Section 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 who move into Massachusetts during the year are not subject to the individual mandate until the first day of the third month following the month they begin residing in Massachusetts.

In this case, as the Appellant did not begin residing in Massachusetts until November 2018 and had until the beginning of February 2019 to obtain coverage, the individual mandate did not apply to the Appellant during 2018.

Under these circumstances, I conclude that the Appellant was not required to have health insurance coverage in 2018, under M.G.L c. 111M, Section 2.

Accordingly, the Appellant’s three-month penalty for 2018 shall be waived in full.

**PENALTY ASSESSED**

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

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

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-590

**Appeal Decision:** Appeal Approved in Part

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** September 26, 2019

**Decision Date:** October 10, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on September 26, 2019. 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 that were admitted into evidence:

- Exhibit 1: Appeal Case Information from 2018 Schedule HC (1 page)
- Exhibit 2: 5/4/19 Appeal (6 pages)
- Exhibit 3: 8/8/19 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 2018 income tax return. (Exhibit 1)
2. The Appellant's filing status in 2018 was Single with no dependents. The Appellant's federal AGI in 2018 was \$41,069. The Appellant resided in Middlesex County in 2018. The Appellant turned thirty-six years old in 2018. (Exhibit 1)
3. As the basis for his appeal, the Appellant checked off that: "During 2018, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities." (Exhibit 2)
4. The Appellant did not have any health insurance coverage in 2018. (Appellant's testimony)
5. Prior to 2018, the Appellant last had health insurance coverage during the first three months of 2017. He lost the coverage when he lost his job. The Appellant was unemployed for the rest of 2017. (Appellant's testimony; Exhibit 2)

6. On January 1, 2018, the Appellant started a new job. His employer offered health insurance coverage following a 90-day waiting period. The Appellant did not pursue obtaining the coverage, because he did not want to take on any additional expense. The Appellant does not recall what the coverage would have cost him. (Appellant's testimony)
7. The Appellant should have done more in 2018 to obtain health insurance coverage. (Appellant's testimony)
8. The Appellant has employer-sponsored health insurance coverage currently and has had the coverage since February 2019. (Appellant's testimony)
9. The Appellant's basic monthly expenses for 2018 included: \$800, rent; \$175, gas/electric; \$70, phone; \$40, Internet/cable; \$375, food; \$90, public transit; and \$50, clothing, for a total of \$1,600/monthly, and \$19,200 for the year. (Appellant's testimony)
10. According to Table 2 of the 2018 Schedule HC, the Appellant was not eligible for government-subsidized health insurance coverage in 2018, since his federal AGI for 2018 exceeded \$36,180 for a family of one.
11. According to Table 3, Affordability, of the 2018 Schedule HC, based on his 2018 AGI and Single tax filing status, the Appellant could have afforded to pay up to 7.45 percent of his income for health insurance coverage in 2018, which calculates to a monthly premium of up to \$254.
12. According to Table 4, Premiums, of the 2018 Schedule HC, the Appellant could have purchased individual health insurance coverage in the private market in 2018 at a monthly cost of \$290, based on his age and county of residence in 2018.

#### **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.

The Appellant has not presented any evidence to support his position that the expense of purchasing health insurance coverage in 2018 would have caused him a serious deprivation of basic necessities. To the contrary, the Appellant's list of his 2018 expenses for basic necessities adds up to less than half of his 2018 adjusted gross income. While he was offered employer-sponsored coverage from his new employer at the start of 2018, following a 90-day waiting period, the Appellant could not recall at hearing how much the coverage would have cost him, stating merely that he did not want to take on any additional expense at the time. The Appellant acknowledged that he could have, and should have, done more in 2018 to obtain coverage.

Therefore, I conclude that the Appellant has not established that health insurance that provided minimum creditable coverage was not affordable to him in 2018 because he experienced a hardship, under 956 CMR 6.08.

Nevertheless, recognizing that the Appellant was unemployed up until the end 2017 and would have had to wait three months at the start of 2018 for his employer-sponsored coverage to take effect had he enrolled, the Appellant's penalty should be reduced by three months.

Accordingly, the Appellant's twelve-month penalty for 2018 shall be reduced to a nine-month penalty.

#### **PENALTY ASSESSED**

Number of Months Appealed:   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 2018 for the amount equal to one half of the lowest cost health insurance plan available to

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

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

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

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-592

**Appeal Decision:** Appeal Granted

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** September 26, 2019

**Decision Date:** October 11, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on September 26, 2019. The Appellant offered testimony under oath or affirmation. At the end of the hearing, the record was left open until October 11, 2019, for the Appellant to submit additional evidence. The Appellant submitted additional evidence on October 7, 2019, 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 2018 Schedule HC (1 page)
- Exhibit 2: Appeal Case Information from 2018 Schedule HC w/Appeal Status Info (1 page)
- Exhibit 3: 3/1/19 Appeal (5 pages)
- Exhibit 4: 8/8/19 Hearing Notice (3 pages)
- Exhibit 5: 10/17/18 MassHealth Notice of Eligibility (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 2018 income tax return, checking off, "During 2018, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities," as the reason for his appeal. (Exhibit 1)
2. The Appellant's filing status for 2018 was Single with no dependents. The Appellant's federal AGI in 2018 was \$27,468. The Appellant resided in Norfolk County in 2018. The Appellant turned sixty years old in January 2018. (Exhibit 1)
3. The Appellant was determined disabled by a state government in 2011, and he moved back home to Massachusetts as a result. His disability required him to wear special shoes and to do regular physical therapy at a gym. (Appellant's testimony; Exhibit 3)

4. The Appellant works as an instructor at a music school on an as-needed basis. As a result, his income fluctuates from month to month. His employer does not offer health insurance coverage. (Appellant's testimony; Exhibit 3)
5. The Appellant had health insurance through MassHealth from 2015 until early in 2018, when he received a letter from MassHealth, stating that he was no longer covered by MassHealth. (Appellant's testimony)
6. The Appellant checked into getting other health insurance coverage. The cheapest coverage he found cost more than \$100/monthly, and the coverage would not pay for any of the services and attire he required to deal with his disability. The Appellant could not afford coverage at this cost. (Appellant's testimony)
7. The Appellant applied for MassHealth again later in 2018, because his income was down and he thought he might qualify again. (Appellant's testimony)
8. By letter dated October 17, 2018, MassHealth notified the Appellant that his coverage had been renewed effective that date.
9. The Appellant's monthly expenses for basic necessities included: rent, \$900; heaters/ACs/dehumidifier; \$200; vehicle, \$200; repairs/gas/insurance, \$700; phone, \$125; food, \$900; clothing/laundry, \$80; son's shelter, \$45; eyeglasses/dental care, \$25; and, shoes/inserts/PT related to disability, \$165, for a total of \$3,340. (Appellant's testimony)
10. According to Table 2 of the 2018 Schedule HC, the Appellant was eligible for government-subsidized insurance in 2018, since his AGI for 2018 was less than \$36,180 for a family of one.
11. According to Table 3, Affordability, of the Schedule HC 2018, based on his 2018 AGI and Single tax filing status, the Appellant could have afforded to pay up to 4.2 percent of his income for health insurance in 2018, which calculates to a monthly premium of up to \$96 for coverage.
12. According to Table 4, Premiums, the Appellant could have purchased health insurance coverage in the private market in 2018 for \$423/monthly, based on his age and county of residence in 2018.

**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.

The Appellant has presented credible testimony, and persuasive documentation, in support of his contention that he could not have afforded health insurance coverage in 2018, with the exception of the coverage offered by MassHealth. It appears that, due to the nature of his work and the fluctuation of his income, the Appellant may have been removed from MassHealth at the start of the 2018 due to his income going up in 2017. However, as MassHealth restored his coverage in October 2018, it appears that his income was lower in 2018. In any case, as the Appellant's expenses for basic necessities in 2018 exceeded his income, the Appellant could not have afforded to pay for health insurance coverage at any price in 2018.

Therefore, I conclude that the Appellant has established that health insurance that provided minimum creditable coverage was not affordable for him in 2018, under 956 CMR 6.08(1)(e).

Accordingly, the Appellant's twelve-month penalty for 2018 shall be waived in full.

**PENALTY ASSESSED**

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 for the amount equal to one half of the lowest cost health insurance plan available to

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

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

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

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-605

**Appeal Decision:** Appeal Denied

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** September 30, 2019

**Decision Date:** October 17, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on September 30, 2019. 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 2018 Schedule HC (1 page)
- Exhibit 2: 4/5/19 Appeal (9 pages)
- Exhibit 3: 8/9/19 Hearing Notice (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 his 2018 income tax return, checking off "Other" on the appeal form and stating that health insurance coverage was unaffordable for him, as the basis for his appeal. (Exhibit 1)
2. The Appellant's filing status for 2018 was Single with no dependents. The Appellant's federal AGI in 2018 was \$19,618. The Appellant resided in Massachusetts in 2018 only from April 21 to October 25. The Appellant resided in Barnstable County during that time. The Appellant turned thirty-five years old in November 2018. (Exhibit 1)
3. The Appellant resided outside the USA before and after residing in Massachusetts in 2018. (Appellant's testimony)
4. The Appellant was aware of the individual mandate in Massachusetts in 2018, because he had resided in Massachusetts during part of 2017 and had appealed his 2017 tax penalty. (Appellant's testimony; Exhibit 1)

5. The Appellant could not find any employment when he first arrived in Massachusetts in April 2018. He never found a full-time job during his six months in Massachusetts. When he found employment, none of his employers offered health insurance coverage. In mid-May 2018, the Appellant got his first part-time job. He found two additional part-time jobs at the end of June 2018—one involved working weekdays and the other weekends only. (Appellant’s testimony)
6. The Appellant decided not to get health insurance coverage in 2018 because it was too expensive, based on what his friends had told him. He had asked them how much health insurance would cost, and they had told him \$200 a month. This was the only effort that the Appellant made to get health insurance coverage in 2018. (Appellant’s testimony)
7. The Appellant’s monthly expenses for basic necessities in Massachusetts in 2018 included: rent, \$600; scooter, \$500; gas for scooter, \$50; phone, \$80; cable, \$20; food, \$200; and, clothing, \$150, for a total of \$1,300 monthly, and \$7,800 for the six months that the Appellant resided in Massachusetts. (Appellant’s testimony)
8. The Appellant’s flights to and from Massachusetts in 2018 cost him \$1,000. (Appellant’s testimony)
9. According to Table 2 of the 2018 Schedule HC, the Appellant was eligible for government-subsidized insurance in 2018, since his AGI for 2018 was less than \$36,180 for a family of one.
10. According to Table 3, Affordability, of the Schedule HC 2018, based on his 2018 AGI and Single tax filing status, the Appellant could have afforded to pay up to 2.9 percent of his income for health insurance in 2018, which calculates to a monthly premium of up to \$47 for coverage.
11. According to Table 4, Premiums, the Appellant could have purchased health insurance coverage in the private market in 2018 for \$282/monthly, based on his age and county of residence in 2018.

## **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.

For residents who moved into Massachusetts during 2018, the individual mandate applied beginning on the first day of the third month following the month they became a resident. For residents who moved out of Massachusetts during 2018, the mandate applied up until the last day of the last full month that they were a resident. 2018 MA Schedule HC Instructions.

In this case, as the Appellant began residing in Massachusetts on April 21, 2018, the Appellant was required to have health insurance coverage during the three-month period beginning on July 1, 2018, and continuing through September 2018, his last full month of residence, as long as it was affordable.

Full-rate insurance on the private market for \$282/monthly far exceeded the \$47/monthly that the Appellant could have afforded to pay for health insurance coverage in 2018, and none of the Appellant’s three employers offered health insurance coverage to part-time employees.

As the Appellant was eligible for government-subsidized insurance in 2018 and did not have access to employer-sponsored insurance, the Appellant had access to government-subsidized coverage through ConnectorCare in 2018 at a cost of \$47/monthly. While I agree with the Appellant that he could not have afforded to pay the \$200/monthly that his friends told him coverage would cost him in 2018, the Appellant’s effort to obtain coverage should not have ended there. As he knew that he needed to have coverage, he should have taken additional steps to confirm for himself what coverage would cost, by phone or by actually applying for coverage through the Health Connector. If he had done so, he would have found that affordable coverage was available to him at a cost far below \$200.

Therefore, I conclude that the Appellant has not established that health insurance that provided minimum creditable coverage was not affordable for him in 2018, under 956 CMR 6.08(1).

Accordingly, the Appellant's three-month penalty for 2018 shall not be waived or reduced.

**PENALTY ASSESSED**

Number of Months Appealed:   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 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

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

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-606

**Appeal Decision:** Appeal Granted

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** September 30, 2019

**Decision Date:** October 18, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant/husband appeared at the hearing, which was held by telephone, on September 30, 2019. 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/husband and the following documents which were admitted into evidence:

- Exhibit 1: Appeal Case Information from 2018 Schedule HC (1 page)
- Exhibit 2: 5/5/19 Appeal (61 pages)
- Exhibit 3: 8/9/19 Hearing Notice (3 pages)

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellants appealed from the assessment of two eight-month penalties against the Appellants on their 2018 income tax return. (Exhibit 1)
2. The Appellants' filing status for 2018 was Married Filing Jointly with three dependents. The Appellants resided in Bristol County in 2018. The Appellants' federal AGI in 2018 was \$47,634. The Appellants turned forty-one and thirty-six years old in 2018. (Exhibit 1)
3. The Appellants arrived in the USA in November 2017. The Appellants had Green cards, and the Appellant/husband was looking for a job in IT. The Appellant was unsuccessful in his efforts during the first eight months of 2018. (Appellant's testimony)
4. The Appellants applied to the Health Connector for health insurance in January 2018. In March 2018, the Health Connector notified the Appellants that they needed to provide proof of residency by June 7, 2018 in order to qualify to purchase a Health Connector plan. (Appellant's testimony; Exhibit 2)
5. The Appellants submitted the requested proof to the Health Connector by the 6/7/18 deadline. The Health Connector then approved the Appellants for coverage for a monthly premium of \$700+. The

Appellants did not enroll in coverage because the cost was much more than they could afford at the time. (Appellant's testimony)

6. The Appellant got his first job in June or July 2018, when he began working full time at the front desk of a hotel. He was paid \$11/hour with no benefits. He continued working at this job until September 2018. (Appellant's testimony)
7. The Appellants' 2018 basic monthly expenses for necessities included: rent, \$1,500; transportation, car insurance, gas, \$400; ; food, \$500; phone, \$90; cable/Internet, \$45; clothing, \$200; and, other (children's clothing, etc), \$300, for total of \$2,835/monthly. In addition, the Appellants had to purchase a used car for \$5,000. (Appellant's testimony; Exhibit 2)
8. The Appellants had to borrow money from two relatives and a friend in order to pay their basic expenses, until the Appellant/husband found suitable employment. From November 2017 to April 2018, the Appellants borrowed a total of \$28,861 from them. (Appellant's testimony; Exhibit 2)
9. In mid-September 2018, the Appellant began working an IT job for the first time since arriving in the USA. The job paid an annual salary of \$70,000 and offered health insurance coverage after a three-month waiting period. (Appellant's testimony; Exhibit 2)
10. The Appellant enrolled in his employer's family coverage as soon as he could. The coverage began on December 11, 2018. (Appellant's testimony; Exhibit 1)
11. According to Table 2 of the 2018 Schedule HC, the Appellants were eligible for government-subsidized insurance in 2018, since their AGI for 2018 was less than \$86,340 for a family of five.
12. According to Table 3, Affordability, of the Schedule HC 2018, based on their 2018 AGI and Married Filing Joint with three dependents tax filing status, the Appellants could have afforded to pay up to 4.95% percent of their income for health insurance in 2018, which calculates to a monthly premium of up to \$196 for coverage.
13. According to Table 4, Premiums, the Appellants could have purchased health insurance coverage in the private market in 2018 for \$777/monthly, based on their ages and county of residence in 2018.

## **ANALYSIS AND CONCLUSIONS OF LAW**

M.G.L c. 111M, Section 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 Appellants had a three-month grace period at the start of 2018 to obtain health insurance coverage, after arriving in the USA at the end of 2017. The Appellants applied to the Health Connector for coverage, promptly, in January 2018, and the Health Connector informed them in March 2018 that they needed to provide proof of residency by June 7, 2018, in order to qualify. The Appellants provided the requested proof, and then learned that coverage for their family would cost over \$700/monthly. This cost was more than triple what, in hindsight, Table 3, Affordability, indicates the Appellants could have afforded to pay for coverage in 2018. The \$700+/monthly premium could only have been based on the Appellants' reasonable expectation in the spring of 2018 that the Appellant/husband would soon be working in an IT job with a projected salary of 70K or more. As the Appellants were already deeply in debt and the Appellant/husband was working as a hotel desk clerk, the Appellants could not afford to pay \$700 for coverage at that time.

While it took longer than the Appellant/husband expected, an employer offered the Appellant an IT position paying a \$70K salary during the summer, and the Appellant started his new job in mid-September 2018. The Appellant enrolled his family in the health insurance coverage offered by the employer, as soon as possible, with the coverage starting in December 2018.

Under these circumstances, I conclude that the Appellants could not have afforded to purchase health insurance from April through November 2018, under 956 CMR 6.08(e), due to the financial circumstances that they were experiencing.

Accordingly, the Appellants' two eight-month penalties for 2018 shall be waived in full.

**PENALTY ASSESSED**

Number of Months Appealed:   16                        Number of Months Assessed:   0  

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

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

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-607

**Appeal Decision:** Appeal Granted

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** September 30, 2019

**Decision Date:** October 21, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on September 30, 2019. The Appellant offered testimony under oath or affirmation. At the end of the hearing, the record was left open until October 14, 2019, for the Appellant to submit additional evidence. The Appellant did not submit any additional evidence, and the record was closed on October 14, 2019.

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

- Exhibit 1: Appeal Case Information from 2018 Schedule HC (1 page)
- Exhibit 2: 5/6/19 Appeal (32 pages)
- Exhibit 3: 8/9/19 Hearing Notice (6 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 2018 income tax return, checking off "During 2018, you were homeless; more than 30 days in arrears in rent or mortgage payments; or received an eviction or foreclosure notice," and stating that he had lost his apartment in October 2018. (Exhibit 2)
2. The Appellant's filing status for 2018 was Single with no dependents. The Appellant's federal AGI in 2018 was \$41,854. The Appellant resided in Plymouth County in 2018. The Appellant turned twenty-seven years old in 2018. (Exhibit 1)
3. The Appellant did not work for an employer that offered health insurance coverage in 2018. (Appellant's testimony)
4. The Appellant has a young daughter. His daughter lives with her mother in a town nearly fifty miles away from where the Appellant lived in 2018. The Appellant was with his daughter every weekend in 2018 and

drove back and forth twice in doing so, for a total of nearly 200 miles of driving each weekend. (Appellant's testimony)

5. In 2018, just after dropping his daughter off at her mother's house, the Appellant blew out the transmission in his car and had to have his car towed back home at a cost of \$400. It cost the Appellant over \$2,000 to repair his car. (Appellant's testimony)
6. The Appellant's basic monthly expenses in 2018 included: rent, \$850; phone, \$90, child support payment, \$600; clothing/food/other for daughter on weekends, \$300; car payment, \$140; insurance, \$187; gas, \$350; m&r, \$275; and, food, \$600, for a total of \$3,392 monthly, and \$40,704 for 2018. (Appellant's testimony)
7. According to Table 2 of the 2018 Schedule HC, the Appellant was not eligible for government-subsidized insurance in 2018, since his AGI for 2018 was more than \$36,180 for a family of one.
8. According to Table 3, Affordability, of the Schedule HC 2018, based on his 2018 AGI and Single tax filer status, the Appellant could have afforded to pay up to 7.45% of his income for health insurance in 2018, which calculates to a monthly premium of up to \$259 for coverage.
9. According to Table 4, Premiums, the Appellant could have purchased health insurance coverage in the private market in 2018 for \$249/monthly, based on his age and county of residence in 2018.

### **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, as the Appellant did not submit any of the documentation that he had requested to submit following the hearing, I must rely solely on the evidence presented at hearing in making my determination. While the Appellant did not submit any documentation to support his position that he was homeless after October 2018, I find credible the Appellant's testimony that he could not afford health insurance coverage in 2018, due to the extraordinary expenses that he had to pay to support and care for his young daughter who lived a long distance from him. Along with the significant expense of fixing his blown-out car transmission on one of these trips during 2018, the Appellant had no money left to pay for health insurance for \$249/monthly in 2018. Under these circumstances, I conclude that the Appellant could not have afforded health insurance coverage in 2018, under 956 CMR Section 6.08(1)(e).

Accordingly, the Appellant's twelve-month penalty for 2018 shall be waived in full.

### **PENALTY ASSESSED**

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

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

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-610

**Appeal Decision:** Appeal Granted

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** September 30, 2019

**Decision Date:** October 18, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on September 30, 2019. 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 2018 Schedule HC (1 page)
- Exhibit 2: 4/30/19 Appeal (11 pages)
- Exhibit 3: 8/9/19 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 her 2018 income tax return, checking off "Other" and stating that she could not afford health insurance coverage in 2018. (Exhibit 2)
2. The Appellant's filing status for 2018 was Single with no dependents. The Appellant's federal AGI in 2018 was \$32,689. The Appellant resided in Worcester County in 2018. The Appellant turned twenty-seven years old in 2018. (Exhibit 1)
3. The Appellant was unemployed from August 2017 until December 2017, when she got a new job, as a bank teller, making \$13.74/hour. Her employer offered health insurance for \$46/weekly. The Appellant did not enroll in the coverage, because she could not afford to pay this much for coverage. (Exhibit 2; Appellant's testimony)
4. The Appellant's basic monthly expenses in 2018 included: mortgage (split with mother; Appellant's share), \$800; electricity, \$250; water/sewer, \$80; car payment, \$240; gas, \$50; insurance, \$200; phone, \$150; cable, \$41; and, food, \$600, for a monthly total of \$2,411, and \$28,932 for the year. In addition, the

Appellant was making regular monthly payments in 2018 of at least \$75 on the credit-card debt that she had taken on when she was unemployed for four months at the end of 2017. (Appellant’s testimony)

5. According to Table 2 of the 2018 Schedule HC, the Appellant was eligible for government-subsidized insurance in 2018, since her AGI for 2018 was less than \$36,180 for a family of one.
6. According to Table 3, Affordability, of the Schedule HC 2018, based on her 2018 AGI and Single tax filer status, the Appellant could have afforded to pay up to 5% of her income for health insurance in 2018, which calculates to a monthly premium of up to \$136 for coverage.
7. According to Table 4, Premiums, the Appellant could have purchased health insurance coverage in the private market in 2018 for \$249/monthly, based on her age and county of residence in 2018.
8. The Appellant has health insurance currently and has had the coverage since January 2019, when her employer gave her a raise. (Appellant’s testimony)

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

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

In this case, the Appellant could not have afforded coverage in the private market in 2018, as the \$249/monthly cost far exceeded the \$136/monthly that Table 3 indicated that she could afford to pay for coverage in 2018. Although the Appellant had access to coverage through her new employer at the start of 2018, the \$46/weekly (or, \$199/monthly) premium cost was also substantially more than the Appellant could afford to pay in 2018. Finally, while the Appellant was eligible for ConnectorCare in 2018, the Appellant could not afford coverage in 2018 for \$136/monthly, because her costs for basic necessities, and making minimum payments for debt she had accumulated while unemployed, nearly exhausted her income for 2018. Under these circumstances, I conclude that the Appellant could not have afforded health insurance coverage in 2018, under 956 CMR Section 6.08(1)(e).

Accordingly, the Appellant’s twelve-month penalty for 2018 shall be waived in full.

### **PENALTY ASSESSED**

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

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

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-614

**Appeal Decision:** Appeal Granted

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** October 1, 2019

**Decision Date:** October 30, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant/husband appeared at the hearing, which was held by telephone, on October 1, 2019. The Appellant/husband 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/husband and the following documents which were admitted into evidence:

- Exhibit 1: Appeal Case Information from 2018 Schedule HC (1 page)
- Exhibit 2: 4/29/19 Appeal (13 pages)
- Exhibit 3: 9/3/19 Hearing Notice (3 pages)

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellants appealed from the assessment of a five-month penalty against the Appellant/wife on their 2018 income tax return, checking off "Other" on the appeal form and attaching a written statement, explaining the reason why she did not have health insurance coverage during the first eight months of 2018. (Exhibit 2)
2. The Appellant/husband had health insurance coverage throughout 2018. (Appellant's testimony)
3. The Appellants' filing status for 2018 was Married Filing Jointly with no dependents. The Appellants' federal AGI in 2018 was \$40,850. The Appellants resided in Norfolk County in 2018. The Appellant turned twenty-three years old in 2018. (Exhibit 1)
4. The Appellant/wife enrolled in a local university Master's program in August 2017. The Appellant enrolled in the health insurance coverage offered by the school at the same time. The Appellant's parents paid for the coverage, and all mail related to the coverage was sent to her parents at their home in Puerto Rico. (Appellant's testimony)

5. At the end of September 2018, the Appellant suffered a concussion. The Appellant’s treatment for her concussion was done through her school-sponsored health insurance coverage. (Appellant’s testimony)
6. As a result of the concussion, the Appellant took a medical leave of absence from her program of study for the first semester. (Appellant’s testimony)
7. The Appellant returned to school for the next semester, at the start of 2018. At that time, the Appellant thought that her insurance coverage continued throughout the school year. (Appellant’s testimony)
8. In the late spring of 2018, the Appellant learned that she no longer had health insurance coverage, when she sought medical treatment. When she checked, she was told that her coverage had terminated at the end of 2017. (Appellant’s testimony)
9. The Appellant’s parents never received any notice that their daughter’s health insurance coverage would terminate at the end of 2017. Hurricane Irma and Hurricane Maria struck Puerto Rico in the fall of 2017, and the Appellant’s parents did not receive any mail for more than six months, as a result. (Appellant’s testimony)
10. The Appellants were married on September 23, 2018. The Appellant/wife got coverage through her husband’s employer-sponsored coverage immediately, and her coverage was effective beginning on September 1, 2018. The coverage continued for the remainder of 2018. (Exhibit 1; Appellant’s testimony)

**ANALYSIS AND CONCLUSIONS OF LAW**

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

In this case, the Appellant had a three-month grace period at the start of 2018 to obtain new coverage after losing her coverage at the end of December 2017. However, the Appellant was unaware that her coverage had terminated at the end of 2017, as her parents had purchased the coverage for her, her parents’ Puerto Rico address was the mailing address of record for the Appellant’s health insurance coverage, and her parents were not receiving any mail in Puerto Rico during this time, as a result of the devastation caused by the late 2017 hurricanes. Consequently, as the Appellant did not learn that she had lost her school coverage until late spring 2018, I find that her three-month grace period for obtaining new coverage started at that time and continued through August 2018. Under these circumstances, I conclude that the Appellant could not have afforded health insurance coverage in 2018, under 956 CMR Section 6.08(3).

Accordingly, the Appellant’s five-month penalty for 2018 shall be waived in full.

**PENALTY ASSESSED**

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

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

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-620

**Appeal Decision** The appeal is approved; the tax penalty is waived in full.

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** October 2, 2019

**Decision Date:** October 9, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on October 2, 2019. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: The Connector's Hearing Notice (3 pages)
- Exhibit 2: An Appeal Case Information from Schedule HC (1 page)
- Exhibit 3: Statement of Grounds (5 pages)
- Exhibit 4: A written statement, submitted by Appellant with his Statement of Grounds (1 page)

### **FINDINGS OF FACT**

The record shows, and I so find:

1. During the tax year 2018, Appellant was 26 years old.
2. At the time of the hearing, he resided in Middlesex County in the Commonwealth of Massachusetts.
3. Appellant reported on his Schedule HC and confirmed in his testimony at the hearing that he had insurance meeting minimum creditable coverage (MCC) standards for the months of January through May 2018, and did not have any health insurance for the remaining seven months of 2018.
4. Appellant is unmarried with no dependents and filed his 2018 taxes as a single taxpayer.
5. During the early part of 2017, Appellant had government-subsidized health insurance, either through Medicaid or the Connector Care program, for which he paid no monthly premium.

6. Starting in September 2017 and continuing through May 2018, Appellant worked for an out-of-state employer that provided him with creditable health insurance.
7. That employment ended in May 2018, leaving Appellant without any health insurance.
8. Appellant was unemployed and seeking employment through the summer of 2018. During that time he lived at his current address in Middlesex County.
9. During that time, Appellant believed that he remained on the government-subsidized health insurance that he had held prior to September 2017 because he had never actively disenrolled from that insurance. In fact, Appellant was not enrolled in government subsidized health insurance at any point after September 2017.
10. Appellant obtained short term employment in August 2018 and remained in that position through November 2018. He was not eligible for health insurance through that employer. During that time, he remained in Middlesex County and commuted to his out-of-state job.
11. In December 2018, Appellant obtained the position where he still worked at the time of the hearing. He obtained health insurance through that employer effective at the beginning of 2019 and was insured as of the date of the hearing.
12. Appellant stated in his Schedule HC and confirmed in his testimony that his adjusted gross income for 2018 was \$32,968. However, because of his period of unemployment, that income was not constant during the year.

## **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 penalty should be waived in his case because obtaining health insurance would have caused him a “serious deprivation” of the necessities of life, which would constitute grounds for a waiver pursuant to 956 CMR 6.08(1)(e).

Appellant was uninsured for only part of the year. Appellant did not have insurance in the months of June through December 2018, a total of seven months. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a penalty ; for Tax Year 2011, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Thus, the appellant is appealing the penalty of only four months.

During the period when he did not have health insurance in 2018, Appellant was either unemployed or working in a temporary position at which he was not eligible for health insurance. Therefore, he did not have access to employer-sponsored health insurance during those periods.

However, during that period, he would likely have been eligible for state-subsidized health insurance, either through the Medicaid or ConnectorCare program. I conclude this because his annual adjusted gross income, which was \$32,968, was below \$36,180, which was 300 percent of the federal poverty

limit (FPL) for a family of one in 2018. (The figure of \$36,180 is obtained from Table 2 of the instructions for Schedule HC, of which I take administrative notice.) An individual without access to affordable employer-sponsored insurance with an income of below 300 percent of FPL is eligible for federal and state subsidies to offset the cost of health insurance. See 956 CMR 12.04 (eligibility for ConnectorCare). Further, Appellant had been eligible for and received government-sponsored health insurance in 2018, supporting an inference that he met the other eligibility requirements of citizenship and residence. Had Appellant applied for and enrolled in government-subsidized insurance, that insurance would have been affordable for him, because the premium amount, if any, is based on the enrollee's income.

Nonetheless, I find that Appellant has satisfied the grounds for a waiver of the tax penalty for insurance. He explained, and I credit the explanation, that he did not enroll in government-subsidized insurance because he erroneously believed that he was still covered from a prior enrollment. Further, during that period, he was unemployed and effectively without income. It would have created a hardship to purchase insurance that was not government-subsidized. In fact he could not have afforded unsubsidized insurance that was available to him in Middlesex County in 2018, because he was unemployed and effectively without income. Additionally, he was seeking work out-of-state during that time, which could have resulted in him relocating, and he could reasonably have concluded that obtaining health insurance in the Commonwealth under those circumstances would have created a financial hardship, given his unemployed and uncertain state. In reaching these conclusions, I also rely on the fact that Appellant has since obtained health insurance and was covered as of the date of the hearing, indicating that this lapse was a temporary, short-term circumstance arising from the hardship caused by a period of unemployment.

**PENALTY ASSESSED**

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

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2011.

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

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-621

**Appeal Decision** The appeal is approved; the tax penalty is waived in full.

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** October 2, 2019

**Decision Date:** October 9, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant's wife (hereafter referred to as Wife) appeared at the hearing, which was held by telephone, on October 2, 2019. The hearing record consists of the Wife's testimony and the following documents which were admitted into evidence:

- Exhibit 1: The Connector's Hearing Notice (3 pages)
- Exhibit 2: An Appeal Case Information Sheet containing information from Appellant's Schedule HC (1 page)
- Exhibit 3: Statement of Grounds (3 pages)
- Exhibit 4: An eligibility notice, submitted by Appellant with his Statement of Grounds (2 pages)
- Exhibit 5: A notice from Eversource, an electric company (2 pages)

### **FINDINGS OF FACT**

The record shows, and I so find:

1. Appellant was 30 years old at the end of 2018.
2. At the time of the hearing, he resided in Hampden County in the Commonwealth of Massachusetts.
3. During 2018, and at the time of the hearing, Appellant was married with three children, all of them under six years old and living at home. He filed his 2018 taxes as married, filing jointly with Wife, and declared three dependents.
4. Appellant reported on his Schedule HC and Wife confirmed in her testimony at the hearing, that Appellant had insurance meeting minimum creditable coverage (MCC) standards only for the month of December 2018 and did not have any health insurance for the first 11 months of 2018.

5. During 2018, Wife and the three children were receiving government-subsidized health insurance, either through the Medicaid or ConnectorCare program.
6. At the start of 2018, Appellant worked for an employer that did not provide employee health insurance.
7. In the early part of 2018, while he was still working, Appellant applied for government-subsidized health insurance benefits. At the time he applied, Wife and the three children had already applied for and obtained government-subsidized health insurance benefits.
8. After applying for government-subsidized health insurance benefits, Appellant was denied on the grounds that his income exceeded the eligibility threshold for subsidized insurance. Appellant called the customer service center to question why that result had been reached, and was told that he was being classified as a separate household from Wife and the three children, and that, as a one-person household, he earned too much to qualify for health insurance benefits. Appellant accepted this answer and did not pursue the application any further.
9. In or around September 2018, Appellant was laid off from his job and began a period of unemployment that lasted through the winter.
10. During that period of unemployment, Appellant and his family experienced financial difficulties. Their heating system broke down and had to be replaced in the middle of the winter. They also had considerable debt of approximately \$20,000 on top of their mortgage, which they were trying to keep on top of.
11. During this period, they were unable to pay their electric bill, which resulted in the utility, Eversource, sending them a shut off notice in October 2018. That shut off notice was received in evidence as Exhibit 5. An Eversource employee came to the house to shut off the electricity, but the family was able to forestall shutoff by working out a payment plan. This occurred during the winter of 2018.
12. In December 2018, Appellant re-applied for government-subsidized insurance. This time, his application was approved, and he was enrolled in insurance effective the start of December 2018. He remained insured as of the date of the hearing, as did Wife and the three children.
13. Appellant reported on his 2018 state income taxes, and Wife confirmed in her testimony, that the household's adjusted gross income for 2018 was \$77,065. However, because of the period of unemployment and resulting job change, that income level was not constant throughout the year.

## **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 penalty should be waived in his case because (1) he had received a shutoff notice for an essential utility (electricity), which would constitute grounds for a waiver pursuant to 956 CMR 6.08(1)(b) and (2) obtaining health insurance would have caused him a "serious deprivation" of the necessities of life, which would constitute grounds for a waiver pursuant to 956 CMR 6.08(1)(e).

Appellant was uninsured for only part of the year. Appellant did not have insurance in the months of January through November 2018, a total of eleven months. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a penalty ; for Tax Year 2011, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Thus, the appellant is appealing the penalty of only eight months.

During the period when he did not have health insurance in 2018, Appellant was either working in a position that did not offer insurance or was unemployed. Therefore, he did not have access to employer-sponsored health insurance during those periods.

Further, during that period, he was unable to obtain government-subsidized insurance. I find as fact that he did apply for and was denied government subsidized insurance; I base that finding on Wife's testimony, which I credit, and Exhibit 4, an eligibility denial, which was admitted into evidence. This is unfortunate because, based on his actual adjusted gross income and household size, Appellant should have been eligible to receive government-subsidized insurance at that time. I base this conclusion on the facts that Wife and children were deemed eligible to receive government-subsidized insurance in 2018, based on their household size and income, which would have been the same as Appellant's, and that Appellant was deemed eligible in December 2018 when he reapplied. However, I credit that he was denied eligibility because he was treated as a separate one-person household. Whether this is the result of an error in the application or in the processing of the application, this circumstance effectively denied Appellant access to government-subsidized insurance during the period in question.

Finally, I have considered whether, during the period of uninsurance, Appellant could have afforded unsubsidized insurance. In making this determination, I take administrative notice of Table 3, Affordability, and Table 4, Premiums, which are included in the instructions for Schedule HC and are used to determine the affordability of unsubsidized insurance for Massachusetts residents in 2018 for purposes of calculating the individual mandate penalty. Based on these tables and his 2018 adjusted gross income, Appellant is deemed to have been able to afford 7.6% of his income, which amounts to \$5,857 annually or \$488 a month, for unsubsidized insurance. At the time, a 30-year-old individual could have obtained self-only coverage in Hampden County for \$282 a month. Thus, the strict application of these tax tables would indicate that Appellant could have afforded unsubsidized insurance. Nonetheless, I conclude that insurance would have been effectively unaffordable for much of the period of uninsurance because Appellant was in fact unemployed at that time and his monthly income, which varied over the course of the year, was at a low point during the period of unemployment.

In any event, I conclude that Appellant has satisfied the grounds for a waiver of the tax penalty, even if he had affordable health insurance available to him. Wife testified, and I credit, based on her testimony and Exhibit 5, that Appellant and his family received a shutoff notice for electricity and faced imminent shutoff. This alone would constitute grounds for a waiver under the governing regulation, 956 CMR 6.08(1)(b). Additionally, during the period of uninsurance, while he was unemployed, Appellant was required to expend money on replacing a heating system that broke down during the winter, and was also trying to service debt and a mortgage. Under these circumstances, paying for insurance would have

caused a “serious deprivation” of the necessities of life, which constitutes grounds for a waiver pursuant to 956 CMR 6.08(1)(e). In reaching this conclusion, I am also supported by the facts that Appellant’s Wife and children were insured during 2018, and that Appellant applied for and obtained health insurance at the end of 2018, which he still carried at the time of the hearing; these facts indicate that his period of uninsurance was a temporary, short-term circumstance arising from the hardship caused by several unfortunate circumstances, including a period of unemployment.

**PENALTY ASSESSED**

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

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2011.

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

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-623

**Appeal Decision** The appeal is approved; the tax penalty is waived in full.

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** October 2, 2019

**Decision Date:** October 9, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on October 2, 2019. The hearing record consists of Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: The Connector's Hearing Notice (3 pages)
- Exhibit 2: An Appeal Case Information sheet containing information from Appellant's Schedule HC (1 page)
- Exhibit 3: Statement of Grounds (3 pages)
- Exhibit 4: An agreement arising from a summary process proceeding in 2018, which was submitted by Appellant with his Statement of Grounds (4 pages)

### **FINDINGS OF FACT**

The record shows, and I so find:

1. As of the end of tax year 2018, Appellant was 39 years old.
2. At the time of the hearing, he resided outside the Commonwealth. During 2018, he resided in Worcester County in the Commonwealth.
3. During 2018, and at the time of the hearing, Appellant was unmarried with no dependents, and filed his 2018 taxes as single.
4. Appellant reported on his Schedule HC and confirmed in his testimony at the hearing, that Appellant had insurance meeting minimum creditable coverage (MCC) standards only for the months of January and February 2018 and did not have any health insurance for the remaining 10 months of 2018.

5. At the start of 2018, Appellant worked for an employer who provided employee health insurance and he was insured through that employer.
6. In March 2018, Appellant was laid off from that job and lost his health insurance.
7. Appellant was offered health insurance through COBRA but the premium was approximately \$600 a month, which he could not afford while unemployed.
8. Appellant went to the website for the Health Connector to look at the prices of health insurance. He saw prices for market-rate, unsubsidized insurance and concluded that this was too expensive for him to afford, so he did not apply or seek to enroll.
9. Appellant remained unemployed until September 2018, when he obtained a temporary job at an hourly rate that was considerably less than he had been making while he had been employed.
10. During the period after his March 2018 layoff, while he was uninsured, Appellant had difficulty meeting necessary expenses.
11. As a result, during this period, Appellant's car was repossessed because he was unable to remain current on the car loan.
12. Further, during this period, Appellant became delinquent in his rent. As a result, his landlord began summary process proceedings to evict him from his rental apartment. Appellant was able to negotiate a payment plan that avoided eviction. However, he was unable to meet even the reduced payments under that plan and remained in arrears on his rent.
13. Unable to find adequately-paying work in the Commonwealth, Appellant relocated out-of-state at the end of 2018. Appellant was still living out-of-state at the time of the hearing.
14. Appellant reported on his 2018 state income taxes, and confirmed in his testimony, that his adjusted gross income for 2018 was \$34,789. However, because of the period of unemployment and resulting job change, that income level was not constant throughout the year.

## **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 penalty should be waived in his case because (1) he had received an eviction notice or been more than 30 days in arrears on rent, which would constitute grounds for a waiver pursuant to 956 CMR 6.08(1)(a) and (2) obtaining health insurance would have caused him a "serious deprivation" of the necessities of life, which would constitute grounds for a waiver pursuant to 956 CMR 6.08(1)(e).

Appellant was uninsured for only part of the year. Appellant did not have insurance in the months of March through December 2018, a total of ten months. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a penalty; for Tax Year 2011, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Thus, the appellant is appealing the penalty of only seven months.

During the period when he did not have health insurance in 2018, Appellant was either unemployed or working in a position that did not offer insurance. Therefore, he did not have access to employer-sponsored health insurance during those periods.

Further, during that period, he did not obtain government-subsidized insurance. Appellant stated that he considered applying for insurance through the Health Connector and looked at the cost of insurance, which he considered to be prohibitively expensive. Based on his testimony, which I credit, I infer that at this time he looked at the cost of unsubsidized health insurance, which, as I find below, would have been unaffordable given his income at the time. However, Appellant would likely have been eligible for government-subsidized insurance through the Medicaid or ConnectorCare programs, which would have been either cost-free or affordable, because premium cost is based on income. I base this conclusion on the fact that Appellant's 2018 adjusted gross income was \$34,789, which is below \$36,180, the amount equal to three times or 300% of the federal poverty level (FPL) for a single individual in 2018. (The figure of \$36,180 is obtained from Table 2 of the instructions to the Schedule HC, governing the individual mandate penalty calculation, of which I take administrative notice.) Persons with an income below 300% of FPL are eligible for government-subsidized insurance, provided they do not have access to affordable employer subsidized insurance and meet requirements of citizenship and residence. See 956 CMR 12.04 (ConnectorCare eligibility regulations). Despite the fact that he might have been eligible had he applied for financial assistance, I credit that Appellant did not realize this fact and that as a consequence he believed that he could not obtain affordable health insurance through a government program.

Finally, I conclude that Appellant was unable to afford unsubsidized health insurance at the time. In making this calculation, I rely on Table 3, Affordability, and Table 4, Premiums, in the instructions to Schedule HC, of which I take administrative notice. Based on those tables, given his income and household size, Appellant was deemed able to afford only five percent of his income for insurance; this amounted to \$1,739 annually or \$144 per month. At the time the lowest-cost health insurance plan available to an individual of Appellant's age in Worcester County cost \$290 per month, which is greater than the amount he was deemed able to afford.

In any event, even if Appellant had access to affordable insurance, he experienced circumstances in 2018 that constitute sufficient grounds for waiving the tax penalty. In particular, he fell more than 30 days behind in his rent; at one point, the amount of his arrears was as great as three months' rent. This led to him receiving a notice of eviction, which resulted in summary process proceedings. He was only narrowly able to avoid eviction by making a payment plan, and even that plan caused him continuing hardship. Thus, he meets the circumstances set forth at 956 CMR 6.08(1)(a). Further, during the period of uninsurance, Appellant's financial circumstances created difficulty meeting other necessary expenses. Even without the cost of paying health insurance premiums, he fell behind in car loan payments, and his car was repossessed. Thus, he meets the circumstances set forth at 956 CMR 6.08(1)(e). As a result, he is entitled to a waiver of his tax penalty.

**PENALTY ASSESSED**

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

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2011.

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

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

Hearing Officer

Cc:    Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-624

**Appeal Decision** The appeal is approved; the tax penalty is waived in full.

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** October 2, 2019

**Decision Date:** October 9, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

This was an appeal of a tax penalty assessed against two Appellants, who are Husband and Wife. The Husband appeared at the hearing, which was held by telephone, on October 2, 2019. The hearing record consists of the Husband's testimony and the following documents, which were admitted into evidence:

- Exhibit 1: The Connector's Hearing Notice (3 pages)
- Exhibit 2: An Appeal Case Information sheet containing information from Appellant's Schedule HC (1 page)
- Exhibit 3: Statement of Grounds (5 pages)
- Exhibit 4: A penalty appeal decision dated October 9, 2012 (6 pages)
- Exhibit 5: A penalty appeal decision dated August 24, 2014 (5 pages)
- Exhibit 6: A penalty appeal decision dated November 21, 2015 (8 pages)
- Exhibit 7: A penalty appeal decision dated November 8, 2017 (3 pages);
- Exhibit 8: A penalty appeal decision dated September 13, 2018 (4 pages)

### **FINDINGS OF FACT**

The record shows, and I so find:

1. As of the end of 2018, Husband was 62 years old and Wife was 63 years old.
2. During 2018 and at the time of the hearing, Appellants resided in Plymouth County in the Commonwealth of Massachusetts.
3. During 2018, and at the time of the hearing, Appellants were married with no dependents. Appellants filed their 2018 taxes as married, filing jointly.

4. Appellants reported on their Schedule HC and Husband confirmed in his testimony at the hearing, that Appellants had no insurance meeting minimum creditable coverage (MCC) standards for the entire 12 months of 2018.
5. Appellants have not had health insurance since at least 2011, when the individual mandate came into effect in the Commonwealth. As a result, they have been assessed tax penalties for failure to obtain insurance yearly since then, and have appealed those penalties.
6. Throughout 2018, Husband was self-employed and so does not have health insurance available through employment.
7. Throughout 2018, Wife worked part-time and is not eligible for health insurance through that employment.
8. Appellants reported on their 2018 Massachusetts taxes, and Husband confirmed in his testimony, that their adjusted gross income for 2018 was \$59,047. Because Appellant is self-employed and has some seasonal employment, that income level is not steady throughout the year.
9. Appellants pay a mortgage of \$1,686 a month or \$20,232 a year.
10. Husband testified that Appellants have annual expenses for other necessities, including heat, utilities, car and homeowner's insurance, and basic cell phone and cable services, of approximately \$20,000 a year.

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

Appellants submitted a statement of grounds for this appeal, claiming that the penalty should be waived in their case because obtaining health insurance would have caused them a "serious deprivation" of the necessities of life, which would constitute grounds for a waiver pursuant to 956 CMR 6.08(1)(e).

During 2018, neither Appellant was eligible for employer-sponsored health insurance because Husband was self-employed and Wife worked a part-time job.

Further, during 2018, Appellants were not eligible for government-subsidized insurance. I base this conclusion on the fact that Appellant's 2018 adjusted gross income was \$59,047, which is above \$48,720, the amount equal to three times or 300% of the federal poverty level (FPL) for a household of two in 2018. (The figure of \$48,720 is obtained from Table 2 of the instructions to the Schedule HC, governing the individual mandate penalty calculation, of which I take administrative notice.) Persons with an income above 300% of FPL are *not* eligible for government-subsidized insurance. See 956 CMR 12.04 (ConnectorCare eligibility requirements). Further, in 2018, Appellants had not yet reached an age where they would have been eligible for Medicare.

Finally, I conclude that Appellants were unable to afford unsubsidized health insurance in 2018. In making this calculation, I rely on Table 3, Affordability, and Table 4, Premiums, in the instructions to Schedule HC, of which I take administrative notice. Based on those tables, given their income and

household size, each Appellant was deemed able to afford only 7.6% percent of their adjusted gross income for health insurance; this amounted to \$4,487.57 annually or \$374 per month. At the time the lowest-cost health insurance plan available to an individual of Appellants' ages in Plymouth County cost \$423 per month, which is greater than the amount they were deemed able to afford.

In conclusion, because Appellants did not have access to employer-sponsored insurance, had a household income above the eligibility threshold for government-subsidized insurance, and could not afford unsubsidized private insurance based on the calculation used to assess the individual mandate penalty, they did not have access to affordable insurance in 2018. As such, they should not have been assessed the tax penalty.

Because I reach that conclusion, I am not required to consider whether Appellants established grounds for a hardship that would have justified waiving their tax penalty if they did have access to affordable insurance but failed to purchase it. Nonetheless, I note that Appellants had necessary household expenses that were considerable in relation to what income they would have had available after taxes, and so would likely have experienced a financial hardship if they had to add the expense of unsubsidized private insurance.

In reaching these conclusions, I note that Appellants have appealed tax penalties in a number of earlier years. In each of those years, based on the decisions in the record, their penalties were waived either in part or in full, based on conclusions that they had met grounds for a financial hardship. As I noted above, my conclusion that their penalty should be waived is based on different grounds, which is that they did not have access to affordable insurance and so should not have been assessed the penalty in the first place.

**PENALTY ASSESSED**

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

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2011.

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

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-625

**Appeal Decision** The appeal is approved; the tax penalty is waived in full.

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** October 2, 2019

**Decision Date:** October 9, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on October 2, 2019. The hearing record consists of Appellant's testimony and the following documents which were admitted into evidence:

Exhibit 1: The Connector's Hearing Notice (3 pages)

Exhibit 2: An Appeal Case Information sheet containing information from Appellant's Schedule HC (1 page)

Exhibit 3: Statement of Grounds (4 pages)

### **FINDINGS OF FACT**

The record shows, and I so find:

1. As of the end of 2018, Appellant was 61 years old.
2. During 2018 and at the time of the hearing, Appellant resided in Plymouth County in the Commonwealth of Massachusetts.
3. During 2018, and at the time of the hearing, Appellant was unmarried with no dependents. She filed her 2018 with a tax filing status of single.
4. Appellant reported on her Schedule HC and confirmed in her testimony at the hearing that she had no insurance meeting minimum creditable coverage (MCC) standards for January through August 2018, but was insured with MCC-compliant insurance for the balance of 2018.
5. Starting in 2016, Appellant was employed by an employer who provided her with health insurance, which she accepted. She was enrolled in that health insurance throughout 2017.

6. Her employer required employees to renew their health insurance during an annual open enrollment period at the end of each calendar year. The new coverage year then began in January of the following year.
7. At the end of 2017, Appellant was instructed by her employer to renew her health insurance. The renewal process was an on-line process. Appellant sought to renew her health insurance on-line and believed that she had successfully completed the process. However, at the start of 2018, she received a notice from her employer that she had not renewed her insurance and so was no longer enrolled. Further, she was notified that she was not able to obtain health insurance again until the next open enrollment period at the end of 2018, when she could obtain insurance for calendar year 2019.
8. Appellant complained to the human resources department at her employer. She was told that she had inadvertently failed to make an attestation that was required as part of her on-line renewal, which resulted in the renewal not being effected. She also complained to her supervisor about this to see if there could be some relief offered. She was unsuccessful in her attempts to get a remedy, and as a result, she was unable to get insurance from that employer in 2019.
9. Appellant was concerned that she did not have health insurance and as a consequence she began to seek other employment, where she might obtain insurance.
10. At some point in the summer of 2018, Appellant found and accepted a new job, which offered insurance to her. However, that employer had a three-month waiting period before she could enroll in insurance. During that three month period, she remained uninsured.
11. When the waiting period ended as of October 2018, Appellant enrolled in health insurance through her new employer and was insured for the remainder of the year. Appellant was insured at the time of the hearing.
12. Appellants reported on her 2018 Massachusetts taxes, and confirmed in her testimony, that her adjusted gross income for 2018 was \$68,028.
13. Appellant testified that she had annual expenses for necessities, including mortgage, condo fees, heat, utilities, and car and homeowner's insurance, of approximately \$26,000 a year.
14. Additionally, Appellant had credit card debt that she was repaying at a rate of \$300 a month.

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

Appellants submitted a statement of grounds for this appeal, claiming that the penalty should be waived in her case because obtaining health insurance would have caused her a "serious deprivation" of the necessities of life, which would constitute grounds for a waiver pursuant to 956 CMR 6.08(1)(e).

Appellant was uninsured for only part of the year. Appellant did not have insurance in the months of January through August 2018, a total of eight months. According to M.G.L. c. 111M, s. 2, residents are

permitted a 63-day gap between periods of coverage without facing a penalty ; for Tax Year 2011, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Thus, the appellant is appealing the penalty of only five months.

During her period of uninsurance in 2018, Appellant was unable to obtain insurance through her employer. I credit her testimony that she was blocked from obtaining insurance because of an error in renewing her health insurance policy and that she attempted to seek relief but was unable to do so. Further, I credit that, when she obtained new employment, she had a three-month waiting period before she was eligible to enroll in employer sponsored insurance through that job. As a result of these circumstances, Appellant did not have access to affordable employer insurance during her period of uninsurance.

Further, during her period of uninsurance, Appellant was not eligible for government-subsidized insurance. I base this conclusion on the fact that Appellant's 2018 adjusted gross income was \$68,028, which is above \$36,180, the amount equal to three times or 300% of the federal poverty level (FPL) for an individual in 2018. (The figure of \$36,180 is obtained from Table 2 of the instructions to the Schedule HC, governing the individual mandate penalty calculation, of which I take administrative notice.) Persons with an income above 300% of FPL are *not* eligible for government-subsidized insurance. See 956 CMR 12.04 (ConnectorCare eligibility requirements).

Finally, I consider whether Appellant was able to afford unsubsidized health insurance in 2018. In making this calculation, I rely on Table 3, Affordability, and Table 4, Premiums, in the instructions to Schedule HC, of which I take administrative notice. Based on those tables, given her income and household size, Appellant was deemed able to afford only 8.05% percent of her adjusted gross income for health insurance; this amounted to \$5,476 annually or \$456 per month. At the time the lowest-cost health insurance plan available to an individual of Appellant's age in Plymouth County cost \$423 per month, which is slightly less than the amount she was deemed able to afford. Thus, by strict application of the tables, she was able to afford unsubsidized health insurance.

Nonetheless, I conclude that Appellant has satisfied the grounds for a waiver of the tax penalty. Her necessary expenses were considerable in relation to the amount of income she would have had available after taxes. Moreover, she had debt that she was paying off, which left her with even less disposable income. The cost of unsubsidized insurance for her would have been considerable, and was only slightly below the amount of money that she was deemed able to afford under the applicable tables. Given the pressure of her debt and other expenses, she would not have been able to make the premium payment without financial hardship. Accordingly, she is entitled to a waiver of the tax penalty under 956 CMR 6.08(1)(e). In reaching this conclusion, I note that Appellant tried diligently to remedy her unfortunate situation by obtaining new employment that would provide her with an affordable insurance option and that she was ultimately successful in doing so, resulting in the fact that she was insured at the end of 2018 and remained insured as of the date of the hearing. This further indicates that her period of uninsurance was a temporary condition that was the result of regrettable circumstances arising from the failure to timely renew her employment-based insurance.

**PENALTY ASSESSED**

Number of Months Appealed: \_\_\_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 2011.

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

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

Hearing Officer

Cc:     Connector Appeals Unit

## Massachusetts Health Connector Appeals Unit

### Tax Penalty Appeal Decision—Docket No. PA18-658

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

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** October 15, 2019

**Decision Date:** October 16, 2019

#### **AUTHORITY**

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

#### **JURISDICTION**

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

#### **HEARING RECORD**

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2018;
3. Appellant's 2017 Final Appeal Decision (Docket No. PA17-668) (4 pages, dated 5/13/18);
4. Appellant's 2015 Final Appeal Decision (Docket No. PA15-807 (5 pages, dated 2/7/17);
5. Appellant's 2014 Final Appeal Decision (Docket No. PA14-343) (7 pages, dated 7/27/15); and
4. Health Connector's Notice of Hearing (3 pages, dated 9/10/19).

## **FINDINGS OF FACT**

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

1. The Appellant appealed from the Department of Revenue's assessment of a 12 month penalty for 2018. The basis for the penalty was that the Appellant was not insured at any time in 2018. Exhibits 1 and 2. Based on Exhibit 1 and the Appellant's hearing testimony, I find that the penalty assessment is accurate.
2. The Appellant filed a Massachusetts personal income tax return for 2018 as a single person with no dependents. The Appellant's federal adjusted gross income (AGI) for 2018 was \$ 31,342. Exhibit 1.
3. The Appellant was 37 years old at the beginning of 2018 and resided in [name of city or town omitted] in Plymouth County, Massachusetts. Exhibit 1.
4. The Appellant did not file either documents or written explanations to support his appeal. The evidence in the hearing record consists of the Appellant's oral testimony at the appeal hearing, the data that the DOR extracted from the Appellant's 2018 state income tax return (Exhibit 1), the 2017, 2015 and 2014 Final Appeal Decisions submitted by the Health Connector (Exhibits 3, 4 and 5), and my administrative notice of information set forth in the DOR Tables 1 - 4 that is recited in my Findings of Fact.
5. The Appellant's AGI was more than 150% of the federal poverty level. On this basis I conclude that the Appellant was not automatically exempt from the assessment of a tax penalty in 2018. DOR Table 1.
6. The Appellant's 2018 AGI (\$31,342) was less than 300% of the federal poverty level (\$36,180 for a one person household). DOR Table 2. On this basis I infer that it is likely that the Appellant would satisfy the financial eligibility requirements for government-subsidized health insurance although the availability of employer-sponsored health insurance makes this uncertain.
7. The Appellant started his current job in 2017. The Appellant represents that he had anticipated enrolling in the health insurance plan offered by his employer for

2018 (the year at issue in this appeal). The Appellant did not enroll in the health plan after he learned that he would get only a 25 cent raise for 2018 (to \$15.25 per hour) and felt that he could not afford the health plan. The Appellant did enroll in the dental insurance plan for 2018 through his employer. Testimony.

8. For 2019 (the year following this appeal) the Appellant represents that he received a \$2.75 per hour raise and that he enrolled in his employer's health insurance plan for the entire year. Testimony.
9. The Appellant's share of the premium for the dental insurance plan for 2018 was \$2.50 per week (\$10.75 per month). The Appellant's uncertain recollection is that \$40 per week (\$172 per month) would have been his share of the 2018 health insurance premium for the health plan offered by his employer. Testimony.
10. Based on DOR Table 3 the Appellant could afford to pay 5.00% of his income -- or \$131 per month -- for health insurance coverage in 2018. (The calculation is 5.00% multiplied by \$31,342 AGI = \$1,567.10 per year divided by 12 months = \$130.59 per month.)
11. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage at his age and location for \$248 per month in 2018.
12. Under the federal Affordable Care Act regulations the Appellant would have to pay \$248 or more per month to be eligible for ConnectorCare since his employer offered him health insurance coverage. On this basis I am unable to determine whether or not the Appellant would have qualified for ConnectorCare coverage for 2018 if he had submitted an application to the Health Connector. (The calculation is 9.5% multiplied by \$31,342 AGI = \$2,977.49 per year divided by 12 = \$248.12 per month. I am using the available AGI as a surrogate for Modified Adjusted Gross Income (MAGI).)
13. In the Appellant's prior appeals Hearing Officers waived the entire penalty assessed by the DOR for 2017 (7 month penalty), 2015 (12 month penalty) and 2014 (12 month penalty) under the Health Connector's financial hardship regulation. Exhibits 3, 4 and 5 (I decided the 2014 appeal, but not the 2015 or 2017 appeals.) The Appellant's AGI for each year, as set forth in the Findings of Fact, was quite consistent and always less than 300% of the annually adjusted federal

poverty level: \$31,342 in 2018 (this appeal); \$30,368 in 2017; \$30,253 in 2015; and \$28,116 in 2014. The evidence of the Appellant's living expenses in each appeal was also similar. See Exhibits 3, 4 and 5.

14. For 2018 the Appellant sustained substantial expenses for the extraction and replacement of four upper front teeth that was only partially covered by the dental insurance that the Appellant obtained through his employer: \$150 emergency consult; \$125 second consult with oral surgeon; \$800 extraction fee (one-half covered by dental insurance); \$60 antibiotics; \$800 emergency room visit; and \$1,200 replacement teeth (one-half covered by dental insurance).
15. In 2018 the Appellant also incurred \$1,500 for car repairs, \$175 per month for car insurance, and \$50 per week for gasoline. The Appellant has now paid off his car loan.
16. As in prior years (see Exhibits 3, 4 and 5) the Appellant owes monthly payments for five credit cards, including a negotiated payment plan for one credit card: \$60, \$65, \$31, \$65, and \$135. The Appellant estimates that in 2019 he still owes approximately \$6,000 outstanding balance on his credit cards. Testimony.
17. Estimates of other 2018 living expenses include: \$800 per month for rent; \$130 per week for groceries; and \$250 per year for clothes. Testimony. See also Exhibits 3, 4 and 5 (Findings of Fact for expenses in prior years).
18. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2018 Massachusetts income tax return.
19. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2018. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth

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

## **ANALYSIS AND CONCLUSIONS OF LAW**

The case is before me on the Appellant's appeal from the state Department of Revenue's (DOR) assessment of a tax penalty because the Appellant did not have health insurance coverage in 2018. See Exhibits 1 and 2. The issue to be decided is whether the penalty should be waived, either in whole or in part.

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

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

The Health Connector's regulations also provide for a "hardship" appeal from the assessment of a penalty. 956 Code Mass. Regs. 6.07 and 6.08. The grounds for a

hardship appeal are summarized in the Statement of Grounds for Appeal – 2017 that the Appellant signed and filed in this case. See Exhibit 2.

In this case, the objective standards set forth in DOR Tables 3 and 4 show that the Appellant could not afford health insurance without a subsidy from either the government or his employer. On his 2018 income the Appellant could afford to pay \$131 per month, but individual coverage would cost his \$290 per month. Mass. Gen. Laws, c. 111M, sec. 2 (a), above. See, e.g., Findings of Fact, Nos. 10, 11 and 12.

After considering all the circumstances I conclude that it is appropriate to waive the entire penalty that the DOR assessed for 2018. First, I conclude that the Appellant's financial situation in 2018 is comparable to his financial situation in 2017, 2015 and 2015 when penalties were waived by Hearing Officers who heard and decided the Appellant's appeals. See, e.g., Findings of Fact, No. 13, above.

Second, I conclude that the Appellant is entitled to relief under the Health Connector's financial hardship regulation. In particular I point to the Appellant's dental expenses in 2018 that were still substantial after the Appellant's dental insurance covered part of the cost. In addition, the Appellant sustained \$1,500 for car repairs and has a continuing financial obligation for multiple credit card debts. See, e.g. Finding of Fact, Nos. 14 17, above. See 956 Code Mass. Regs. 6.08 (1) (e) ([The Appellant] experienced financial circumstances such that the expense of purchasing health insurance that met minimum creditable coverage standards would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities.").

In closing I emphasize that the Appellant's decision to enroll in his employer's health plan to 2019 is an important factor in my decision to waive the entire penalty in what is his fourth tax penalty appeal. Otherwise, I might have simply reduced the number of penalty months. According, the Appellant should take the appropriate steps to reenroll in health insurance coverage for 2020 -- most employers have an open enrollment period in the Fall – or to submit an application to the Health Connector if employer-sponsored health insurance is no longer available to him for some reason or to compare the cost of coverage through the Health Connector to his employer's health plan (see [www.mahealthconnector.org](http://www.mahealthconnector.org) or call Customer Service at 1-877-623-6765). The Appellant should not assume that any tax penalties that DOR might assess in future years will be waived on appeal just because penalties were waived in past years.

**PENALTY ASSESSED**

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

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

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-670

**Appeal Decision:** Penalty Overturned in Full

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** October 16, 2019

**Decision Date:** October 27, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The appellant appeared at the hearing which was held by telephone on October 16, 2019, 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—2018

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

Ex. 3—Notice of Hearing

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The appellant is 48-years-old, is single, and has one minor child. In 2018, she resided in Norfolk County from January through November and in Bristol County for the month of December. She did not have health insurance in 2018. (Testimony, Ex. 2)
2. Prior to 2018, the appellant last had health insurance in 2014. She was never assessed a penalty for being uninsured or not having adequate health insurance. (Testimony)
3. The appellant was employed in 2018, but her employer did not offer health insurance. (Testimony)

---

<sup>1</sup> Ex. 2 is a computer printout that extracts information submitted by the appellant on Schedule HC as part of her 2018 Massachusetts income tax return. It also contains information about prior appeals, if any.

4. The appellant investigated health insurance through the Health Connector for 2018 and determined that the monthly cost of an individual plan would have been approximately \$300.00-\$500.00 which she could not afford. She did not enroll in health insurance for 2019. (Testimony)
5. The appellant resided with her parents from January through November and did not contribute towards household expenses. She moved in with her boyfriend for the month of December and did not pay any part of the rent. She paid her ex-husband \$160.00/month for his health insurance. (Testimony)
6. The appellant reported an adjusted gross income of \$29,460.00 on her 2018 federal tax return, and reported that she was single with no dependents. (Ex. 2)
7. From January through November, 2018, the appellant had regular monthly expenses of approximately \$553.00 for cable and internet service (\$129.00), cell phone (\$40.00), car insurance (\$104.00), food (\$160.00), and gasoline (\$120.00). For the month of December, she had regular monthly expenses of approximately \$1173.00 which included \$110.00 for utilities, \$30.00 for internet service and \$480.00 for food. Her remaining expenses were the same as those listed for the first eleven months of the year. (Testimony)

In addition to the foregoing, I take administrative notice of the 2018 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov.dor/docs/dor/health-care/2018>, and in particular, Tables 1-6 which, as discussed below, include the Affordability Schedule and other financial information used in making 2018 individual mandate tax penalty determinations.

## **ANALYSIS AND CONCLUSIONS OF LAW**

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 2018 because the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. She also submitted a list of expenses (Ex. 1A) in which she indicated that her monthly expenses were \$1588.00 which included \$600.00/month for pet supplies and toiletries, leaving her with \$144.00/month for savings and emergencies.

The appellant did not have insurance from January through December. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a tax penalty; for Tax Year 2018, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Since the appellant was uninsured for the entire year, she was assessed and is appealing a penalty of twelve months.

The appellant testified credibly that she was employed in 2018, but her employer did not offer health insurance. She testified that she last had insurance in 2014 and has never paid a tax penalty for being uninsured. She testified that she lived with her parents for eleven months during which time she did not contribute to household expenses. Finally, she testified that she investigated health insurance through the Health Connector and determined that a monthly premium would have cost between \$300.00-\$500.00 which she could not afford.

The evidence provided by the appellant established that her income for 2018, \$29,460.00, was less than 300% of the federal poverty level (FPL), which for 2018 was \$36,180.00 for a single person. Table 3 of the Affordability Schedule indicates that an individual filing separately with no dependents with a federal adjusted gross income between \$24,121.00 and \$30,150.00 is deemed to be able to afford a monthly premium of \$103.11 (4.20% of \$29,460.00/12). Table 4 of the Premium Schedule indicates that a 47-year-old individual (the appellant's age in 2018) in Norfolk and Bristol Counties (where the appellant resided from January through November, 2018, and in December, 2018) could have purchased private health insurance for \$354.00 per month, more than the monthly amount deemed affordable from Table 3. Thus, according to the foregoing analysis, the appellant could not have purchased affordable private health insurance in 2018.

Since the appellant's income was within 300% of the FPL, the appellant should have qualified for subsidized health insurance through the Health Connector, assuming she met all other eligibility criteria, and for which she would have been subject to a subsidized premium of approximately \$103.11 per month, pursuant to the aforementioned Affordability Schedule in Table 3.<sup>2</sup>

Even though subsidized health insurance may have been affordable to the appellant under the law, she may nevertheless not be subject to a penalty for failing to get health insurance for the months in question if she can show that she experienced a hardship during 2018. 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 2018 could be waived if she experienced financial circumstances such that the expense of purchasing health insurance would have caused her to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08.

The evidence presented by the appellant in this case is insufficient to establish that she experienced a financial hardship as defined by law so as to waive her penalty for the months in question. The appellant testified that she incurred basic monthly expenses of approximately \$553.00 for the first eleven months of 2018 and \$1173.00 for December. Those expenses were less than her regular monthly pre-tax income of approximately \$2455.00 thereby making a subsidized health insurance premium through the Health Connector of \$103.11/month seemingly manageable. While it is recognized that an approximate difference between income and expenses of \$1902.00 and \$1282.00 per month is not a panacea, it does not appear on its face that the payment of \$103.08/month for health insurance would have caused an undue hardship, even if her ex-husband's health insurance and her other miscellaneous expenses are added to the calculation.

Based on the foregoing, it is concluded that the appellant could have afforded subsidized health insurance and failed to establish that she experienced a financial hardship that would entitle her to a waiver of the penalty. Notwithstanding this conclusion, the penalty will be mitigated for the following reasons. First, the fact that the appellant lived with her parents for almost the whole year demonstrates a level of financial distress that the numbers do not suggest. Second, she testified that she is still living with her boyfriend where her expenses are higher than with her parents, although still not within range of a financial hardship.

Therefore, based upon the totality of the evidence, it is concluded that 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 2018, only and is based upon the extent of information submitted by her in this appeal.

---

<sup>2</sup> It is unclear how the appellant determined that a monthly premium through the Health Connector would have cost between \$300.00-\$500.00/month, since the foregoing analysis indicates that she would have qualified for subsidized insurance with a much lower premium.

**PENALTY ASSESSED**

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

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

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

Hearing Officer

Cc:     Connector Appeals Unit

**ADDENDUM**

The appellant is advised not to rely on a similar grant of leniency should she be assessed and appeal a penalty for not purchasing health insurance in the future. The appellant is also advised that the open enrollment period for 2020 health insurance runs from November 1, 2019-January 23, 2020 during which time she should investigate her eligibility for subsidized health insurance through the Health Connector either online at **mahealthconnector.org** or by contacting customer service at 1-877-623-6765.

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-671

**Appeal Decision:** Penalty Overturned in Full

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** October 16, 2019

**Decision Date:** October 27, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The appellant's husband and accountant appeared on her behalf at the hearing which was held by telephone on October 16, 2019 and testified under oath. The hearing record consists of their testimony and the following documents which were admitted into evidence without their objection:

Ex. 1—Statement of Grounds for Appeal—2018

Ex. 1A—Final Appeal Decision in PA14-323 dated August 10, 2015

Ex. 1B—Final Appeal Decision in PA15-720 dated November 12, 2016

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

Ex. 3—Notice of Hearing

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The appellant is 53-years-old, is married and has three children. She did not have health insurance in 2018. (Testimony, Ex. 2)
2. The appellant lived in Lebanon with two of her children in 2018. She spent one week in Massachusetts during the 2018 Christmas holiday. (Testimony)
3. The appellant's husband resided in Massachusetts in 2018 and had health insurance for the entire year. (Testimony, Ex. 2)

---

<sup>1</sup> Ex. 2 is a computer printout that extracts information submitted by the appellant on Schedule HC as part of her jointly filed 2018 Massachusetts income tax return. It also contains information about prior appeals, if any.

4. The appellant was assessed a tax penalty for not having health insurance for tax years 2013-2016. For 2014 and 2015, the appellant filed an appeal with the Health Connector. Following a hearing, the penalties were overturned in full on the ground that she was not a resident of Massachusetts. For 2016, an appeal was filed and the Appeals Unit overturned the penalty after an internal review. (Testimony, Exs. 1A,1B)<sup>2</sup>
5. The appellant and her husband reported an adjusted gross income of \$310,234.00 on their jointly filed 2018 tax return, and reported that they were married with three 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 2018 because of “other” circumstances including not being a resident of the state during her period of uninsurance. 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 2018, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, 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 not a resident of the state, she was assessed and is appealing a penalty of twelve months based on the information she provided on her Schedule HC.

The appellant’s husband and accountant testified credibly that she lived in Lebanon with two of her children for all of 2018. They also testified that she was assessed a tax penalty for being uninsured for prior tax years, and the penalty was overturned on the ground that she did not reside in Massachusetts during the years in question.

Based on the totality of the evidence, it is concluded that since the appellant was not a resident of the state during 2018, her request for a waiver from the penalty is **granted**. The determination that the appellant is eligible for a waiver is with respect to 2018, only and is based upon the extent of information submitted by her in this appeal.

#### **PENALTY ASSESSED**

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

---

<sup>2</sup> The record does not contain a copy of the hearing decision for the 2013 tax year.

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

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-672

**Appeal Decision:** Penalty Overturned in Full

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** October 16, 2019

**Decision Date:** October 28, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The appellant appeared at the hearing which was held by telephone on October 16, 2019, 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—2018
- Ex. 1A—Letter from the appellant dated May 10, 2019
- Ex. 1B—Apartment lease dated August 22, 2017
- Ex. 1C—Residential lease dated September 1, 2018
- Ex. 1D—Unemployment information for 2017
- Ex. 1E—2018 MA Resident Income Tax Return
- Ex. 1F—2018 Form 1099
- Ex. 1G—2018 W-2 Wage and Tax Statement
- Ex. 1H—2018 W-2 Wage and Tax Statement
- Ex. 1I—Email from the Health Connector dated August 22, 2017
- Ex. 2—Appeal Case Information from Schedule HC <sup>1</sup>
- Ex. 3—Notice of Hearing

### **FINDINGS OF FACT**

The record shows, and I so find:

---

<sup>1</sup> Ex. 2 is a computer printout that extracts information submitted by the appellant on Schedule HC as part of her 2018 Massachusetts income tax return. It also contains information about prior appeals, if any.

1. The appellant is 28-years-old, is single, and does not have children. In 2018, she resided in Middlesex County. She had minimum creditable coverage (MCC) health insurance in January, 2018. (Testimony, Ex. 2)
2. The appellant had subsidized health insurance through the Health Connector in 2017 and in January, 2018, for which she paid \$86.00/month. She anticipated the same determination for 2018, but was deemed ineligible. She called the Health Connector several times to find out why she no longer qualified, and no one was able to access her account online, or provide her with an explanation. (Testimony)
3. The appellant was unemployed in 2017, and decided to transition to a new career in 2018. She attended a program to learn software development and held two internships, neither of which offered health insurance. (Testimony)
4. The appellant was often unable to cover her monthly expenses in 2018 and was forced to dip into savings and borrow money from friends. (Testimony)
5. The appellant found a job in 2019 and has been enrolled in employer provided health insurance. (Testimony)
6. The appellant reported an adjusted gross income of \$26,620.00 on her 2018 federal tax return, and reported that she was single with no dependents. (Ex. 2)
7. In 2018, the appellant had regular monthly expenses of approximately \$1685.00 for rent which included heat and electricity (\$1150.00), internet service (\$80.00), cell phone (\$55.00), and food (\$400.00). She did not have a car and could not afford a public transportation pass. She took taxi cabs when necessary. She owned a dog for which she paid about \$400.00/month in food, and \$200.00/month for veterinary matters. (Testimony, Exs. 1B, 1C)

In addition to the foregoing, I take administrative notice of the 2018 Schedule HC Instructions and Worksheets, available at [http://www.mass.gov.dor/docs/dor/health-care/2018](http://www.mass.gov/dor/docs/dor/health-care/2018), and in particular, Tables 1-6 which, as discussed below, include the Affordability Schedule and other financial information used in making 2018 individual mandate tax penalty determinations.

## **ANALYSIS AND CONCLUSIONS OF LAW**

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 2018 because the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. She also submitted a letter (Ex.1A) with her statement in which she stated in part that she could not afford health insurance without assistance and was at a loss to understand why her subsidies were terminated in 2018. She further stated that she lived off unemployment benefits and struggled in 2017, and continued to have a very difficult financial situation in 2018 while she transitioned to a new career.

The appellant did not have insurance from February 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 2018, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Since the appellant was uninsured for eleven months, she was assessed and is appealing a penalty of eight months (i.e. the months of uninsurance less the gap period of three months).

The appellant testified credibly that she was unemployed in 2017, and had subsidized health insurance through the Health Connector which continued into January, 2018. She testified that she was determined ineligible for subsidies in 2018, and called the Health Connector on several occasions for an explanation, but no one was able to access her account online and determine why she no longer qualified. She testified that she held two internships which did not offer health insurance, and was often not able to cover her monthly expenses, forcing her to dip into her savings or borrow money from friends. Finally she testified that she found a job in 2019 and has been enrolled in employer sponsored insurance.

The evidence provided by the appellant established that her income for 2018, \$26,620.00, was less than 300% of the federal poverty level (FPL), which for 2018 was \$36,180.00 for a single person. Table 3 of the Affordability Schedule indicates that an individual filing separately with no dependents with a federal adjusted gross income between \$24,121.00 and \$30,150.00 is deemed to be able to afford a monthly premium of \$93.17 (4.20% of \$26,620.00/12). Table 4 of the Premium Schedule indicates that a 27-year-old individual (the appellant's age in 2018) in Middlesex County (where the appellant resided in 2018) could have purchased private health insurance for \$249.00 per month, more than the monthly amount deemed affordable from Table 3. Thus, according to the foregoing analysis, the appellant could not have purchased affordable private health insurance in 2018.

Since the appellant's income was within 300% of the FPL, the appellant should have qualified for subsidized health insurance through the Health Connector, assuming she met all other eligibility criteria, and for which she would have been subject to a subsidized premium of approximately \$93.17 per month, pursuant to the aforementioned Affordability Schedule in Table 3.

Even though subsidized health insurance may have been affordable to the appellant under the law, she may nevertheless not be subject to a penalty for failing to get health insurance for the months in question if she can show that she experienced a hardship during 2018. 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 2018 could be waived if she experienced financial circumstances such that the expense of purchasing health insurance would have caused her to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08.

The evidence presented by the appellant in this case is sufficient to establish that she experienced a financial hardship as defined by law so as to waive her penalty for the months in question. The appellant testified that she incurred basic monthly expenses of approximately \$1685.00 in 2018. Although those expenses were less than her regular monthly pre-tax income of approximately \$2218.00, thereby making a subsidized insurance premium of \$93.17 seemingly manageable, the difference of \$533.00/month was an inadequate cushion to cover unanticipated expenses that typically arise. Hence, it is concluded that the totality of the evidence presented by the appellant established that she experienced financial circumstances such that the expense of purchasing health insurance that met minimum creditable coverage standards would have caused her to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08 (1)(e).

Based upon the totality of the evidence, it is concluded that 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 hardship waiver is with respect to 2018, only and is based upon the extent of information submitted by her in this appeal.

**PENALTY ASSESSED**

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

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

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

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-673

**Appeal Decision:** Penalty Overturned in Full

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** October 16, 2019

**Decision Date:** October 28, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The appellant appeared at the hearing which was held by telephone on October 16, 2019 and testified under oath. The hearing record consists of his testimony and the following documents which were admitted into evidence without his objection:

Ex. 1—Health Connector’s Notice of Dismissal of Appeal dated April 30, 2019

Ex. 2—Request to Vacate Dismissal dated May 9, 2019

Ex. 2A—2018 W-2 Wage and Tax Statement

Ex. 2B—2018 Form 1095-C

Ex. 3—Appeal Case Information from Schedule HC <sup>1</sup>

Ex. 4—Notice of Hearing

The record was held open for documentation requested by the hearing officer. The documentation had already been received by the Appeals Unit but had not been made part of the record at the time of the hearing. It was marked as follows:

Ex. 5—2018 Form MA 1099-HC

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The appellant is 45-years-old, is single and does not have children. In 2018, he had minimum creditable coverage (MCC) health insurance for the whole year. (Testimony, Ex. 5)

---

<sup>1</sup> Ex. 2 is a computer printout that extracts information submitted by the appellant on Schedule HC as part of his 2018 Massachusetts income tax return. It also contains information about prior appeals, if any.

2. The appellant was employed in 2018 and had employer provided health insurance throughout his employment. (Testimony, Exs. 2B, 5)
3. The appellant mistakenly indicated on his Schedule HC that he did not have health insurance for any month in 2018. (Testimony, Ex. 2)

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

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

The appellant submitted a letter (Ex. 2) as part of his appeal in which he stated in part that he was employed in 2018 and had employer provided health insurance for the whole year. He further stated that he made a mistake on his state tax return and Schedule HC by indicating that he did not have any coverage.

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 2018, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, 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 insured for the entire year, he was assessed and is appealing a penalty of twelve months based on the information he provided on his Schedule HC.

The appellant’s testimony was corroborated by a Form MA 1099-HC which indicated that he had MCC insurance for the whole year. Accordingly, he 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 2018, only and is based upon the extent of information submitted by him in this appeal.

### **PENALTY ASSESSED**

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

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

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the

county where you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

Hearing Officer

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-685

**Appeal Decision:** Appeal Approved.

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** October 18, 2019

**Decision Date:** October 23, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on October 18, 2019. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated September 23, 2019.<sup>1</sup>
- Exhibit 2: Appeal Case Information from Schedule HC 2018 with the Appellant's letter of Appeal dated May 15, 2019 attached.
- Exhibit 3: Notice issued by the Health Connector Appeals Unit on September 13, 2019 that was returned by the Postal Service.

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant turned 23 years old in May 2018. The Appellant filed their Federal Income Tax return as a single person with no dependents claimed (Exhibit 2).
2. The Appellant lived in Hampden County, MA in 2018 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2018 was \$41,707 (Exhibit 2 and Appellant Testimony).

---

<sup>1</sup> Two notices were issued. The notice mailed to the Appellant's address of record was returned from the Postal Service. The Health Connector Appeals Unit updated the address and mailed a second notice to the Appellant's current address.

4. The Appellant had health insurance for the months of January through May but did not have insurance for the period of June through December in tax year 2018 (Exhibit 2 and Appellant Testimony).
5. The Appellant has been assessed a four-month tax penalty for 2018. The Appellant filed an appeal of the assessment in May 2019 (Exhibit 2 and Appellant Testimony).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
7. In accordance with Table 3 of Schedule HC for 2018, the Appellant filing the Federal tax return as a single person, with no dependents claimed, with an annual adjusted gross income of \$41,707 could afford to pay \$259 per month for health insurance. In accordance with Table 4, the Appellant, age 23, living in Hampden County, could have purchased private insurance for \$249 per month for a plan (Schedule HC for 2018). Private insurance was affordable for the Appellant in 2018.
8. The Appellant had employer sponsored health insurance for the period of January through May. The Appellant changed jobs in June. This employer also offered access to health insurance at a monthly cost of \$200 for the lowest tier plan. The Appellant testified that they chose not to enroll in this insurance because the Appellant believed the coverage was not worth \$200 per month. This insurance was affordable in accordance with Table 3 of Schedule HC for 2018 (Appellant Testimony).
9. The Appellant would not have been eligible for ConnectorCare coverage in 2018 because the Appellant's income was greater than 300% of the federal poverty level, which was \$36,180 in 2018. The Appellant had access to affordable insurance through employment in tax year 2018 (See Table 2 of Schedule HC-2018 and 956 CMR 12.04) (Appellant Testimony).
10. The Appellant testified that in addition to working, they attend college full time. The Appellant said that after grants and loans, they must pay approximately \$1,000 monthly toward their college tuition and fees (Appellant Testimony).
11. The Appellant lived in a shared housing arrangement in tax year 2018. The Appellant's 2018 monthly living expenses of \$2,382 included: rent-\$970; electricity-\$50; telephone-\$181; car loan-\$311; gasoline-\$130; food-\$450; internet-\$90 and credit card payments totaling \$200. The Appellant explained that their housemate lost their job and for the months of September and October the Appellant had to pay their share of expenses as well as their own in order to maintain a place to live. The Appellant said that they struggled to meet their expenses and could not afford to purchase health insurance. I found the Appellant to be credible (Appellant Testimony).

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies See G.L. C. 111M, sec. 2(b) and for Tax Year 2010, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c.176Q as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of financial hardship. See 956 CMR 6.08.

The Appellant had employer sponsored health insurance for the period of January through May but did not have health insurance for the seven-month period of June through December in tax year 2018. The Appellant has been assessed a four-month penalty. The Appellant asserts that the penalty should not apply in this case because of financial hardship. To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met minimum creditable coverage standards was available to the Appellant through employment, through private insurance, or through a government sponsored program. If affordable insurance was available, it must be determined if such insurance was not affordable to the Appellant because the Appellant experienced a financial hardship as defined in 956 CMR 6.08.

In accordance with Table 3 of Schedule HC for 2018, the Appellant filing the Federal tax return as a single person with no dependents claimed with an adjusted gross income of \$41,707 could afford to pay \$259 per month for health insurance. According to Table 4, the Appellant, age 23, living in Hampden County, could have purchased a private insurance plan for \$249 per month. See Schedule HC for 2018. Private insurance was affordable for the Appellant in tax year 2018.

The Appellant changed jobs mid-year and their new employer also offered access to health insurance at a cost of \$200 per month. The Appellant did not enroll in this insurance. The Appellant testified that the cost was for the lowest tier plan and the coverage was poor. The Appellant would not have been eligible for ConnectorCare coverage based upon the Appellant's income which was greater than \$36,180. See Table 2 of Schedule HC 2018 and 956 CMR 12.04 for eligibility criteria. Since affordable insurance was available to the Appellant in 2018, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1).

The Appellant testified credibly in addition to working, they attend college full time. In order to remain enrolled, the Appellant is required to pay approximately \$1,000 per month for tuition and fees not covered by student loans and grants. In addition, the Appellant testified to monthly living expenses totaling \$2,382. The Appellant explained that they lived in a shared housing situation in 2018 but their housemate lost their job and for the months of September and October, the Appellant had to pay the additional rent and utility expenses. Given the cost of college and their living expenses, the Appellant testified credibly that they could not afford health insurance.

Based on the evidence and testimony in the record, the Appellant has demonstrated that the cost of purchasing health insurance would have caused the Appellant to experience a serious financial hardship. See 956 CMR 6.08(1)(e). The Appellant's four-month penalty is therefore waived.

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2018. The Appellant should not assume that a similar determination will be made for subsequent tax years should they again be assessed a penalty for failure to have health insurance.

#### **PENALTY ASSESSED**

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

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

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

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

Cc: Connector Appeals Unit

**ADDENDUM**

The Appellant is reminded that open enrollment for health insurance coverage for tax year 2020 begins November 1, 2019.

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-688

**Appeal Decision:** Appeal Approved.

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** October 18, 2019

**Decision Date:** October 22, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on October 18, 2019. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated September 13, 2019.
- Exhibit 2: Appeal Case Information from Schedule HC 2018.
- Exhibit 3: The Statement of Grounds for Appeal signed by the Appellant on May 7, 2019, with attachments.

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant turned 28 years old in May 2018. The Appellant filed their Federal Income Tax return as a single person with no dependents claimed (Exhibit 2).
2. The Appellant lived in Plymouth County, MA in 2018 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2018 was \$43,286 (Exhibit 2 and Appellant Testimony).
4. The Appellant had health insurance for the periods of January through June and November through December. The Appellant did not have health insurance for the period of July through October in tax year 2018 (Exhibit 2 and Appellant Testimony).
5. The Appellant has been assessed a one-month tax penalty for 2018. The Appellant filed an appeal of the assessment in May 2019 (Exhibits 2, 3 and Appellant Testimony).

6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
7. In accordance with Table 3 of Schedule HC for 2018, the Appellant filing the Federal tax return as a single person, with no dependents claimed, with an annual adjusted gross income of \$43,286 could afford to pay \$274 per month for health insurance. In accordance with Table 4, the Appellant, age 28, living in Plymouth County, could have purchased private insurance for \$249 per month for a plan (Schedule HC for 2018). Private insurance was affordable for the Appellant in 2018.
8. The Appellant would not have been eligible for ConnectorCare coverage in 2018 because the Appellant's income was greater than 300% of the federal poverty level, which was \$36,180 in 2018. The Appellant had no access to affordable insurance through employment during the period of June through October in tax year 2018 (See Table 2 of Schedule HC-2018 and 956 CMR 12.04) (Exhibit 3 and Appellant Testimony).
9. The Appellant testified that the adjusted gross income does not adequately reflect their circumstances for all of tax year 2018. The Appellant said that they had employer sponsored health insurance for the period of January through May. The Appellant's employment ended April 20 and the Appellant remained unemployed through December. The Appellant explained that their application for unemployment compensation was initially denied and they did not begin receiving this income until November. The adjusted gross income includes retroactive unemployment compensation that was received in November. In November, the Appellant was approved for MassHealth (Exhibit 3 and Appellant Testimony).
10. The Appellant's 2018 monthly living expenses included: mortgage-\$2,369; heat -\$187; electricity - \$70; telephone-\$70; car insurance-\$240; gasoline-\$87; food-\$120-\$150 and cable/internet- \$130. The Appellant testified credibly that they struggled to pay their monthly expenses during the months of May through October with no income. The Appellant said that they used their savings to meet these expenses. I found the Appellant's testimony to be credible (Exhibit 3 and Appellant Testimony).
11. The Appellant is currently insured (Appellant Testimony).

## **ANALYSIS AND CONCLUSIONS OF LAW**

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

The Appellant did not have health insurance during the period of July through October in tax year 2018. The Appellant has been assessed a one-month penalty. The Appellant asserts that the penalty should not apply in this case because of financial hardship. To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met minimum creditable coverage standards was available to the Appellant through employment, through private insurance, or through a government sponsored program. If affordable insurance was available, it must be determined if such insurance was not affordable to the Appellant because the Appellant experienced a financial hardship as defined in 956 CMR 6.08.

In accordance with Table 3 of Schedule HC for 2018, the Appellant filing the Federal tax return as a single person with no dependents claimed with an adjusted gross income of \$43,286 could afford to pay \$274 per month for health insurance. According to Table 4, the Appellant, age 28, living in Plymouth County, could have purchased a private insurance plan for \$249 per month. See Schedule HC for 2018. Private insurance was affordable for the Appellant in tax year 2018.

The Appellant had no access to affordable employer-sponsored health insurance during the period of July through October 2018. The Appellant would not been eligible for ConnectorCare coverage based upon the Appellant's income which was greater than \$36,180. See Table 2 of Schedule HC 2018 and 956 CMR 12.04 for eligibility criteria. Since affordable insurance was available to the Appellant in 2018, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1).

The Appellant testified credibly that their gross income figure does not reflect their month to month financial circumstances in tax year 2018. The Appellant was employed and had employer sponsored health insurance for the period of January through May. The Appellant's job ended on April 20 and the Appellant remained unemployed through December 31, 2018. The Appellant's application for unemployment compensation was initially denied. The Appellant had no income until November when their application for unemployment was finally approved. The Appellant verified substantial day to day living expenses and testified credibly that they struggled to meet these expenses with no income during the period of May through October. The Appellant began receiving MassHealth in November 2018.

Based on the evidence and testimony in this administrative record, the Appellant has demonstrated that the cost of purchasing health insurance would have caused the Appellant to experience a serious financial hardship. See 956 CMR 6.08(1)(e). The Appellant's one-month penalty is therefore waived.

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2018. The Appellant should not assume that a similar determination will be made for subsequent tax years should they again be assessed a penalty for failure to have health insurance.

#### **PENALTY ASSESSED**

Number of Months Appealed:   1   Number of Months Assessed:   0  

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

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

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where

you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

Cc: Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA18-690

**Appeal Decision:** Appeal Approved

**Hearing Issue:** Appeal of the 2018 Tax Year Penalty

**Hearing Date:** October 18, 2019

**Decision Date:** October 22, 2019

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on October 18, 2019. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated September 13, 2019<sup>1</sup>.
- Exhibit 2: Appeal Case Information from Schedule HC 2018.
- Exhibit 3: Statement of Grounds for Appeal dated May 8, 2019.
- 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 filed their 2018 Federal Income Tax return as a single person with no dependents claimed (Exhibit 2).
2. The Appellant lived in Norfolk County, MA in 2018 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2018 was \$23,972 (Exhibit 2).
4. According to the information on the Appellant's Schedule HC for tax year 2018, the Appellant did not have insurance for any months of tax year 2018. The Appellant has been assessed a twelve-month tax penalty for 2018.
5. The Appellant filed an appeal of the assessment in May 2019 (Exhibits 3, 4).

---

<sup>1</sup> Two notices were issued. One was to the Appellant's current address and the second to the Appellant's former address.

6. The Appellant testified that they had MassHealth from late 2017 through November of 2018. The Appellant was employed and became eligible for employer sponsored health insurance for tax year 2019. (Exhibit 4 and Appellant Testimony).
7. The Appellant submitted a copy of Form 1095-B issued by the Massachusetts Executive Office of Health and Human Services. The Appellant had MassHealth during the months of January through November in tax year 2018 (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 filed their tax year 2018 return as a single person with no dependents. Based on the information from the Appellant’s 2018 Schedule HC, it appeared that the Appellant did not have health insurance that met Massachusetts minimum creditable coverage requirements in tax year 2018. Consequently, the Appellant has been assessed a twelve-month penalty. The Appellant submitted an appeal request with a copy of their federal Form 1095-B from the Massachusetts Executive Office of Health and Human Services. This document verifies the Appellant’s credible testimony that they had health insurance through MassHealth for the period of January through November in tax year 2018. Given the three-month grace period outlined above, the Appellant should not be subject to a tax penalty for tax year 2018. The Appellant’s twelve-month penalty is therefore waived.

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2018. 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 meeting Massachusetts requirements.

**PENALTY ASSESSED**

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

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2018.

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

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

Cc: Connector Appeals Unit

**ADDENDUM**

The Appellant indicated that their employer sponsored health insurance for 2019 is not meeting their needs. The Appellant is reminded that they may explore other options through the Health Connector during Open Enrollment beginning November 1, 2019.