

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA20-341

Appeal Decision: Appeal Approved

Hearing Issue: Appeal of the 2020 Tax Year Penalty

Hearing Date: July 28, 2021

Decision Date: September 28, 2021

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 RECORD¹

The Appellant appeared at the hearing, which was held by telephone, on July 28, 2021.

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

Exhibit 1	Hearing Notice dated June 28, 2021	2 pages
Exhibit 2	Appeal Case Info. fr. Sch. HC 2020	1 page
Exhibit 3	Statement of Grounds for Appeal with Letter	3 pages

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant turned 38 years old in March 2020. The Appellant filed their Federal Income Tax Return as a married individual, filing separately, with no dependents claimed. (Exhibit 2).

¹ The pronouns "they," "their" and "them" are used throughout this Decision in order to be gender neutral, regardless of the singular or plural.

2. The Appellant lived in Middlesex County, MA in 2020. (Exhibit 2 and Appellant's Testimony).
3. The Appellant's Federal Adjusted Gross Income (AGI) for 2020 was \$101,541.00 as shown on Schedule HC for 2020. (Exhibit 2).
4. The Appellant did not have health insurance that met Minimum Creditable Coverage (MCC) during eight (8) months of tax year 2020 according to Appeal Case Information from Schedule HC for 2020. (Exhibit 2).
5. The Appellant has been assessed a five (5)-month tax penalty for 2020, which they have appealed. (Exhibits 2 & 3).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2020 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2020. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2020.
7. In accordance with Table 3 of Schedule HC for 2020, the Appellant filing the Federal tax return as a married individual, filing separately, with no dependents claimed, with an annual adjusted gross income of \$101,541.00, could afford to pay \$676.94 per month for government-sponsored health insurance. In accordance with Table 4, the Appellant, age 38, living in Middlesex County, could have purchased private market health insurance for \$298.00 per month. (Table 4, Schedule HC for 2020). Thus, private insurance was affordable for the Appellant in 2020.
8. Appellant had employer-sponsored health insurance through April 2020, when they were laid off from their job. (Appellant's Testimony). From May through December 2020, Appellant did not have employer-sponsored insurance available to them. (Appellant's Testimony).
9. The Appellant was not income-eligible for ConnectorCare coverage in 2020 because their adjusted gross income of \$101,541.00 was more than 300% of the Federal poverty level, which was \$37,470.00 in 2020 (Schedule HC, Table 2).
10. The Appellant was employed in the travel industry when they were laid off in March 2020. That entire industry suffered serious cutbacks during the pandemic, and Appellant was unable to find another job throughout the remainder of 2020 despite their constant job search efforts. (Appellant's Testimony).
11. The Appellant decided that the cost of COBRA insurance through their employer, between \$800.00 and \$1,000.00, was more than they could afford given the uncertainty about when they would be re-employed, the need to save money and to pay monthly

living expenses. (Appellant's Testimony). They were not aware about subsidized insurance options through the Health Connector.

12. Appellant received unemployment and extended benefits but "due to the inconsistent and unreliable messaging from the government on the local and federal levels, " they believed it was best to save and use that money for rent and food. (Exhibit 3 and Appellant's Testimony).
13. The Appellant became re-employed in January of 2021 and now receives employer-sponsored health insurance. (Appellant's Testimony).
14. The Appellant's pre-tax monthly expenses of \$2,464.50 during 2020 included: Rent - \$1,339.40, Heat - \$200.00, Gas - \$35.00, Electricity - \$110.00, Phone - \$118.00, Food - \$500.00, Car insurance - \$90.00, and Internet - \$72.00. (Appellant's Testimony).

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 M.G.L. c. 111M, sec. 2(b) and for Tax Year 2011, Administrative Bulletin 03-10: 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 check any box on the Statement of Ground for Appeal. In their supporting letter they stated, "I find the form to be insufficient and does not reflect the current global situation." They stated that that saved "every dollar [they] possibly could last year because no one had any idea what would happen and what kind of support the unemployed would be getting from the government." (Exhibit 3 and Appellant's Testimony). They testified they used their money to pay rent and living expenses and did not have enough money to pay for health insurance. They were not aware about subsidized insurance options through the Health Connector. (Appellant's Testimony).

To determine if the five (5)-month 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 hardship as defined in 956 CMR 6.08.

I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2019 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2020. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2020.

In accordance with Table 3 of Schedule HC for 2020, the Appellant filing the Federal tax return as a married individual, filing separately, with no dependents claimed, with an annual adjusted gross income of \$101,541.00, could afford to pay \$676.94 per month for government-sponsored health insurance. In accordance with Table 4, the Appellant, age 38, living in Middlesex County, could have purchased private market health insurance for \$298.00 per month. (Table 4, Schedule HC for 2020). Thus, private insurance was affordable for the Appellant in 2020.

Appellant had employer-sponsored health insurance through April 2020, when they were laid off from their job. (Appellant's Testimony). From May through December 2020, Appellant did not have employer-sponsored insurance available to them.

The Appellant was not income-eligible for ConnectorCare coverage in 2020 because their adjusted gross income of \$101,541.00 was more than 300% of the Federal poverty level, which was \$37,470.00 in 2020 (Schedule HC, Table 2).

The Appellant was employed in the travel industry when they were laid off in March 2020. That entire industry suffered serious cutbacks during the pandemic, and Appellant was unable to find another job throughout the remainder of 2020 despite their constant job search efforts. (Appellants' Testimony).

The Appellant decided that the cost of COBRA insurance through their employer, between \$800.00 and \$1,000.00 was more than they could afford given the uncertainty about when they would be re-employed and the need to save money and to pay monthly living expenses. (Appellant's Testimony).

Appellant received unemployment and extended benefits but "due to the inconsistent and unreliable messaging from the government on the local and federal levels," they believed it was best to save and use that money for rent and food. (Exhibit 3 and Appellant's Testimony).

The Appellant became re-employed in January of 2021 and now receives employer-sponsored health insurance. (Appellant's Testimony).

Based on all the credible evidence contained in this administrative record and the totality of the circumstances, I conclude that the pandemic created an unanticipated hardship for the Appellant, within the meaning of 956 CMR 6.08(3), which they could not have predicted. For all these reasons, payment for the five (5)-month penalty assessment is waived entirely.

The Appellant should note that the waiver of their penalty is based upon facts that I have determined to be true in 2020. The Appellant should not assume that a similar determination

will be made for subsequent tax years should they again be assessed a tax penalty for failure to have health insurance in Massachusetts, as the individual mandate requires.

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 2020.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA 20-589

Appeal Decision The appeal is approved; the tax penalty is waived in full.

Hearing Issue: Appeal of the 2020 Tax Year Penalty

Hearing Date: October 13, 2021

Decision Date: October 18, 2021

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

Appellants were a married couple who shall be referred to in this decision as Husband and Wife. Husband appeared at the hearing, which was held by telephone, on October 13, 2021. The hearing record consists of the testimony of Husband, and the following documents, which were admitted into evidence:

- Exhibit 1: Health Connector Hearing Notice (3 pages)
- Exhibit 2: Appeal Case Information sheet¹ (1 page)
- Exhibit 3: Statement of Grounds with attachment (8 pages)

FINDINGS OF FACT

The findings of fact are based on the testimony of Husband and, if specifically noted, exhibits, and the reasonable inferences drawn therefrom. The record shows, and I so find:

1. Wife was assessed a penalty for not having health insurance in 2020. Exhibit 2.
2. Appellants filed their 2020 Massachusetts taxes as married filing jointly with no dependents. Exhibit 2.
3. Appellants married on October 13, 2020.
4. During 2020, Appellants lived in Plymouth County. Exhibit 2.
5. Husband was 33 at the end of 2020. Wife was 28 at the end of 2020. Exhibit 2.

¹ Exhibit 2 is a computer printout containing information extracted from the Schedule HC that Appellant submitted as part of her 2020 Massachusetts tax return. The Schedule HC is the form on which Massachusetts taxpayers report information relevant to the individual mandate penalty, which is the subject of this appeal.

6. Appellants reported on their Massachusetts tax return and Husband confirmed at the hearing that they had adjusted gross income in 2020 of \$110,171. See Exhibit 2. Of that amount, Wife's earnings were \$26,606 and Husband's income made up the balance.
7. Appellants reported in the Schedule HC that they filed with their 2020 state income taxes that Wife did not have health insurance meeting minimum creditable (MCC) standards at any point in 2020. Husband stated however that Wife was insured for the last two months of the year. Husband was insured for the entire year. Exhibit 2.
8. Husband worked in 2020 and still works for an employer that offers health insurance. He has been enrolled in that insurance throughout 2020 and at the time of the hearing.
9. However, in 2020, Wife worked at a job that did not offer her insurance.
10. When the couple married in October 2020, Wife became eligible to be covered through Husband's employment-based insurance. She enrolled at that time and became insured. She was insured as of the date of the hearing.
11. At various points in the past, Wife had received insurance through the Connector Care program run by the Health Connector. However, she had trouble maintaining eligibility and so was not covered during 2020.

In addition to the foregoing, I take administrative notice of the 2020 Schedule HC Instructions and Worksheets, available at <https://www.mass.gov/doc/2020-schedule-hc-instructions-1/download> and in particular, Tables 1-6, which, as discussed below, include the Affordability Schedule and other financial information used in making 2020 individual mandate tax penalty determinations.

ANALYSIS AND CONCLUSIONS OF LAW

In this case Wife was assessed the individual mandate penalty because she was without insurance in 2020. G.L. c. 111M, § 2, also called the "individual mandate," requires every adult resident of Massachusetts to obtain "creditable" 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.

A penalty for 12 months without insurance was assessed against Wife because she reported on the Schedule HC that she had not been insured at all in 2020. However, I credit Husband's testimony that Wife was insured in November and December of the year, because that followed their marriage. According to M.G.L. c. 111M, § 2, residents are permitted a 63-day gap between periods of insurance. The Health Connector's "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 can be found at <https://betterhealthconnector.com/wp-content/uploads/rules-and-regulations/AdminBulletin03-10.pdf>, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. In this case, Wife lacked insurance for only 10 months. Therefore she was entitled to a three-month gap without penalty, and so she should have been assessed a penalty for only seven months.

In order to determine whether Wife should be penalized for not having coverage, I must first consider whether she could have obtained affordable insurance from any of the following three sources: (1) employment-based insurance; (2) government-subsidized insurance; or (3) unsubsidized insurance purchased on the non-group market. See 2020 Schedule HC instructions at pages HC 6-8.

During the part of 2020 when she was uninsured, Wife was not eligible for employment-based insurance. Her own job did not offer her insurance as a benefit. She was not eligible to be covered under Husband's employer-based plan until after they were married in October.

Further, during the period that she was uninsured, Wife could not have afforded unsubsidized insurance purchased on the non-group market under state affordability standards set by the Health Connector board pursuant to M.G.L. c. 111M. Although Appellants reported joint income of \$110,171 on their tax return, most of that represented the Husband's earnings. Wife alone made only \$26,606 in 2020. Before her marriage, during the period when she was uninsured, that lower amount was her income. Under state affordability standards, a person making \$26,606 for a household of one person was deemed able to afford 4.2 percent of income for health insurance. (I obtain that percentage figure from Table 3 to the instructions for the 2020 Schedule HC.) In Wife's case, that amounts to \$1,117 annually or \$93 a month. During 2020, a person like Wife who lived in Plymouth County and was 28 years of age would have had to pay \$269 a month for health insurance. (I obtain the premium figure from Table 4 to the instructions for the 2020 Schedule HC). Thus, under state standards, this amount would not have been affordable for Wife.

However, based on an annual income of \$26,606, Wife would have been eligible for Connector Care, which is government-subsidized insurance. Her annual income in 2020 of \$26,606 was below \$37,470, which is 300 percent of the federal poverty limit for a household of one person. (I obtain the figure of \$37,470 from Table 2 to the instructions for the 2020 Schedule HC.) Persons with household incomes below 300 percent of the federal poverty limit are eligible for Connector Care, which is government-subsidized insurance, provided they meet other eligibility requirements such as citizenship or legal permanent resident status and lack of access to affordable employment-based insurance. 956 CMR 12.04 (Connector Care eligibility requirements.) I conclude that Wife did meet those other eligibility requirements because she had been determined eligible for Connector Care in the past.

Because Wife could have afforded insurance, but didn't obtain it, I must determine whether she has stated grounds to waive the penalty under the Health Connector's regulations. See 956 C.M.R. § 6.08(1). I conclude that she has. She had applied for and enrolled in Connector Care in the past, but she had problems maintaining her eligibility. As a result, she was not enrolled in the program in 2020. Without access to that program, she had no affordable option to obtain insurance until after her marriage. Further, I take into account the fact that Wife has been insured since her marriage and was insured as of the date of the hearing.

Based on the foregoing, I exercise my discretion to waive the penalty assessed against Wife in its entirety.

PENALTY ASSESSED

Number of Months Appealed: 12

Number of Months Assessed: 0

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2020.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA 20-591

Appeal Decision The appeal is approved; the tax penalty is waived in full.

Hearing Issue: Appeal of the 2020 Tax Year Penalty

Hearing Date: October 13, 2021

Decision Date: October 16, 2021

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 October 13, 2021. The hearing record consists of the testimony of Appellant, and the following documents, which were admitted into evidence:

Exhibit 1: Health Connector Hearing Notice (3 pages)

Exhibit 2: Appeal Case Information sheet¹ (1 page)

Exhibit 3: Statement of Grounds (4 pages)

FINDINGS OF FACT

The findings of fact are based on the testimony of Appellant and, if specifically noted, exhibits, and the reasonable inferences drawn therefrom. The record shows, and I so find:

1. Appellant was 51 years old at the end of 2020.
2. During 2020, Appellant lived in Essex County.
3. Appellant filed his 2020 Massachusetts taxes as head of household with one dependent.
4. Appellant reported on his Massachusetts tax return and confirmed at the hearing that he had adjusted gross income in 2020 of \$34,717. See Exhibit 2.

¹ Exhibit 2 is a computer printout containing information extracted from the Schedule HC that Appellant submitted as part of her 2020 Massachusetts tax return. The Schedule HC is the form on which Massachusetts taxpayers report information relevant to the individual mandate penalty, which is the subject of this appeal.

5. Appellant reported in the Schedule HC that he filed with his 2020 state income taxes that he did not have health insurance meeting minimum creditable (MCC) standards at any point in 2020. Exhibit 2.
6. At the start of 2020, Appellant was working for a company that had lost a lot of business because of disruption caused by the Covid-19 pandemic.
7. That employer did not provide health insurance to its employees.
8. Appellant left that job at the end of January 2020.
9. Thereafter, he began working for a staffing agency. The staffing agency offered insurance, but it would have cost between \$600-700 a month.
10. By the end of 2020, Appellant became a permanent employee. As a result, he was offered affordable insurance through his employment. He enrolled in that insurance effective January 1, 2021, and he was insured as of the date of the hearing.
11. Appellant never applied for Connector Care during the period that he was without insurance because he was unaware that the program was available to him.

In addition to the foregoing, I take administrative notice of the 2020 Schedule HC Instructions and Worksheets, available at <https://www.mass.gov/doc/2020-schedule-hc-instructions-1/download> and in particular, Tables 1-6, which, as discussed below, include the Affordability Schedule and other financial information used in making 2020 individual mandate tax penalty determinations.

ANALYSIS AND CONCLUSIONS OF LAW

G.L c. 111M, § 2, also called the “individual mandate,” requires every adult resident of Massachusetts to obtain “creditable” 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.

In order to determine whether Appellant should be penalized for not having coverage, I must first consider whether he could have obtained affordable insurance from any of the following three sources: (1) employment-based insurance; (2) government-subsidized insurance; or (3) unsubsidized insurance purchased on the non-group market. See 2020 Schedule HC instructions at pages HC 6-8.

The question of whether insurance was affordable depends on how much Appellant is deemed able to afford under state affordability standards set by the Health Connector board pursuant to M.G.L. c. 111M. Appellant lived in a tax household of two persons because he had one dependent child. Under state affordability standards, an individual like Appellant who had income of \$34,717 for a tax household of two persons was deemed able to afford 6.2 percent of income for health insurance. (I obtain that percentage figure from Table 3 to the instructions for the 2020 Schedule HC.) In Appellant’s case, that amounts to \$2,152 annually or \$179 a month.

During 2020, Appellant either worked for an employer that did not offer health insurance or else worked for a staffing agency that would have charged between \$600-700 a month for insurance. Based on the state affordability standards discussed above, that amount would have been unaffordable.

Further, Appellant would not have afforded unsubsidized insurance purchased on the non-group market. During 2020, a person like Appellant who lived in Essex County and was 51 years of age would have had to pay a monthly premium of \$420 for health insurance. (I obtain the premium figure from Table 4 to the instructions for the 2020 Schedule HC). Thus, under state standards discussed above, this amount would not have been affordable for Appellant.

However, based on the annual income that Appellant provided on his 2020 state tax return, he would have been eligible for Connector Care, which is government-subsidized insurance. His annual income in 2020 of \$34,717 was below \$37,470, which is 300 percent of the federal poverty limit for a household of one person like Appellant's. (I obtain the figure of \$37,470 from Table 2 to the instructions for the 2020 Schedule HC.) Persons with household incomes below 300 percent of the federal poverty limit are eligible for Connector Care, which is government-subsidized insurance, provided they meet the other eligibility requirements, which include citizenship or legal permanent residence in the United States and lack of access to employer subsidized insurance. 956 CMR 12.04 (Connector Care eligibility requirements.) I conclude that Appellant would have met those requirements based on his testimony about his work situation. Connector Care would have been affordable health insurance.

Because Appellant could have obtained affordable insurance, but didn't, I must determine whether he has stated grounds to waive the penalty under the Health Connector's regulations. See 956 C.M.R. § 6.08(1). I conclude that he has. Appellant had economic difficulties during 2020 arising from the end of his employment in January and the need to work at an uncertain position through a staffing agency. His income during that period was relatively low. He had the expenses of supporting a dependent. He was unaware that he had the option of applying for and obtaining Connector Care. However, he did have insurance in the past and he obtained it as soon as he had an affordable option through employment in January 2021. I take into account the fact that he was insured as of the date of the hearing.

Based on the foregoing, I exercise my discretion to waive the penalty assessed against Appellant in its entirety.

PENALTY ASSESSED

Number of Months Appealed: 12

Number of Months Assessed: 0

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2020.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA 20-592

Appeal Decision The appeal is approved; the tax penalty is waived in full.

Hearing Issue: Appeal of the 2020 Tax Year Penalty

Hearing Date: October 13, 2021

Decision Date: October 16, 2021

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 October 13 2021. The hearing record consists of the testimony of Appellant, and the following documents, which were admitted into evidence:

- Exhibit 1: Health Connector Hearing Notice (3 pages)
- Exhibit 2: Appeal Case Information sheet¹ (1 page)
- Exhibit 3: Statement of Grounds (with attachments) (11 pages)

FINDINGS OF FACT

The findings of fact are based on the testimony of Appellant and, if specifically noted, exhibits, and the reasonable inferences drawn therefrom. The record shows, and I so find:

1. Appellant was 62 years old at the end of 2020.
2. During 2020, Appellant lived in Middlesex County.
3. Appellant filed her 2020 Massachusetts taxes as single with no dependents.
4. Appellant reported on her Massachusetts tax return and confirmed at the hearing that she had adjusted gross income in 2020 of \$168,203. See Exhibit 2.
5. Appellant reported in the Schedule HC that she filed with her 2020 state income taxes and confirmed at the hearing that she had health insurance meeting minimum creditable coverage

¹ Exhibit 2 is a computer printout containing information extracted from the Schedule HC that Appellant submitted as part of her 2020 Massachusetts tax return. The Schedule HC is the form on which Massachusetts taxpayers report information relevant to the individual mandate penalty, which is the subject of this appeal.

(MCC) standards in January 2020, but did not have such health insurance for the remaining 11 months in 2020. Exhibit 2.

6. Appellant was retired in 2020. Her regular sources of income were Social Security and a pension, along with a small amount of rental income. However, her 2020 income was larger because she had sold some stock and realized a significant capital gain in that year.
7. Appellant had been enrolled in insurance obtained through the Health Connector in 2019. However, she had a problem with her account and lost that insurance. As a result, she signed up with a program called First Health for a monthly premium of \$472 a month.
8. Based on information that she received from an acquaintance, she became concerned that this coverage would not be adequate for her. As a result, she dropped the insurance at the end of January 2020.
9. She intended to enroll in health insurance at that point. However, when she attempted to do so, she was told by the insurer that the annual open enrollment season was over. She was told that she could not enroll in health insurance until the next open enrollment season at the end of 2020 for a January 1 effective date.
10. Appellant waited until the end of 2020 and enrolled in health insurance effective January 1, 2021. She was insured on the date of the hearing.

In addition to the foregoing, I take administrative notice of the 2020 Schedule HC Instructions and Worksheets, available at <https://www.mass.gov/doc/2020-schedule-hc-instructions-1/download> and in particular, Tables 1-6, which, as discussed below, include the Affordability Schedule and other financial information used in making 2020 individual mandate tax penalty determinations.

ANALYSIS AND CONCLUSIONS OF LAW

G.L. c. 111M, § 2, also called the “individual mandate,” requires every adult resident of Massachusetts to obtain “creditable” 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.

Further, according to M.G.L. c. 111M, § 2, residents are permitted a 63-day gap between periods of insurance. The Health Connector’s “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 can be found at <https://betterhealthconnector.com/wp-content/uploads/rules-and-regulations/AdminBulletin03-10.pdf>, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. In Appellant’s case, she reported on her Schedule HC that she was without insurance for eleven months in 2020. Because she was entitled to a three-month gap without penalty, she has been assessed a penalty for only eight months.

In order to determine whether Appellant should be penalized for not having coverage, I must first consider whether she could have obtained affordable insurance from any of the following three sources: (1) employment-based insurance; (2) government-subsidized insurance; or (3) unsubsidized insurance purchased on the non-group market. See 2020 Schedule HC instructions at pages HC 6-8.

During 2020, Appellant did not work. Therefore, she did have access to employment-based insurance.

Further, Appellant was not eligible for government-subsidized insurance. Her annual income in 2020 of \$168,203 was above \$37,470, which is 300 percent of the federal poverty limit for a household of one person like Appellant's. (I obtain the figure of \$37,470 from Table 2 to the instructions for the 2020 Schedule HC.) Persons with household incomes above 300 percent of the federal poverty limit are not eligible for Connector Care. 956 CMR 12.04 (Connector Care eligibility requirements.)

However, Appellant could have afforded unsubsidized insurance purchased on the non-group market under state affordability standards set by the Health Connector board pursuant to M.G.L. c. 111M. Under those standards, an individual like Appellant who had income of \$168,203 for a tax household of one person was deemed able to afford 8 percent of income for health insurance. (I obtain that percentage figure from Table 3 to the instructions for the 2020 Schedule HC.) In Appellant's case, that amounts to \$13,456 annually or \$1,121 a month. During 2020, a person like Appellant who lived in Middlesex County and was 62 years of age could have obtained health insurance for \$432 a month. (I obtain the premium figure from Table 4 to the instructions for the 2020 Schedule HC). Thus, under state standards, this amount would have been affordable for Appellant.

Although unsubsidized insurance would have been affordable to Appellant, she was effectively unable to obtain that insurance because she dropped one plan in January, unaware that annual open enrollment had ended. Under federal and state law, enrollment in health insurance plans is limited to certain times of the year, called open enrollment. See 42 U.S.C. § 300gg-1(b)(1); Mass. Gen. Laws c. 176J, §4(a)(3). In 2020, that open enrollment period ran from mid-October through mid-December annually for an effective date of the following January 1. Appellant was not aware of this restriction when she dropped her insurance in January. As a result of this restriction, she was in effect unable to obtain insurance in the non-group market when she attempted to do so in January 2020. She was told she would have to wait for a year until the next open enrollment period, which she did.

Based on the foregoing, I conclude that Appellant was unable to obtain affordable insurance during the period of time in 2020 that she was uninsured. Accordingly, I conclude that the penalty assessed against her should be waived.

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 2020.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA20369

Appeal Decision: The penalty is overturned in full.

Hearing Issue: Appeal of the 2020 Tax Year Penalty

Hearing Date: July 27, 2021

Decision Date: October 12, 2021

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 July 27, 2021. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

- Exhibit 1: Statement of Grounds for Appeal 2020 signed and dated by Appellant on March 23, 2021 with letter attached
- Exhibit 2: Appeal Case Information from Schedule HC 2020
- Exhibit 3: Notice of Hearing sent to Appellant dated July 2, 2021 for July 27, 2021 hearing
- Exhibit 4: Final Appeal Decision for Tax Year 2015 dated December 2, 2016
- Exhibit 4: Final Appeal Decision for Tax Year 2016 dated August 14, 2017

FINDINGS OF FACT

The record shows, and I so find:

1. Appellants, who filed a 2020 Massachusetts tax return jointly with no dependents claimed, were 53 and 49 years old in 2020 (Exhibit 2, Testimony of Appellant).
2. Appellants lived in Middlesex County in 2020 (Exhibit 2, Testimony of Appellant).
3. Appellants' Federal Adjusted Gross Income for 2020 was \$127,290 (Exhibit 2, Testimony of Appellant).
4. One of the appellants was employed full-time from January through the beginning of March. Appellant was furloughed because of the pandemic from early March until some time in August when Appellant was called back to work. Appellant collected unemployment compensation benefits while he was out of work. Appellant had health insurance which met the Commonwealth's minimum creditable coverage standards all year, even when furloughed. Appellant paid \$95 a week, or \$408 a month for the coverage (Testimony of Appellant, Exhibit 2).

5. The other appellant also worked full-time until March when Appellant's hours were cut significantly because of the pandemic. The appellant went from working at least 40 hours a week (with some overtime) to working between 16 and 20 hours a week. Her income decreased by 50%. Appellant also had health insurance which met the Commonwealth's standards through her job until the end of July when her employer stopped providing coverage (Testimony of Appellant, Exhibit 2).
6. The appellant who had health insurance coverage all year tried to add his spouse to his plan when he went back to work in August. Appellant was told that he could not add his spouse until the next open enrollment period. During the next open enrollment period, Appellant added his spouse to the coverage. The appellant who was uninsured part of 2020 gained coverage as of January 1, 2021 (Testimony of Appellant).
7. One appellant had health insurance coverage all year. The other had coverage from January through July, 2020. They have been assessed a tax penalty for two months, November and December (Testimony of Appellant, Exhibit 2).
8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2020 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2020. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2020.
9. According to Table 3 of Schedule HC for 2020, the appellants with no dependents claimed with an adjusted gross income of \$127,290 could afford to pay \$848 per month for health insurance. According to Table 4, Appellants, 53 and 49 years old and living in Middlesex County, could have purchased insurance for \$839 per month for a plan. One of the appellants had insurance which cost him \$408 a month. The other appellant could have afforded coverage for \$440 a month. Individual coverage was available to her for \$361. Coverage through the individual market was, therefore, affordable for the appellant in 2020 (Schedule HC for 2020, Exhibit 2).
10. According to Table 2 of Schedule HC for 2020, Appellants, with no dependents, earning more than \$50,730, the income limit for a family of two, would have been ineligible for the ConnectorCare program based upon income (Exhibit 2, Table 2 of Schedule HC-2020, 956 CMR 12.00 et. seq.).
11. Appellants did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2020 (Testimony of Appellant).
12. Appellants did not fall more than thirty days behind in mortgage payments in 2020 (Testimony of Appellant).
13. Appellants did not received any shut-off notices for basic utilities during 2020 (Testimony of Appellant).
14. Appellants had the following monthly expenses for basic necessities in 2020: mortgage, including property taxes- \$2,400; water and sewer-\$100; electricity, heat-\$400; telephone and internet-\$158; food and household and personal items-\$600; car insurance-\$138; gas-\$195; clothing-\$200. Appellants paid \$125 for student loans through September. They also had to pay \$7,000 to repair their hearing system and \$5,000 for other home repairs. One of the appellants paid \$408 a month for health insurance (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 2020 should be waived, either in whole or in part. One of the appellants had insurance which met the Commonwealth's

standards from January through July. Appellant is entitled to a three-month grace period after losing her coverage at the end of July. This appellant has been assessed a tax penalty for November and December. The other appellant had health insurance which met the Commonwealth's standards all year. Appellants have appealed the penalty. See Exhibits 1 and 2, and Massachusetts General Laws Chapter 111M, Section 2.

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

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

According to Table 3 of Schedule HC for 2020, the appellants with no dependents claimed with an adjusted gross income of \$127,290 could afford to pay \$848 per month for health insurance. According to Table 4, Appellants, 53 and 49 years old and living in Middlesex County, could have purchased insurance for \$839 per month for a plan. One of the appellants had insurance which cost him \$408 a month. The other appellant could have afforded coverage for \$440 a month. Individual coverage was available to her for \$361. Coverage through the individual market was, therefore, affordable for the appellant in 2020 See Schedule HC for 2020, Tables 3 and 4, and Exhibit 2.

One of the appellants had health insurance through her job until the end of July when her employer stopped providing coverage. Appellant had been a full-time employee, but had her hours cut by more than 50% because of the pandemic. She became a part-time employee and lost her health insurance benefits. Appellant's spouse had insurance through his job all year. When his spouse lost her coverage, Appellant tried to get her coverage through his plan. He was told that he could only add his spouse during the next open enrollment period. He did this and the uninsured appellant obtained coverage as of January 1, 2021. See the testimony of the appellant which I find to be credible.

According to Table 2 of Schedule HC for 2020, Appellants, with no dependents, earning more than \$50,730, the income limit for a family of two, would have been ineligible for the ConnectorCare program based upon income. See Exhibit 2, Table 2 of Schedule HC-2020, 956 CMR 12.00 et. seq. There is no evidence in the record that Appellant who needed coverage was eligible for any other government-sponsored plan.

Since Appellant had access to affordable insurance through the individual market, we need to determine if the appellant experienced a financial hardship such the coverage would have been unaffordable for her. See 956 CMR 6.08 et. seq.

Pursuant to 956 CMR 6.08(3), which allows the Connector to consider financial issues raised by Appellants when determining if a penalty should be waived, I determine that the appellants' penalty should be waived in its entirety. While the appellants ultimately earned \$127,290, once the pandemic hit, they had no idea how much they would earn or if they would each be employed during the rest of the year. Both appellants began the year fully employed

and insured. Because of the pandemic, one of the appellants was furloughed until August. The other had her hours and income cut by more than 50%. She also lost her health insurance. Both experienced job insecurity. One did not know if or when he would be called back to work. The other now worked between 16 and 20 hours a week instead of working 40 hours a week with some overtime. In addition, Appellants had significant home repairs during the year, including the repair of their heating system which cost \$7,000. See the testimony of the appellant which I find to be credible.

I also take into consideration the fact that the insured appellant attempted to obtain coverage for his spouse through his job's plan. Appellant was told that he had to wait until the next open enrollment period to add his spouse to his plan. He did this and his spouse obtained coverage as of January 1, 2021.

Appellants should note that any waiver granted here is for 2020 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: 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 2020.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Hearing Officer

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA20-530

Appeal Decision: Penalty Overturned in Full
Hearing Issue: Appeal of the 2020 Tax Year Penalty
Hearing Date: September 17, 2021
Decision Date: October 20, 2021

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 17, 2021. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

- Exhibit 1: Schedule HC for Healthcare from DOR
- Exhibit 2: Notice of Appeal, dated March 28, 2021
- Exhibit 3: Correspondence from Health Connector, dated August 5, 2021

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 57 years old in 2020 and resided in Suffolk County (Exhibit 1).
2. Appellant filed a Massachusetts 2020 tax return as single with no dependents claimed (Exhibit 1).
3. Appellant had an Adjusted Gross Income for 2020 of \$75,689 (Exhibit 1).
4. Appellant was laid off from employment in January 2020 (Exhibit 2 and Testimony of Appellant).
5. Appellant was covered by employer sponsored health insurance in January 2020 (Testimony of Appellant).
6. Appellant believed that Appellant would be covered by COBRA after the lay-off (Testimony of Appellant).
7. Appellant contacted the former employer and learned that they did not offer COBRA (Exhibit 2 and Testimony of Appellant).
8. Appellant was unemployed for most of 2020 (Testimony of Appellant).
9. Appellant applied for health insurance through the Health Connector in early July 2020 (Testimony of Appellant).
10. Appellant was found eligible for Health Connector insurance but was not eligible for a special enrollment period (Exhibit 2 and Testimony of Appellant).
11. Appellant applied for health insurance from the Health Connector during open enrollment in September 2020 (Testimony of Appellant).
12. Appellant began health insurance coverage in January 2021 (Testimony of Appellant).

13. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2020 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2020. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2020.
14. According to Table 3 of Schedule HC for 2020 a person filing as single with no dependents claimed with an adjusted gross income of \$75,689 could afford to pay \$505 per month for private insurance. According to Table 4, Appellant, who was 57 years old and lived in Suffolk county could have purchased private insurance for a cost of \$432 per month.
15. Private insurance was considered affordable for Appellant in 2020 (Schedule HC for 2020).
16. Appellant did not have health insurance for eleven months of 2020 (Testimony of Appellant and Exhibit 1).
16. Appellant has been assessed a penalty for eight months for 2020 (Exhibit 1).
17. Appellant filed a hardship Appeal on March 28, 2021, claiming that Appellant was unable to purchase health insurance (Exhibit 2).

ANALYSIS AND CONCLUSIONS OF LAW

G.L.c. 111M, § 2, also called the “individual mandate,” requires every adult resident of Massachusetts to obtain health insurance that meets minimum creditable coverage standards “[s]o long as it is deemed affordable” under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance or who do not obtain insurance that meets the minimum creditable coverage standard are subject to a tax penalty for “each of the months” that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2020, 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 See 956 CMR 6.

Private insurance was considered affordable for Appellant. Appellant did try to obtain private health insurance in July 2020 and was denied a special enrollment period. Appellant applied for health insurance again in September 2020 during open enrollment, and Appellant began coverage in January 2021. See Schedule HC for 2020, Exhibits 1 and 2 and Testimony of Appellant which I find to be credible.

Given these circumstances, I find that the penalty assessed against Appellant for 2020 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 2020 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2020.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA20-561

Appeal Decision: Penalty Overturned in Full

Hearing Issue: Appeal of the 2020 Tax Year Penalty

Hearing Date: September 27, 2021

Decision Date: October 8, 2021

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 27, 2021, 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—2020

Ex. 2—Appeal Case Information from Schedule HC ¹

Ex. 3—Notice of Hearing

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is 52-years-old, is single, and does not have children. In 2020, she resided in Middlesex County, MA. She had health insurance for the months of January and February, 2020. (Testimony, Ex. 2)
2. The appellant had employer health insurance for the months of January and February, 2020, after which she lost her job. She was unemployed for the remainder of the year. Prior to 2020, she had been enrolled in employer health insurance for many years. (Testimony)
3. Following her job separation, the appellant was offered health insurance by her employer through COBRA, but declined because the cost was far too expensive. She investigated insurance options through the Health Connector, but became very overwhelmed by the process. She was bombarded with calls from insurance brokers, and after speaking with a few of them, was too confused to

¹ Ex. 2 is a computer printout that extracts information submitted by the appellant on Schedule HC as part of her 2020 Massachusetts income tax return. It also contains information about prior appeals, if any.

proceed. The combination of coping with the pandemic, being unemployed and trying to look for work was so stressful that she gave up looking for insurance. (Testimony)

4. The appellant did not enroll in health insurance for 2021. She was hoping to find a job and purchase employer insurance, but has become very discouraged about her job prospects. (Testimony)
5. The appellant lives in a condominium and was assessed for \$2500.00 in March/2020 for building repairs. She also incurred approximately \$4000.00 in car repairs during the year. (Testimony)
6. The appellant reported an adjusted gross income of \$114,779.00 on her 2020 federal tax return, and reported that she was single with no dependents. (Ex. 2)
7. In 2020, the appellant had regular monthly expenses of approximately \$3005.00 for her mortgage which included real estate taxes and homeowner's insurance (\$1648.00), condominium fee which included heat, trash removal and water and sewer taxes (\$408.00), utilities (\$60.00), cell phone (\$20.00), internet (\$200.00), automobile insurance (\$219.00), gasoline (\$150.00), and food (\$300.00). (Testimony)

In addition to the foregoing, I take administrative notice of the 2020 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov/dor/docs/dor/health-care/2020>, and in particular, Tables 1-6 which, as discussed below, include the Affordability Schedule and other financial information used in making 2020 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 2020 because the expense of purchasing health insurance would have caused a serious deprivation of food, clothing, shelter or other necessities.

The appellant did not have insurance from March 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 2020, 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 ten months, she was assessed and is appealing a penalty of seven months (i.e., the number of months of uninsurance less the gap period of three months).

The appellant testified credibly that she had employer health insurance for January and February after which she lost her job. She testified that she was offered COBRA, but found the cost was unaffordable. She testified that she investigated insurance options through the Health Connector, but was overwhelmed by many factors including the numerous calls she received from brokers, the situation with the pandemic and coping with unemployment. She testified that she did not obtain insurance in 2021, because she was hoping to get a job and enroll in employer health insurance. Finally, she testified that she had employer health insurance for many years prior to 2020.

The evidence provided by the appellant established that her income for 2020, \$114,779.00, was greater than 300% of the federal poverty level (FPL), which for 2020 was \$37,470.00 for an individual. Table 3 of the Affordability Schedule indicates that an individual filing separately with no dependents with a federal adjusted gross income greater than \$49,961.00 is deemed to be able to afford a monthly premium of \$765.19 (8.00% of \$9182.00/12). Table 4 of the Premium Schedule indicates that a 51-year-old individual (the age of the appellant in 2020) in Middlesex County (where the appellant resided in 2020) could have purchased private health insurance for \$420.00 per month, less than the monthly amount deemed affordable from Table 3. Thus, according to the foregoing analysis, the appellant could have purchased affordable private health insurance in 2020.

Even though private 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 2020. 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 2020 could be waived if she experienced financial circumstances such that the expense of purchasing health insurance would have caused her to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08.

The evidence presented by the appellant in this case is insufficient to establish that she experienced a financial hardship as defined by law so as to waive her penalty for the months in question. The appellant testified that in 2020, she incurred basic monthly expenses of approximately \$3005.00. Those expenses were less than her regular monthly pre-tax income of approximately \$9565.00, thereby making a private health insurance premium of \$420.00/month seemingly manageable. While it is recognized that an approximate difference between income and expenses of \$6560.00/month is not a panacea, it does not appear on its face that the payment of \$420.00 for health insurance would have caused an undue hardship.

Based on the foregoing, it is concluded that the appellant could have afforded private 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 waived for the following reason. The appellant established that she underwent extremely difficult personal circumstances in 2020 including the loss of her job and the stress of looking for a new position during a pandemic. Moreover, she was faced with two large unexpected expenses for a condo assessment and car repairs which left her feeling more vulnerable. While the foregoing numbers do not demonstrate a level of financial distress to qualify as a hardship, she did provide a compelling account of anxiety over her overall situation which justifies a mitigation of the penalty.

Accordingly, based upon the totality of the evidence, the appellant's request for a waiver from the penalty is **granted** for the months in question. The determination that the appellant is eligible for a waiver is with respect to 2020, only and is based upon the extent of information submitted by her in this appeal.

PENALTY ASSESSED

Number of Months Appealed: 7

Number of Months Assessed: 0

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2020 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 2020.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

ADDENDUM

The appellant is advised not to rely on a similar extension of leniency should she be assessed and appeal a tax penalty in the future for failure to obtain health insurance.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA20-563

Appeal Decision: Penalty Overturned in Full

Hearing Issue: Appeal of the 2020 Tax Year Penalty

Hearing Date: September 27, 2021

Decision Date: October 10, 2021

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 27, 2021. Her daughter appeared on her behalf and testified under oath. The hearing record consists of the daughter's testimony and the following documents which were admitted into evidence without her objection:

Ex. 1—Statement of Grounds for Appeal—2020

Ex. 2—Appeal Case Information from Schedule HC ¹

Ex. 3—Notice of Hearing

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is 59-years-old, is single, and has adult children. She resided in Essex County, MA in 2020. She had health insurance for the months of January and February, 2020. (Testimony, Ex. 2)
2. The appellant had health insurance through MassHealth for 2019 and for January and February, 2020. Her eligibility for continued enrollment was then redetermined and her daughter was supposed to assist with the process, but did not complete it, after which her insurance was terminated. (Testimony)
3. The appellant was employed in 2020 and was eligible for employer health insurance, but did not enroll because the cost was unaffordable. According to a memorandum from the employer dated July 22, 2020, the bi-weekly deductions for three different individual plans offered by the employer were \$85.27 (HMO), \$115.02 (PPO) and \$94.20 (PPO). (Testimony, Ex. 1)

¹ Ex. 2 is a computer printout that extracts information submitted by the appellant on Schedule HC as part of her 2020 Massachusetts income tax return. It also contains information about prior appeals, if any.

4. The appellant is employed with the same employer in 2021, but has been enrolled in subsidized health insurance through the Health Connector since the beginning of the year for which she pays a monthly premium of \$87.00. (Testimony)
5. The appellant reported an adjusted gross income of \$31,055.00 on her 2020 federal tax return, and reported that she was single with no dependents. (Ex. 2)
6. One of the appellant's children lived with her in 2020, but did not contribute to any of the household expenses. (Testimony)
7. In 2020, the appellant had regular monthly expenses of approximately \$2045.00 for rent (\$800.00); heat (\$200.00); electricity (\$250.00); cable and internet service (\$20.00); cell phone (\$150.00); automobile insurance (\$265.00); food (\$300.00) and gasoline (\$60.00). (Testimony)

In addition to the foregoing, I take administrative notice of the 2020 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov/dor/docs/dor/health-care/2020>, and in particular, Tables 1-6 which, as discussed below, include the Affordability Schedule and other financial information used in making 2020 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 2020 because the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities. She also submitted a memorandum from the employer dated July 22, 2020 which contained information about the cost of health insurance offered by the employer for the remainder of 2020.

The appellant did not have insurance from March 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 2020, 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 ten months, she was assessed and is appealing a penalty of seven months (i.e., the months of uninsurance less the gap period of three months).

The appellant's representative testified credibly that the appellant had health insurance with MassHealth in 2019 and for January and February of 2020. She testified that she did not complete the eligibility redetermination process with MassHealth at that point in time, and the appellant's insurance was terminated. She testified that the appellant was employed in 2020 and was eligible for employer health insurance, but did not enroll because the cost was unaffordable. Finally, she testified that the appellant has been enrolled in subsidized insurance through the Health Connector since the beginning of 2021.

The evidence provided by the appellant established that her income for 2020, \$31,055.00, was less than 300% of the federal poverty level (FPL), which for 2020 was \$37,470.00 for an individual. Table 3 of the Affordability

Schedule indicates that an individual filing separately with no dependents with a federal adjusted gross income between \$24,981.00 and \$31,225.00 is deemed to be able to afford a monthly premium of \$108.70 (4.20% of \$31,055.00/12). Table 4 of the Premium Schedule indicates that a 58-year-old individual (the age of the appellant in 2020) in Essex County (where the appellant resided in 2020) could have purchased private health insurance for \$432.00 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 2020.

The next issue to consider is whether the appellant had access to affordable employer health insurance in 2020. According to information submitted by the appellant, the lowest cost individual plan offered by the employer for the second half of 2020 was approximately \$171.00/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 2020 is considered to be affordable if the employee's contribution for an individual plan is 9.78% 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 lowest monthly cost for an individual plan through the appellant's employer was \$171.00. That cost is less than 9.78% of the appellant's projected household MAGI for 2020 (i.e., 9.78% of \$31,055.00 is \$3037.18 or \$253.10/month).² Hence, since the cost of employer insurance is less than \$253.10/month, she is considered to have had access to qualifying health insurance. See 956 CMR 12.05 and 45 CFR section 155.305 (f)(1)(ii)(B). Since the appellant had access to affordable employer health insurance, she would not have been eligible for an APTC and subsidized insurance through the Connector.

Even though employer health insurance may have been affordable to the appellant under the law, she may nevertheless not be subject to a penalty for failing to get health insurance for the months in question if she can show that she experienced a hardship during 2020. 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 2020 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's representative testified that in 2020, she incurred basic monthly expenses of approximately \$2045.00. Although those expenses were less than her regular monthly pre-tax income of approximately \$2587.00, the difference between income and expenses of \$542.00/month was an inadequate cushion to cover a monthly employer insurance premium of

² 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.

\$171.00, particularly in light of the miscellaneous living 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).

Accordingly, based on 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 hardship waiver is with respect to 2020, only and is based upon the extent of information submitted by him in this appeal.

PENALTY ASSESSED

Number of Months Appealed: 7

Number of Months Assessed: 0

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2020 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 2020.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit