

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION

Appeal Decision: Approved

Hearing Issue: 2016 Tax-Year Penalty

Hearing Date: June 19, 2017

Decision Date: August 30, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on June 19, 2017. The Appellant offered testimony under oath or affirmation.

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

- Exhibit 1: Appeal Case Information from Schedule HC
- Exhibit 2: 3/16/17 Appeal (8 pages)
- Exhibit 3: 5/23/17 Notice of Hearing (3 pages)

FINDINGS OF FACT

The record shows, and I so find:

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

2. The Appellant's filing status in 2016 was Married Filing Separate with no dependents. The Appellant's federal AGI in 2016 was \$25,677. The Appellant resided in Barnstable County during the last three months of 2016. The Appellant turned forty-three years old in 2016. (Exhibit 1)
3. The Appellant did not have health insurance coverage during 2016. (Appellant's testimony)
4. The Appellant worked for a cruise line from 1999, until January 2015, when he suffered an injury and went on leave from his job. During this time, the Appellant was based out of Thailand, where he resided. (Appellant's testimony; Exhibit 2)
5. The Appellant's uncle has owned a restaurant on Cape Cod for many years. The Appellant has resided in the city where the restaurant is located since October 21, 2015. (Appellant's testimony)
6. On October 28, 2015, the Appellant married a US citizen. In early 2016, the Appellant applied for permanent resident status. In April 2016, the Appellant received a Social Security number. The Appellant began working at his uncle's restaurant on April 25, 2016. The Appellant does not have access to health insurance coverage through his employer. (Appellant's testimony; Exhibit 2)
7. The Appellant did not learn of the individual mandate until February 2017, when he did his income tax return for 2016. This was the first time that the Appellant had needed to file an income tax return in the USA. (Appellant's testimony)
8. The Appellant has not received a determination on his application for a Green card. The Appellant was a nonresident alien throughout 2016. (Appellant's testimony)
9. The Appellant's wife has had health insurance coverage for many years. The Appellant is not eligible to be included on his wife's coverage because he does not have permanent resident status. (Appellant's testimony)
10. According to Table 2 of the Schedule HC 2016, the Appellant was eligible for government-subsidized insurance in 2016, since his AGI for 2016 was less than \$35,310 for a family of one. (Appellant's testimony)
11. According to Table 3, Affordability, of the Schedule HC 2016, the Appellant could have afforded to pay up to 4.2% of his income in 2016 for health insurance coverage. Based on his AGI and filing status, the Appellant could have afforded to pay a monthly premium of up to \$89 for health insurance coverage in 2016.
12. According to Table 4, Premiums, of the Schedule HC 2016, the Appellant could have purchased health insurance coverage for himself in the private market in 2016 for a monthly premium of \$281, based on his county of residence and age in 2016.

Massachusetts Health Connector Appeals Unit

ANALYSIS AND CONCLUSIONS OF LAW

MGL Chapter 11M, § 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 issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2016 should be waived, either in whole or in part.

I credit the Appellant’s testimony that he did not become aware of the individual mandate until he 2017, when he filed his federal and state tax returns for the first time. The Appellant had resided in Thailand, until October 2015, when he joined his uncle on Cape Cod and got married to US citizen. He applied for a Green card and a Social Security number soon afterwards. As he had only recently arrived in the USA from his native Thailand and had to wait until April 2016 before he could start working legally, it is not surprising that the Appellant would not have learned of the individual mandate until 2017, when he did his tax return. Moreover, even if he had been aware of the requirement to have coverage, the Appellant could not have afforded to pay a \$281 monthly premium for coverage in the private market in 2016; and, the Appellant was not eligible for ConnectorCare plans or an APTC, because of his nonresident alien status in 2016 while his Green Card application was pending.

Therefore, I conclude that health insurance that provided minimum creditable coverage was not affordable for the Appellant in 2016, because he experienced financial hardship, under 956 CMR 6.08(3).

Accordingly, the Appellant’s twelve-month penalty for 2016 shall be waived in full.

ORDER

Penalty Overturned in Full
 Penalty Overturned in Part

Penalty Upheld
 Other

PENALTY ASSESSED

Number of months appealed: 12

Number of months assessed: 0

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

cc. Connector Appeals Unit

Connector Appeals Unit

FINAL APPEAL DECISION

Appeal Decision: Penalty Overturned in Full

Penalty Upheld

Penalty Overturned in Part

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date: March 2, 2017

Decision Date: August 15, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellants are a married couple (Husband and Wife) and designated a representative (Representative) to represent them in connection with this appeal. Representative appeared at the hearing, which was held by telephone on March 2, 2017. The hearing record consists of the testimony and the following documents which were admitted into evidence:

Exhibit 1: Appeal Case Information from Schedule HC

Exhibit 2: Statement of Grounds for Appeal - 2015 (April 23, 2016)

Exhibit 3: Representative Form (August 26, 2016)

Exhibit 4: Notification of Hearing on August 17, 2016 (July 27, 2016)

Exhibit 5: Notification of Hearing on March 2, 2017 to Representative (February 10, 2017)

Exhibit 6: Notification of Hearing on March 2, 2017 to appellants (February 10, 2017)

FINDINGS OF FACT

The record shows¹, and I so find:

¹ The findings are all taken from the appellant's testimony, unless an exhibit is specifically cited.

1. Husband and Wife were born in 1967 and 1986, respectively. They have three minor children. Husband has dual American and Lebanese citizenship. During 2015, the appellants and their children spent the entire year in Lebanon, while maintaining a residence in Bristol County, Massachusetts, and they had health insurance in Lebanon.

2. The appellants filed a Statement of Grounds for Appeal - 2015, dated April 23, 2016, stating "Other" as the ground for appeal. (Exhibit 2)

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellants submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply. They asserted at the hearing that they were living outside the United States during all of 2015 and had health insurance in Lebanon, where they were living.

I conclude that the penalty should be waived in full because the appellants were living in Lebanon (and had health insurance there) during all of 2015.

PENALTY ASSESSED

Number of Months Appealed: 24 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 2015 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 2015.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

CONNECTOR APPEALS UNIT

discovered that the first open record request was sent to a previous address. The appeals unit sent a new request to the new address in July, 2017. The representative/spouse submitted the information to the appeals unit on August 15, 2017. The insurance information request indicated that the representative/spouse was enrolled in an employer-sponsored health insurance from February 17, 2013 ending December 31, 2015. The document indicated that the representative/spouse enrolled in a new program starting January 25, 2016. The employer's document identified that there was dependent coverage for three dependents including the appellant. However, the document did not specifically state the years of coverage for the dependents.

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

Exhibit 1: Notice of Hearing dated May 19, 2017.

Exhibit 2: Appellant's Schedule HC information dated May 19, 2017.

Exhibit 3: Appellant's letter of 05/19/2017

Exhibit 4: Duplicate documents from 3 previous hearings which appellant failed to appear.

Exhibit 5: Representative/appellant spouse's employer submitted evidence that the appellant/spouse had health insurance starting February 17, 2013 and ending December 31, 2015. The documentation indicates that appellant/spouse was enrolled in a new health insurance plan starting January 25, 2016 and that the appellant is included in that insurance as a dependent.

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was a 40 year old married individual, filing jointly, residing in Suffolk County in 2015.
2. According to appellant's Schedule HC information appellant was uninsured for 12 months of 2015. Appellant is appealing a 12 month penalty.
3. Appellant's joint Federal Adjusted Gross Income was \$48,158.00 in 2015.
4. I find representative's testimony that the appellant was insured in 2013 through the representative's employer sponsored health insurance plan to be credible.
5. I find representatives testimony that the appellant was out of the country in 2014 to be credible.
6. I find representative's testimony that the representative and the appellant were unaware that appellant was not covered by representative's 2015 employer sponsored health plan until tax filing time in 2016 to be credible.

CONNECTOR APPEALS UNIT

ANALYSIS AND CONCLUSION 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.

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.

I find that appellant and appellant’s spouse reasonably relied on the prior practice of the representative’s employer providing coverage for the couple.

I find that the appellant is not subject to a tax penalty in 2015.

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 2015.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

Appeal Decision: Penalty Overturned in Full

Penalty Upheld

Penalty Overturned in Part

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date: December 14, 2016

Decision Date: September 6, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing, which was held by telephone on December 14, 2016. The hearing record remained open at the conclusion of the testimony to permit the appellant to submit an overview of benefits provided by the appellant's health insurance plan. These documents were submitted timely and were admitted into evidence. 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

Exhibit 2: Statement of Grounds for Appeal - 2015 (May 20, 2016)

Exhibit 2A: Letter to appellant from nystate regarding appellant's health insurance enrollment (December 23, 2014)

Exhibit 2B: Benefits Overview

Exhibit 3: Notification of Hearing (November 17, 2016)

Exhibit 4: Overview of benefits offered by appellant's health insurance plan

FINDINGS OF FACT

The record shows¹, and I so find:

1. During 2015, the appellant was single and turned 30 years old. The appellant was a resident of Berkshire County, where their parents lived, but also had an apartment in New York with their significant other.² The appellant spent most of their time in New York, but maintained their legal residence in Massachusetts since their employer was located here. The appellant mostly worked remotely. The appellant started a new job in New York on January 4, 2016.
2. During 2015, the appellant's employer did not offer health insurance to the appellant, and the appellant enrolled in an individual plan in New York. The appellant's employer reimbursed the appellant for their premium, paying \$400-500 per month. Prior to 2015, the appellant had been enrolled in a very good plan in Massachusetts. In 2015, however, the appellant switched to a new inexpensive plan in New York through the health exchange there, a so-called Catastrophic Level plan, at a monthly premium cost of \$197.73. The appellant was under the age of 30 at the start of the plan year, which began December 22, 2014. The new plan had a \$6,600 deductible, but it covered preventive care visits at no charge and generally covered the various health services required of a MCC-compliant plan. (Testimony & Exhibits 2A & 4)
3. The appellant filed their 2015 Massachusetts income tax return as single with no dependents. Their federal adjusted gross income was \$73,509. They reported on their Schedule HC, filed with their 2015 income tax return, that they had no health insurance that complied with Minimum Creditable Coverage (MCC) standards during 2015, and they were assessed a 12-month penalty. (Exhibit 1)
4. The appellant filed a Statement of Grounds for Appeal - 2015, dated May 20, 2016, stating as the ground for appeal as follows: "During 2015, I was enrolled in health care through the state of New York (Empire Blue Cross Blue Shield). See documentation included for details. Thank you for your review and understanding." (Exhibit 2)

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply because they had health insurance through a Blue Cross Blue Shield plan in New York.

¹ The findings are all taken from the appellant's testimony, unless an exhibit is specifically cited.

² Although it is technically not the correct usage, "they," "them" etc. will be used to refer to the appellant rather than "he," "him" etc. or "she," "her" etc. to help maintain the confidentiality of the appellant's identity.

CONNECTOR APPEALS UNIT

Typically, to be MCC-compliant, a health plan's deductible may not exceed \$2,000 for an individual. 956 CMR 501(1)(c)(3). 965 CMR 5.03(3)(b)(1), however, creates an exception to this requirement. It provides that a Catastrophic Health Plan as defined in 42 U.S.C. § 18022(e) is deemed to provide minimum creditable coverage. Section 18022(e), in turn, provides that a catastrophic plan meets federal standards, even though the premium exceeds annual limits, if the enrollee is under the age of 30 at the beginning of the plan year, the plan provides certain essential health benefits, including coverage for at least three primary care visits, and the premium accords with a formula specified in 26 U.S.C. 223(c)(2)(A).

The appellant was under the age of 30 at the beginning of their plan year. In addition, their premium did not exceed the above-referenced formula, and their plan provided the scope of benefits specified in Section 18022(e). Accordingly, I conclude that the appellant's health insurance constituted a Catastrophic Health Plan in compliance with these federal standards and so that their insurance complied with MCC standards. Under these circumstances, the penalty 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 2015 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 2015.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

Appeal Decision: Penalty Overturned in Full

Penalty Upheld

Penalty Overturned in Part

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date: December 14, 2016

Decision Date: September 6, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing, which was held by telephone on December 14, 2016. The hearing record remained open at the conclusion of the testimony to permit the appellant to submit an overview of benefits provided by the appellant's health insurance plan. These documents were submitted timely and were admitted into evidence. 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

Exhibit 2: Statement of Grounds for Appeal - 2015 (May 20, 2016)

Exhibit 2A: Letter to appellant from nystate regarding appellant's health insurance enrollment (December 23, 2014)

Exhibit 2B: Benefits Overview

Exhibit 3: Notification of Hearing (November 17, 2016)

Exhibit 4: Overview of benefits offered by appellant's health insurance plan

FINDINGS OF FACT

The record shows¹, and I so find:

1. During 2015, the appellant was single and turned 30 years old. The appellant was a resident of Berkshire County, where their parents lived, but also had an apartment in New York with their significant other.² The appellant spent most of their time in New York, but maintained their legal residence in Massachusetts since their employer was located here. The appellant mostly worked remotely. The appellant started a new job in New York on January 4, 2016.
2. During 2015, the appellant's employer did not offer health insurance to the appellant, and the appellant enrolled in an individual plan in New York. The appellant's employer reimbursed the appellant for their premium, paying \$400-500 per month. Prior to 2015, the appellant had been enrolled in a very good plan in Massachusetts. In 2015, however, the appellant switched to a new inexpensive plan in New York through the health exchange there, a so-called Catastrophic Level plan, at a monthly premium cost of \$197.73. The appellant was under the age of 30 at the start of the plan year, which began December 22, 2014. The new plan had a \$6,600 deductible, but it covered preventive care visits at no charge and generally covered the various health services required of a MCC-compliant plan. (Testimony & Exhibits 2A & 4)
3. The appellant filed their 2015 Massachusetts income tax return as single with no dependents. Their federal adjusted gross income was \$73,509. They reported on their Schedule HC, filed with their 2015 income tax return, that they had no health insurance that complied with Minimum Creditable Coverage (MCC) standards during 2015, and they were assessed a 12-month penalty. (Exhibit 1)
4. The appellant filed a Statement of Grounds for Appeal - 2015, dated May 20, 2016, stating as the ground for appeal as follows: "During 2015, I was enrolled in health care through the state of New York (Empire Blue Cross Blue Shield). See documentation included for details. Thank you for your review and understanding." (Exhibit 2)

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply because they had health insurance through a Blue Cross Blue Shield plan in New York.

¹ The findings are all taken from the appellant's testimony, unless an exhibit is specifically cited.

² Although it is technically not the correct usage, "they," "them" etc. will be used to refer to the appellant rather than "he," "him" etc. or "she," "her" etc. to help maintain the confidentiality of the appellant's identity.

CONNECTOR APPEALS UNIT

Typically, to be MCC-compliant, a health plan's deductible may not exceed \$2,000 for an individual. 956 CMR 501(1)(c)(3). 965 CMR 5.03(3)(b)(1), however, creates an exception to this requirement. It provides that a Catastrophic Health Plan as defined in 42 U.S.C. § 18022(e) is deemed to provide minimum creditable coverage. Section 18022(e), in turn, provides that a catastrophic plan meets federal standards, even though the premium exceeds annual limits, if the enrollee is under the age of 30 at the beginning of the plan year, the plan provides certain essential health benefits, including coverage for at least three primary care visits, and the premium accords with a formula specified in 26 U.S.C. 223(c)(2)(A).

The appellant was under the age of 30 at the beginning of their plan year. In addition, their premium did not exceed the above-referenced formula, and their plan provided the scope of benefits specified in Section 18022(e). Accordingly, I conclude that the appellant's health insurance constituted a Catastrophic Health Plan in compliance with these federal standards and so that their insurance complied with MCC standards. Under these circumstances, the penalty 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 2015 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 2015.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: July 12, 2017

Decision Date: August 21, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on July 12, 2017, 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—2016
- Ex. 1A—Letter from the appellant, undated
- Ex. 1B—Bank spending analysis¹
- Ex. 1D—Insurance claim summary, 1/29/2016
- Ex. 1E—Insurance claim summary, 3/4/2016
- Ex. 1F—Insurance claim summary, 3/8/2016
- Ex. 1G—Insurance claim summary, 12/8/2016
- Ex. 1H—Bank of America accounts overview
- Ex. 1I—Citi statement dated March 27, 2017
- Ex. 1J—Capitol One Statement, March 19, 2017

¹ There is no Exhibit 1C due to a marking error.

CONNECTOR APPEALS UNIT

Ex. 2—Appeal Case Information from Schedule HC ²

Ex. 3—Notice of Hearing

The record was held open at the conclusion of the hearing for documentation requested by the hearing officer. Specifically, the appellant was sent a form to submit to his employer regarding the terms and cost of health insurance in 2016. No documentation was submitted in response to the request and the record was closed. It is not known whether the appellant submitted the form to his employer or whether the employer failed to return the form to the Health Connector.

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is 27-years-old, is single, and does not have children. He resided in Essex County, MA in 2016. In 2016, he did not have health insurance. (Testimony, Ex. 2)
2. The appellant moved to Massachusetts in April or May of 2015 and did not have health insurance for the rest of the year. He did not pay a penalty for the months during which he was uninsured in 2015. (Testimony)
3. The appellant was employed in 2016 and was eligible for employer health insurance. The cost of an individual plan was approximately \$250.00-\$300.00/month which the appellant determined was not affordable. (Testimony)
4. The appellant performed security work for properties throughout the state and was reliant on his car. In 2016, two of his vehicles had mechanical failures. He was in an accident with a third vehicle and the resulting damage was covered by his insurance policy. He was without a vehicle for approximately two months during which time he took the commuter rail and paid \$15.00-\$30.00/day depending on where he was going. (Testimony)
5. The appellant reported an adjusted gross income of \$48,383.00 on his 2016 federal tax return, and reported that he was single with one dependent. (Ex. 2)
6. The appellant lived with a disabled friend who received assistance with his housing costs. The rent for their apartment was \$1350.00/month and the appellant paid \$750.00 towards that amount. (Testimony)

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

CONNECTOR APPEALS UNIT

7. In 2016, the appellant had approximately \$15,000.00 of personal debt.³ (Testimony)
8. The appellant did not enroll in employer health insurance for 2017, and did not have insurance at the time of the instant hearing. (Testimony)
9. In 2016, the appellant had regular monthly expenses of approximately \$2149.00 for rent (\$750.00), heat averaged over summer and winter months (\$383.00), electricity (\$50.00), automobile insurance (\$151.00), cable and internet service (\$90.00), cell phone (\$65.00), gasoline (\$60.00), and food (\$600.00). In addition, he paid approximately \$310.00/month towards his credit card debt. (Testimony)

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

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant submitted a statement of grounds for appeal (Ex. 1), claiming that the individual mandate did not apply to him because during 2016 1) the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities; and 2) he incurred a fire, flood, natural disaster or other unexpected natural or human-caused event which caused substantial household or personal damage to or for him. He also submitted a letter with his statement (Ex. 1A) in which he stated in part that he had to replace his transportation three times during the year and struggled with paying a large personal debt, both of which hindered his ability to obtain health insurance.

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

³ The documentation that the appellant submitted to substantiate his debt is from 2017, not 2016, the year in question. In or around March, 2017, he had a balance of approximately \$15,333.00 on three credit cards. (Exs. 1H, 1I and 1J)

CONNECTOR APPEALS UNIT

without facing a tax penalty; for Tax Year 2016, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Since the appellant was uninsured for the entire year, he was assessed and is appealing a penalty of twelve months.

The appellant testified that he moved to Massachusetts in 2015 and did not have insurance for any part of the year. He testified that he did not pay a penalty for being uninsured that year. He testified that he was employed in 2016 and was eligible for employer health insurance, but did not enroll because he could not afford the monthly premium of approximately \$250.00-\$300.00. Finally, he testified that two of his cars had mechanical failures during the year and a third was in an accident.

The appellant argued that he sustained two hardships in 2016; to wit, that he incurred an unexpected natural or human-caused event, and that the expense of obtaining insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. With regard to the first issue, he maintains that the loss of three vehicles over the course of the year constitutes an event which caused substantial household or personal damage. While there is no question that he was greatly inconvenienced, especially given the nature of his work, and that the cost of repairing and/or replacing the vehicles compounded an already strained financial situation, it is concluded that the situation did not rise to the level of the type of disaster envisioned in the regulation, and is therefore not considered to be a hardship pursuant to 956 CMR 6.08(1)(d)(4).

As for the second issue, the evidence provided by the appellant established that his income for 2016, \$48,383.00, was greater than 300% of the federal poverty level, which for 2016 was \$47,790.00 for a two-person family.⁴ Pursuant to the Code of Massachusetts Regulations, 956 CMR 6.05(1), the Connector has established an affordability schedule that sets forth the percentage of an individual's adjusted gross income which s/he can be expected to contribute toward the cost of private health insurance that meets minimum creditable coverage standards. Table 3 of the Affordability Schedule indicates that an individual filing as Head of Household with one dependent with a federal adjusted gross income between \$47,791.00 and \$55,755.00 is deemed to be able to afford a monthly premium of \$298.00 (7.40% of \$48,383.00). Table 4 of the Premium Schedule indicates that a 26-year-old Head of Household with dependents (the appellant's age in 2016) in Essex County (where the appellant resided in 2016) could have purchased private health insurance for \$528.00 per month, more than the monthly amount deemed affordable from Table 3. Thus,

⁴ The information on Ex. 3 indicates that the appellant reported that he was single on his 2016 tax return with one dependent. Although he did not file as Head of Household, the fact that he claimed a dependent makes this a two-person family, and for purposes of this analysis and the application of the aforementioned Tables, he will be treated as Head of Household.

CONNECTOR APPEALS UNIT

according to the foregoing analysis, the appellant could not have purchased affordable health insurance in 2016.

The next issue to consider is whether the appellant had access to affordable employer health insurance. The appellant testified credibly that the cost of an individual plan through his employer was \$250.00-\$300.00 per month. Pursuant to 26 IRC section 36B and 45 CFR section 155.305(f), applicants are eligible for an Advanced Premium Tax Credit (APTC) if they meet qualifying income levels and other eligibility requirements. Massachusetts residents may also be eligible for additional state premium assistance through the Health Connector's ConnectorCare program if: a) their household income does not exceed 300 percent of the Federal Poverty Level (FPL) and b) they are eligible for an APTC. 956 CMR 12.09(1) An applicant who has access to other qualifying health insurance, including insurance through an employer, will be blocked from eligibility for an APTC if the coverage is affordable and meets minimum value standards, as those terms are defined by the law. See 26 CFR section 1.36B-2(c)(3). Coverage for plan year 2016 is considered to be affordable if the employee's contribution for an individual plan is 9.66 percent or less of the employee's projected household modified adjusted income (MAGI). The coverage is considered to meet minimum value standards if it has an actuarial value of at least 60 percent. (It is noted that since nothing was submitted in response to the Open Record Request for employer health insurance information, it is not known whether the insurance met minimum value standards.)

In this case, the appellant testified that the monthly cost for an individual plan was approximately \$250.00-\$300.00. That cost is less than 9.66 percent of the appellant's projected household MAGI for 2016 (i.e.—9.66 percent of \$48,383.00 is \$4674.00 or \$389.00/month).⁵ (As already discussed, pursuant to the Affordability Schedules, the appellant is deemed to be able to spend \$298.00/month (7.40 percent of his income), and that is significantly less than 9.66 percent. Hence, if the employer coverage met minimum value standards, and since it is less than \$389.00/month, the appellant is considered to have had access to qualifying health insurance, and would have been blocked from eligibility for an APTC or ConnectorCare. See 956 CMR 12.05 and 45 CFR section 155.305 (f)(1)(ii)(B).

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

⁵ A MAGI figure was not obtained at the hearing and the record was not held open for documentation to make that calculation. It is recognized that the federal adjusted gross income (AGI) is not the same number as MAGI since the latter number starts with AGI and then adds in certain income sources such as tax-exempt interest, taxable social security and foreign earned income. See 26 USC section 36B(d)(2)(b) and 956 CMR 12.04. Notwithstanding this discrepancy, based on the appellant's testimony, the two numbers were probably very close, if not the same, in which case it is not unreasonable to use the AGI number for purposes of this calculation.

CONNECTOR APPEALS UNIT

during 2016. Examples of hardships include being homeless or overdue in rent or mortgage payments, receiving a shut-off notice for utilities, or incurring unexpected increases in basic living expenses due to domestic violence, death of a family member, sudden responsibility for providing care for a family member or fire, flood or natural disaster. In addition, the appellant's tax penalty for 2016 could be waived if he experienced financial circumstances such that the expense of purchasing health insurance would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08.

The evidence presented by the appellant in this case is insufficient to establish that he experienced a financial hardship as defined by law so as to waive his penalty for the entire period in question. The appellant testified that in 2016 he incurred basic monthly expenses of approximately \$2459.00. Those expenses were less than his regular monthly pre-tax income of approximately \$4031.00, thereby making a monthly employer premium of \$250.00-\$300.00 seemingly manageable. While it is recognized that an approximate difference between income and expenses of \$1572.00 per month is not a panacea, it does not appear on its face that the payment of \$250.00-\$300.00/month for health insurance would have caused an undue hardship.

Based on the totality of the evidence, it is concluded that the appellant could have afforded employer health insurance and he failed to establish that he experienced a financial hardship that would entitle him to a complete waiver of the penalty. Notwithstanding this conclusion and in order to mitigate the harshness of a full twelve-month penalty, it will be reduced to two months because the appellant established that he experienced difficult and unexpected circumstances in connection with his vehicles. A reduced penalty makes the point that the appellant is expected to comply with the Legislature's requirement that Massachusetts residents must have compliant health insurance coverage. In reaching this determination, it is acknowledged that the appellant had still not enrolled in employer health insurance at the time of the hearing.

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

PENALTY ASSESSED

Number of Months Appealed: 12

Number of Months Assessed: 2

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

CONNECTOR APPEALS UNIT

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: July 13, 2017 Decision Date: August 11, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone on July 13, 2017. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified. At the end of the hearing, the record was left open until July 27, 2017 so that Appellant could submit additional documents. Appellant did not submit additional documents and the record is now closed.

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 June 12, 2017
- Exhibit 2: Appeal Case Information from Schedule HC 2016
- Exhibit 3: Statement of Grounds for Appeal, dated March 24, 2017

FINDINGS OF FACT

The record shows, and I so find:

CONNECTOR APPEALS UNIT

1. Appellant was 52 years in 2016 and filed a Massachusetts tax return as single, with no dependents claimed (Exhibit 2).
2. Appellant lived in Suffolk County, MA in 2016 (Exhibit 2).
3. Appellant's Adjusted Gross Income for 2016 was \$25,252 (Exhibit 2).
4. Appellant worked in 2016 and employer sponsored health insurance was available at a cost of \$400 per month (Testimony of Appellant).
5. Appellant did not sign up for the employer sponsored health insurance due to the cost (Testimony of Appellant).
6. Appellant looked into government subsidized health insurance but chose not to sign up due to the cost (Testimony of Appellant).
7. Appellant has not had health insurance for the past six years (Testimony of Appellant).
8. Appellant did not have health insurance for twelve months in 2016 (Testimony of Appellant and Exhibit 2).
9. Appellant has been assessed a penalty for twelve months for 2016 (Exhibit 2)
10. Appellant filed for an appeal of the penalty on March 24, 2017. Appellant claimed that the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities (Exhibit 3).
11. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
12. According to Table 3 of Schedule HC for 2016 a person filing as single, with no dependents claimed and with a Federal Adjusted Gross Income of \$25,252 could afford to pay \$88 per month for health insurance.
13. According to Table 4, Appellant, age 52 and living in Suffolk county, could have purchased private insurance for \$314 per month. Private insurance was not considered affordable for Appellant in 2016.
14. According to Table 2 of Schedule HC for 2016, Appellant, earning less than \$35,010 would have met the income eligibility guidelines for government subsidized insurance.

CONNECTOR APPEALS UNIT

15. Appellant was not homeless during 2016. Appellant did not fall behind in rent or mortgage payments nor receive any shut-off notices (Testimony of Appellant).

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

17. Appellant had the following monthly expenses for basic necessities during 2016: rent \$650; telephone \$62; food \$300 supplies \$200; clothing \$75; public transportation \$100; dental \$36. These expenses totaled approximately \$1,423 (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

Appellant did not have insurance for twelve months in 2016. 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 so that the purchase of insurance which met minimum creditable coverage standards was not affordable. See 956 CMR 6.08.

Appellant worked and employer sponsored health insurance was available at a cost to Appellant of \$400 per month. According to Appellant’s modified adjusted gross income for 2016, Appellant was able to afford \$88 per month for health insurance under Table 3 of Massachusetts Schedule HC. Private insurance was deemed not to be affordable. The employer sponsored health insurance available to Appellant cost \$400 per month for a plan for a single person, so it is not considered affordable according to Table 3. Appellant, who earned \$25,252 was income eligible for government subsidized health insurance. Appellant would not have been blocked from government subsidized health insurance since the cost of employer

CONNECTOR APPEALS UNIT

sponsored health insurance was more than 9.66% of Appellant's Modified adjusted gross income. See 45CFR 155.305 (f)(1)(ii)(B), 26CFR 1-36B-2(c)(3)(v), Schedule HC for Healthcare Tables 2, 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 expenses for basic necessities in the amount of \$1,423. Appellant's modified adjusted gross income for 2016 was \$2,104. The expense of purchasing government subsidized health insurance would not have caused Appellant a serious deprivation of food, shelter, clothing or other necessities.

I find that Appellant did not suffer a hardship and that the 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 2016 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: July 13, 2017 Decision Date: August 7, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone on July 13, 2017. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified. At the end of the hearing, the record was left open until July 27, 2017 so that Appellant could submit additional documents. Appellant did not submit additional documents and the record is now closed.

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 June 12, 2017
- Exhibit 2: Appeal Case Information from Schedule HC 2016
- Exhibit 3: Statement of Grounds for Appeal, and supporting documents, dated March 28, 2017

FINDINGS OF FACT

The record shows, and I so find:

CONNECTOR APPEALS UNIT

1. Appellant was 52 years in 2016 and filed a Massachusetts tax return as single, with no dependents claimed (Exhibit 2).
2. Appellant lived in Middlesex County, MA in 2016 (Exhibit 2).
3. Appellant's Adjusted Gross Income for 2016 was \$30,233 (Exhibit 2).
4. Appellant worked in 2016 and employer sponsored health insurance was available at a cost to Appellant of \$370 per month (Testimony of Appellant).
5. Appellant did not sign up for the employer sponsored health insurance due to the cost (Testimony of Appellant).
6. Appellant did not have health insurance for twelve months in 2016 (Testimony of Appellant and Exhibit 2).
7. Appellant has been assessed a penalty for twelve months for 2016 (Exhibit 2)
8. Appellant filed for an appeal of the penalty on March 28, 2017. Appellant claimed that the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities (Exhibit 3).
9. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
10. According to Table 3 of Schedule HC for 2016 a person filing as single, with no dependents claimed and with a Federal Adjusted Gross Income of \$30,233 could afford to pay \$126 per month for health insurance.
11. According to Table 4, Appellant, age 52 and living in Middlesex county, could have purchased private insurance for \$314 per month. Private insurance was not considered affordable for Appellant in 2016.
12. According to Table 2 of Schedule HC for 2016, Appellant, earning less than \$35,010, would have met the income eligibility guidelines for government subsidized insurance.
13. Appellant did not have housing for part of 2016, following the death of a spouse. Appellant stayed with an adult daughter and a friend (Testimony of Appellant).

CONNECTOR APPEALS UNIT

14. Appellant had the following monthly expenses for basic necessities during 2016: rent \$542; telephone \$62; food \$260 supplies \$30; clothing \$17; public transportation \$92; child support \$442; IRS \$92. These expenses totaled approximately \$1,537 (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

Appellant did not have insurance for twelve months in 2016. 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 so that the purchase of insurance which met minimum creditable coverage standards was not affordable. See 956 CMR 6.08.

Appellant worked and employer sponsored health insurance was available at a cost to Appellant of \$371 per month. According to Appellant’s modified adjusted gross income for 2016, Appellant was able to afford \$126 per month for health insurance under Table 3 of Massachusetts Schedule HC. Private insurance was deemed not to be affordable. The employer sponsored health insurance available to Appellant cost \$370 per month for a plan for a single person, so it is not considered affordable according to Table 3. Appellant, who earned \$30,233 was income eligible for government subsidized health insurance. Appellant would not have been blocked from government subsidized health insurance since the cost of employer sponsored health insurance was more than 9.66% of Appellant’s Modified adjusted gross income. See 45CFR 155.305 (f)(1)(ii)(B), 26CFR 1-36B-2(c)(3)(v), Schedule HC for Healthcare Tables 2, 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. Following the death of a spouse, Appellant did not have housing for part of 2016. I find, therefore, that pursuant to 956 CMR 6.08 (1)(a), Appellant experienced a hardship such that insurance would not have been affordable. The penalty assessed should be waived in full.

CONNECTOR APPEALS UNIT

PENALTY ASSESSED

Number of Months Appealed: 12

Number of Months Assessed: 0

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

ADDENDUM: Appellant should note that I have based this decision on the facts as I have found them for 2016. Appellant should note that a similar decision may not be reached if Appellant fails to obtain health insurance in the future. If Appellant has not already done so, Appellant should call the Health Connector at 1 877 623-6765 to apply for affordable health insurance.

FINAL APPEAL DECISION

Appeal Decision:

Hearing Issue: 2016 Tax-Year Penalty

Hearing Date: July 19, 2017

Decision Date: September 28, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant/husband appeared at the hearing, which was held by telephone on July 19, 2017. The Appellant/wife did not appear at the hearing. The Appellant/husband offered testimony under oath or affirmation.

At the end of the hearing, the record was left open until August 16, 2017, for the Appellants to submit additional evidence. At the Appellants' request, the time for submitting additional evidence was extended to September 13, 2017. The Appellants submitted additional evidence on September 13, 2017, and the record was closed. The hearing record consists of the Appellant/husband's testimony and the following documents which were admitted in evidence:

- Exhibit 1: Appeal Case Information from Schedule HC
- Exhibit 2: 3/27/17 Appeal (7 pages)
- Exhibit 3: 6/15/17 Notice of Hearing (3 pages)
- Exhibit 4: 1/2017 Form MA 1099-HC from MassHealth
- Exhibit 5: Hospital Bill for 7/11/16 Admission

Massachusetts Health Connector Appeals Unit

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellants appealed from the assessment of two twelve-month penalties against them on their 2016 state income tax return. (Exhibit 1)
2. The Appellants filing status in 2016 was Married Filing Jointly with one dependent. The Appellants' federal AGI in 2016 was \$32,849. The Appellants resided in Middlesex County in 2016. The Appellant/husband turned thirty-four years old in 2016. The Appellant/wife turned thirty-one years old in 2016. (Exhibit 1)
3. The Appellant/wife had health insurance in 2016 only during the last four months of the year. Her coverage was through MassHealth, as a result of her pregnancy. (Exhibit 4; Appellant's testimony)
4. The Appellant/husband did not have health coverage in 2016. (Inference drawn from Appellant/husband's failure to provide evidence of such coverage when the record was left open for him to do so)
5. The Appellant/husband checked out the Health Connector for coverage regularly in 2016. (Appellant's testimony)
6. The Appellants' first child was born in 2013. Their second child was born in March 2017. (Appellant's testimony)
7. The Appellant/husband was unemployed from January through March of 2016. From April through November 2016, the Appellant/husband worked for an employer that offered health insurance coverage. Family coverage cost \$200/monthly. He did not enroll in the coverage because he thought that it was too expensive. (Appellant's testimony)
8. In June 2016, the Appellants learned that the Appellant/wife was pregnant. (Appellant's testimony)
9. On July 11, 2016, the Appellant went to the emergency room at a hospital and was admitted and discharged that day. The hospital billed him \$1,171 in July 2016 for the visit. (Exhibit 5)
10. By February 10, 2017, the Appellant still owed \$903 for services provided by the hospital's emergency physicians on July 11, 2016. (Exhibit 2)
11. According to Table 2 of the Schedule HC 2016, the Appellants were eligible for government-subsidized insurance in 2016, since their AGI for 2016 was less than \$60,270 for a family of three.
12. According to Table 3, Affordability, of the Schedule HC 2016, the Appellants could have afforded to pay up to 3.45% of their income in 2016 for health insurance coverage, based on their 2016 AGI and Married Filing Jointly with one



dependent tax filing status. Accordingly, the Appellants could have afforded to pay a monthly premium of up to \$94 for health insurance coverage in 2016.

- 13. According to Table 4, Premiums, of the Schedule HC 2016, the Appellants could have purchased family health insurance coverage in the private market in 2016 for a monthly premium of \$551, based on their county of residence and age in 2016.

ANALYSIS AND CONCLUSIONS OF LAW

MGL Chapter 11M, § 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 issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2016 should be waived, either in whole or in part.

In this case, the Appellant/husband has established through credible testimony and documentary evidence that the Appellants experienced financial hardship in 2016. The Appellant/husband was unemployed during the first three months of 2016. When he found employment in April 2016 and his new employer offered health insurance coverage, the coverage at \$200/monthly was much more than the \$94/monthly that he could afford to pay. When the Appellants learned in June 2016 that their second child was on the way, the Appellant/wife enrolled in MassHealth coverage as soon as she could and had this coverage during the last four months of 2016. In July 2016, the Appellant/husband was admitted into the hospital on an emergency basis, and the hospital and physician bills for this visit totaled more than \$2,000—an amount the Appellants are still trying to pay off. Under these circumstances, the Appellants could not have afforded to pay \$94/monthly for coverage during any period in 2016.

Therefore, I conclude that health insurance that provided minimum creditable coverage was not affordable for the Appellants in 2016, because they experienced financial hardship, under 956 CMR 6.08(1)(e).

Accordingly, the Appellants’ two twelve-month penalties shall be waived in full for 2016.

ORDER

Penalty Overturned in Full
___ Penalty Overturned in Part
___ Penalty Upheld
___ Other

Massachusetts Health Connector Appeals Unit

PENALTY ASSESSED

Number of months appealed: 24

Number of months assessed: 0

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

cc. Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: July 20, 2017

Decision Date: August 31, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on July 20, 2017. Testimony was recorded electronically. The hearing record consists of the Appellant's testimony and the following documents, which were admitted into evidence:

- Exhibit 1: Computer Printout from the Department of Revenue (DOR) with appeal case information from Appellant's 2016 Schedule HC
- Exhibit 2: Appellant's Health Care Appeal Form dated March 25, 2017
- Exhibit 3: Note from the Appellant
- Exhibit 4: Appellant's Earnings Statement dated 3/24/2017
- Exhibit 5: National Grid Bill dated 3/1/2017
- Exhibit 6: Eversource Bill dated 3/21/2017
- Exhibit 7: Appellant's Automobile Lease Bill dated 3/16/2017
- Exhibit 8: Appellant's Automobile Insurance Bill dated 3/2/2017
- Exhibit 9: Appellant's Mortgage Bill due on 1/1/2017
- Exhibit 10: Notice of Hearing dated 6/15/2017

CONNECTOR APPEALS UNIT

FINDINGS OF FACT

The record shows, and I so find:

1. In 2016 the Appellant was twenty-nine (29) years old. He resided in Barnstable County. (Exhibit 1)
2. In 2016 the Appellant's Massachusetts tax filing status was single with a family size of one (1) and no dependents. (Exhibit 1)
3. The Appellant had a Federal Adjusted Gross Income of \$51,386 in 2016. (Exhibit 1)
4. The Appellant had no health insurance in 2016. He was assessed a twelve (12) month penalty. (Exhibit 1)
5. The Appellant filed a Health Care Appeal Form (Appeal Form) dated March 25, 2017, appealing the assessment of the penalty for the failure of to have health insurance in 2016. On his Appeal Form, the Appellant indicated that during 2016, the expense of purchasing health insurance would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities. (Exhibit 2)
6. The Appellant was not eligible for his employer's health insurance in 2016. He became eligible in January 2017. (Appellant testimony)
7. The Appellant enrolled in his employer's health insurance in January 2017, and his coverage began at the end of January. The Appellant pays \$350 monthly. (Appellant testimony)
8. The Appellant worked 40 hours a week from October 2016 until January 2017. He usually works 55 hours per week. He is paid \$16 per hour. (Appellant testimony)
9. The Appellant's gross pay from March 13, 2017 to March 19, 2017 was \$870.88, and his take-home pay was \$662.32. He was paid \$16 per hour for 40 hours and \$24 per hour for 9.62 hours of overtime. His pay and deductions were similar for 2016. (Exhibit 4)
10. In 2016, the Appellant resided with his girlfriend, and split household expenses with her. (Appellant testimony)
11. From April 2016 until October 2016, the Appellant's girlfriend was not working and the Appellant paid all of the household bills. (Appellant testimony)
12. The Appellant's utility bills were about the same for 2016 as they were in 2017. (Appellant testimony)
13. In 2016, the Appellant had the following monthly household expenses: gas \$108, electric \$87, mortgage \$1,637. (Exhibits 5, 6, and 9)
14. In 2016, the Appellant had the following personal monthly expenses: food \$500; clothing \$50, phone \$100. (Appellant testimony)
15. In 2016 the Appellant used his pick-up truck to commute to work. He had the following monthly motor vehicle related expenses: gasoline \$200, lease payment \$350.66, insurance \$164. (Appellant testimony and Exhibits 7 and 8)

CONNECTOR APPEALS UNIT

16. In 2016, the Appellant was not homeless and he was not more than 30 days behind in his mortgage. (Appellant testimony)
17. In 2016, the Appellant did not receive a shut-off notice from an essential utility. (Appellant testimony)
18. During 2016, the Appellant did not incur a significant, unexpected increase in essential expenses resulting from: domestic violence; death of a family member or partner with primary responsibility for child care; the sudden responsibility to provide full care for an aging parent or other family member; or an unexpected natural or human-caused event causing substantial household or personal damage. (Appellant testimony)

ANALYSIS AND CONCLUSIONS OF LAW

G.L. c. 111M, § 2 also called the “individual mandate”, requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage, “(s)o long as it is deemed affordable.” Residents who do not obtain creditable coverage are subject to a tax penalty. The Appellant had no health insurance in 2016. He was assessed a twelve (12) month penalty, which the he is appealing.

Although the Appellant had no health insurance in 2016, he obtained insurance through his employer that was effective at the end of January 2017. Since gaps in coverage of three (3) months or less are not subject to a penalty, the Appellant should not be penalized for failure to have health insurance in November and December 2016. (M.G.L. c. 111M, s. 2, and Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and c. 176Q, as implemented by 956 CMR 6.00)

In order to avoid a penalty for failure to have health insurance from January through October 2016, the Appellant needs to show that there was no affordable health insurance available to him; or that he suffered a hardship pursuant to 956 CMR 6.08 (1) (a) - (e); or that there were other grounds that made obtaining health insurance for the Appellant unaffordable from January through October 2016, pursuant to 956 CMR 6.08 (3).

Private insurance was affordable for the Appellant in 2016. According to the 2016 Affordability Table included in the 2016 Schedule HC Instructions, based on the Appellant’s adjusted gross income of \$51,386, which was 436.58% of the Federal Poverty Level, he could afford to pay \$348 per month for health insurance. Based on the 2016 Premium Table included in the 2016 Schedule HC Instructions, health insurance would have cost the Appellant \$232 monthly since he was 29 years old in 2016 and resided in Barnstable County.

Employer-sponsored insurance was not available to the Appellant in 2016. In addition, the Appellant was not eligible for subsidized insurance and health insurance subsidies since he earned more than 400% of the Federal Poverty Level in 2016.

CONNECTOR APPEALS UNIT

Since the Appellant could afford private insurance in 2016, in order to avoid a penalty the Appellant must provide evidence that in 2016, he suffered a hardship pursuant to 956 CMR 6.08 (1) (a) - (e), or that there were other grounds that made health insurance unaffordable for him, pursuant to 956 CMR 6.08 (3). The Appellant provided evidence of a hardship pursuant to 956 CMR 6.08 (1) (e) from April through October, since the cost 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.

From January through October 2016, the Appellant's gross pay was approximately \$3,813 monthly (\$880 weekly). Using the earnings statement provided by the Appellant, with a gross pay of \$870.88, the Appellant's take-home pay was \$662.32 weekly or \$2,870 monthly. The Appellant paid all of the household bills from April to October, while his girlfriend was not working. Those bills totaled \$1,832, including: gas \$108, electric \$87, mortgage \$1,637. The Appellant also had personal monthly expenses totaling \$650, including: food \$500; clothing \$50, phone \$100. The Appellant had a pick-up truck which he used to commute to work. His monthly expenses relating to his pick-up truck were \$715 including gasoline \$200, lease payment \$350.66, insurance \$164. His monthly expenses totaled \$3,197 from April until October, while he was paying all of the household expenses, and exceeded his take-home pay by \$327 monthly. Health insurance would have cost him \$232 monthly.

In January, February, and March, when the Appellant was paying half of the household expenses, his monthly expenses totaled \$2,281. During this period the Appellant's monthly take-home pay was approximately \$2,870. Since his take-home pay exceeded his expenses by \$589 per month, and since health insurance would have cost him \$232 monthly, it was affordable.

For the six months that the Appellant paid all of the household bills, his expenses exceeded his take-home pay by \$327 monthly. Since his bills exceeded his take-home pay for six months, in October he still had a deficit. Therefore from April through October, the Appellant provided evidence of a hardship pursuant to 956 CMR 6.08 (1) (e) since the cost 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. He should not be fined for failure to have health insurance during this period.

PENALTY ASSESSED

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

CONNECTOR APPEALS UNIT

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2016 for the amount equal to one half the lowest cost health insurance plan available to you for each month you have been assessed a penalty, as listed above, plus applicable interest back to the 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 Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: July 20, 2017

Decision Date: September 2, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on July 20, 2017. Testimony was recorded electronically. The hearing record consists of the Appellant's testimony and the following documents, which were admitted into evidence:

- Exhibit 1: Computer Printout from the Department of Revenue (DOR) with appeal case information from Appellant's 2016 Schedule HC
- Exhibit 2: Appellant's Health Care Appeal Form dated March 7, 2017
- Exhibit 3: Note from the Appellant
- Exhibit 4: Massachusetts Court System, Human Resources, Frequently Asked Questions, Question 10. Can I make changes to my health, dental or vision plan at any time?
- Exhibit 5: Massachusetts employees Insurance and Health Benefits dated 1/7/2013
- Exhibit 6: Important Information Regarding Enrollment and Changes
- Exhibit 10: Notice of Hearing dated 6/15/2017

FINDINGS OF FACT

The record shows, and I so find:

1. In 2016 the Appellant was twenty-four (24) years old. She resided in Essex County. (Exhibit 1)

CONNECTOR APPEALS UNIT

2. In 2016 the Appellant's Massachusetts tax filing status was single with a family size of one (1) and no dependents. (Exhibit 1)
3. The Appellant had a Federal Adjusted Gross Income of \$29,591 in 2016. (Exhibit 1)
4. On her Massachusetts Schedule HC, the Appellant indicated that she had no health insurance in 2016. She was assessed a twelve (12) month penalty. (Exhibit 1)
5. The Appellant filed a Health Care Appeal Form (Appeal Form) dated March 7, 2017, appealing the assessment of the penalty for the failure of to have health insurance in 2016. On her Appeal Form, the Appellant indicated that during 2016, there were other circumstances that made health insurance unaffordable. (Exhibit 2)
6. The Appellant was working for the Commonwealth of Massachusetts in 2016. (Appellant testimony)
7. At the time the Appellant became eligible for health insurance through her employer, she had health insurance through MassHealth. Her MassHealth terminated in December 2015 or January 2016. (Appellant testimony)
8. Employees are only allowed to make changes to their insurance plans once a year during the open enrollment period unless there is an unexpected or qualifying event. (Exhibit 4)
9. After her MassHealth insurance terminated, the Appellant requested to be enrolled in her employer's insurance. She was informed that her office manager was to determine her eligibility to enroll prior to the open enrollment period. (Appellant testimony)
10. The Appellant's office manager told the Appellant that she could not enroll in her employer's health insurance prior to the open enrollment period. (Appellant testimony and Exhibit 3)
11. The open enrollment period for the Appellant's employer's health insurance was in April 2016 for insurance beginning July 1, 2016. (Appellant testimony)
12. The Appellant enrolled in her employer's health insurance during the open enrollment period and her coverage began on July 1, 2016. She pays \$60 bi-weekly (\$130 monthly) for her employer's insurance. (Appellant testimony)

ANALYSIS AND CONCLUSIONS OF LAW

G.L. c. 111M, § 2 also called the "individual mandate", requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage, "(s)o long as it is deemed affordable." Residents who do not obtain creditable coverage are subject to a tax penalty. The Appellant indicated on her 2016 Schedule HC, that she had no health insurance in 2016. She was assessed a twelve (12) month penalty, which she is appealing.

CONNECTOR APPEALS UNIT

The Appellant's testimony was creditable when she testified that she had health insurance from July through December 2016. Therefore she should not be assessed a penalty for that period. Since gaps in coverage of three (3) months or less are not subject to a penalty, the Appellant also should not be penalized for failure to have health insurance in April, May and June 2016. (M.G.L. c. 111M, s. 2, and Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and c. 176Q, as implemented by 956 CMR 6.00)

In order to avoid a penalty for failure to have health insurance from January through March 2016, the Appellant needs to show that there was no affordable health insurance available to her; or that she suffered a hardship pursuant to 956 CMR 6.08 (1) (a) - (e); or that there were other grounds that made obtaining health insurance for her unaffordable from January through March 2016, pursuant to 956 CMR 6.08 (3).

Private insurance was not affordable for the Appellant in 2016. According to the 2016 Affordability Table included in the 2016 Schedule HC Instructions, based on the Appellant's adjusted gross income of \$29,591, which was 251.41% of the Federal Poverty Level, she could afford to pay \$125 per month for health insurance. Based on the 2016 Premium Table included in the 2016 Schedule HC Instructions, health insurance would have cost the Appellant \$143 monthly since she was 25 years old in 2016 and resided in Essex County.

Employer-sponsored insurance was not available to the Appellant until July 2016. She was not allowed to enroll until the open enrollment period in April for insurance starting in July. The Appellant had been terminated from MassHealth in December 2015 or January 2016 and tried to enroll prior to the open enrollment period, but her request was denied. She paid \$130 monthly for her employer's insurance.

The Appellant was income eligible for subsidized health insurance and health insurance subsidies, however, her eligibility was blocked by her access to employer-sponsored insurance that met Minimum Essential Coverage Standards [26 CFR 1.36-B-2 (a) and (c)] and was affordable since it cost less than 9.5% of her household income. (26 CFR 1.36B-2 and 956 CMR 12.04 (1) (b)).

The Appellant should not be fined for failure to have health insurance from January through April. There was no affordable insurance available to her. Private insurance was not affordable; and employer-sponsored insurance and subsidized insurance were not available.

PENALTY ASSESSED

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

CONNECTOR APPEALS UNIT

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: July 20, 2017

Decision Date: September 10, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on July 20, 2017. Testimony was recorded electronically. The hearing record consists of the Appellant's testimony and the following documents, which were admitted into evidence:

- Exhibit 1: Computer Printout from the Department of Revenue (DOR) with appeal case information from Appellant's 2016 Schedule HC
- Exhibit 2: Appellant's Health Care Appeal Form dated March 7, 2017
- Exhibit 3: Note from the Appellant
- Exhibit 4: Appellant's W-2 from Appellant's Prior Employer, for whom he worked from 1/2017 until 6/2017
- Exhibit 5 Letter from the Health Connector dated 5/26/2016, entitled "Eligibility Approval"
- Exhibit 6: Small Claims Court Orders dated 7/21/2014 and 4/23/2015
- Exhibit 7: Receipts for Court Payments
- Exhibit 8: Small Claims Court Continuance Agreement dated 11/10/2014
- Exhibit 9: Letter from Attorney for Creditor dated 7/9/2015
- Exhibit 10: Notice of Hearing dated 6/15/2017

FINDINGS OF FACT

CONNECTOR APPEALS UNIT

The record shows, and I so find:

1. In 2016 the Appellant was thirty-six (36) years old. He resided in Middlesex County. (Exhibit 1)
2. In 2016 the Appellant's Massachusetts tax filing status was single with a family size of one (1) and no dependents. (Exhibit 1)
3. The Appellant had a Federal Adjusted Gross Income of \$50,692 in 2016. (Exhibit 1)
4. The Appellant had no health insurance from January through September 2016. He was assessed a six (6) month penalty. (Exhibit 1)
5. The Appellant filed a Health Care Appeal Form (Appeal Form) dated March 7, 2017, appealing the assessment of the penalty for the failure of to have health insurance from January through September 2016. On his Appeal Form, the Appellant indicated that during 2016, the expense of purchasing health insurance would have caused him to suffer a serious deprivation of food, shelter, clothing or other necessities. (Exhibit 2)
6. From January through June 2016, while working for his prior employer, the Appellant earned \$12,101. This employer did not offer the Appellant health insurance. (Appellant testimony and Exhibits 3 and 4)
7. In June 2016, the Appellant changed jobs. His new employer offered health insurance. The Appellant had to work 400 hours to become eligible. He thought he would be able to enroll in August 2016. The employer pays the entire premium. (Appellant testimony)
8. The Appellant enrolled in his employer's health insurance in October 2016, which was when he became eligible. (Appellant testimony and Exhibit 3)
9. The Appellant applied to MassHealth in January 2016. He was informed he was not eligible. (Appellant testimony and Exhibit 3)
10. In a letter dated May 26, 2016, from the Health Connector, the Appellant was informed that he was eligible for ConnectorCare Plan Type 2B and an Advance Premium Tax Credit of \$132. He had 60 days to enroll in coverage and his first available start date was July 1, 2016. (Exhibits 3 and 5)
11. The Appellant had the following monthly expenses in 2016: food \$500; phone \$135; car payment \$393; car insurance \$100, gasoline approximately \$280. The Appellant used his car to commute to his jobs in 2016.
12. In 2016, the Appellant had job related expenses totaling about \$400 for six (6) months. Those expenses included: paint clothes, paint supplies, and boots. (Appellant testimony)
13. The Appellant had credit card debts totaling approximately \$15,000. In 2016, the Appellant made court ordered payments totaling \$185. He finished paying one of the debts in Augusts so his monthly payments were reduced by \$60 From September through December. (Appellant testimony and Exhibits 3, 6, 8 and 9).
14. In 2016, the Appellant was not homeless and he was not more than 30 days behind in his mortgage or rent. (Appellant testimony)

CONNECTOR APPEALS UNIT

15. In 2016, the Appellant did not receive a shut-off notice from an essential utility. (Appellant testimony)
16. During 2016, the Appellant did not incur a significant, unexpected increase in essential expenses resulting from: domestic violence; death of a family member or partner with primary responsibility for child care; the sudden responsibility to provide full care for an aging parent or other family member; or an unexpected natural or human-caused event causing substantial household or personal damage. (Appellant testimony)

ANALYSIS AND CONCLUSIONS OF LAW

G.L. c. 111M, § 2 also called the “individual mandate”, requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage, “(s)o long as it is deemed affordable.” Residents who do not obtain creditable coverage are subject to a tax penalty. The Appellant had health insurance from October through December 2016. Although the Appellant did not have health insurance for nine (9) months, from January through September 2016, since gaps in coverage of three (3) months or less are not subject to a penalty, the Appellant was assessed a six (6) month penalty. (M.G.L. c. 111M, s. 2, and Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and c. 176Q, as implemented by 956 CMR 6.00)

In order to avoid a penalty for failure to have health insurance from January through September 2016, the Appellant needs to show that there was no affordable health insurance available to him; or that he suffered a hardship pursuant to 956 CMR 6.08 (1) (a) - (e); or that there were other grounds that made obtaining health insurance unaffordable from January through September 2016, pursuant to 956 CMR 6.08 (3).

According to the 2016 Affordability and Premium Tables included in the 2016 Schedule HC Instructions, private insurance was affordable for the Appellant in 2016. The Appellant’s adjusted gross income was \$50,692 in 2016, and was 430.68% of the Federal Poverty Level. He could afford to pay \$343 per month for health insurance, and health insurance would have cost him \$221 monthly since he was 36 years old in 2016 and resided in Middlesex County. Employer-sponsored insurance was not available to the Appellant until October 2016. He was not eligible for subsidized health insurance or health insurance subsidies since his adjusted gross income for 2016 was over 400% of the Federal Poverty Level.

Since there was affordable health insurance available to the Appellant from January through September 2016, the Appellant needs to show that that he suffered a hardship pursuant to 956 CMR 6.08 (1) (a) - (e); or that there were other grounds that made obtaining health insurance unaffordable from January through September 2016, pursuant to 956 CMR 6.08 (3). The Appellant has provided evidence that there were other grounds that made obtaining health insurance for him unaffordable from January through September 2016, pursuant to 956 CMR 6.08 (3). The Appellant’s income varied during 2016. For the first six months of the year he earned \$12,101.

CONNECTOR APPEALS UNIT

At that time he was making 205.62% of the Federal Poverty Level. He would have been able to afford \$85 monthly for health insurance. Private insurance would have been unaffordable. Employer sponsored insurance was unavailable.

Since his income for the first six months of the year was less than 300% of the Federal Poverty Level, the Appellant would have been eligible for ConnectorCare and the Advance Premium Tax Credit. The Appellant applied for MassHealth in January 2016 and was denied eligibility. He applied to the Connector and was found eligible for ConnectorCare Plan Type 2B and an Advance Premium Tax Credit of \$132. The first available start date was July 1, 2016. He did not enroll.

Shortly after he received the eligibility letter from the Health Connector, at the end of May, 2016, the Appellant obtained a new job with health insurance offered by his employer. The Appellant's employer paid the entire premium. The Appellant believed he could enroll in his employer's health insurance beginning in August, so he did not enroll in ConnectorCare.

The Appellant should not be fined for failure to have health insurance from January through September 2016. His only affordable option during this period was subsidized health insurance. He applied beginning in January and was found eligible in May with a start date of July 1, 2016. By July 1, 2016, the Appellant was working for an employer who provided health insurance.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: July 20, 2017

Decision Date: September 10, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on July 20, 2017. Testimony was recorded electronically. The Hearing Record was left open until August 3, 2016 for the submission of additional documentation by the Appellant. As of the date of this decision, no additional documentation has been received.

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

- Exhibit 1: Computer Printout from the Department of Revenue (DOR) with appeal case information from Appellant's 2016 Schedule HC
- Exhibit 2: Appellant's Health Care Appeal Form dated March 16, 2017
- Exhibit 3: Appellant's Employer's Benefit Enrollment Summary for the Appellant,
- Exhibit 4: Car Payment Monthly Statement dated 2/5/2017
- Exhibit 5: Property Tax Assessment dated 3/10/2017
- Exhibit 6: Notice of Hearing dated 6/15/2017

FINDINGS OF FACT

The record shows, and I so find:

CONNECTOR APPEALS UNIT

1. In 2016 the Appellant was twenty-three (23) years old. She resided in Hampden County. (Exhibit 1)
2. In 2016 the Appellant's Massachusetts tax filing status was single with a family size of one (1) and no dependents. (Exhibit 1)
3. The Appellant had a Federal Adjusted Gross Income of \$28,208 in 2016. (Exhibit 1)
4. The Appellant had no health insurance in 2016. She was assessed a twelve (12) month penalty. (Exhibit 1)
5. The Appellant filed a Health Care Appeal Form (Appeal Form) dated March 16, 2017, appealing the assessment of the penalty for the failure of to have health insurance in 2016. On her Appeal Form, the Appellant indicated that during 2016, the expense of purchasing health insurance would have caused him to suffer a serious deprivation of food, shelter, clothing or other necessities. (Exhibit 2)
6. The Appellant had health insurance at the beginning of 2015 through MassHealth. After she moved from her parents' house, she contacted MassHealth. MassHealth informed the Appellant that she was no longer eligible for coverage. (Appellant testimony)
7. The Appellant did not apply to the Health Connector for health insurance in 2016. (Appellant testimony)
8. In 2016, the Appellant was eligible for her employer's health insurance. The open enrollment period was in January 2016. She did not enroll. (Appellant testimony)
9. The Appellant's health insurance would have cost the Appellant approximately \$70 every two weeks (\$152 monthly). (Appellant testimony and Exhibit 3)
10. The Appellant did not have health insurance at the time of the hearing in this appeal. She had just received the paperwork from her employer for health insurance. (Appellant testimony)
11. In 2016, the Appellant was more than 30 days behind in her mortgage or rent a few times. She received a letter from her landlord that she could be evicted if she did not pay. (Appellant testimony)
12. In 2016, the Appellant received a shut-off notice regarding her cell phone. Her cell phone was her only phone in 2016. (Appellant testimony)
13. During 2016, the Appellant did not incur a significant, unexpected increase in essential expenses resulting from: domestic violence; death of a family member or partner with primary responsibility for child care; the sudden responsibility to provide full care for an aging parent or other family member; or an unexpected natural or human-caused event causing substantial household or personal damage. (Appellant testimony)

ANALYSIS AND CONCLUSIONS OF LAW

G.L. c. 111M, § 2 also called the "individual mandate", requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage, "(s)o long as it is

CONNECTOR APPEALS UNIT

deemed affordable.” Residents who do not obtain creditable coverage are subject to a tax penalty. The Appellant had no health insurance in 2016. She was assessed a twelve (12) month penalty, which she is appealing. (M.G.L. c. 111M, s. 2, and Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and c. 176Q, as implemented by 956 CMR 6.00)

In order to avoid a penalty for failure to have health insurance in 2016, the Appellant needs to show that there was no affordable health insurance available to her; or that she suffered a hardship pursuant to 956 CMR 6.08 (1) (a) - (e); or that there were other grounds that made obtaining health insurance unaffordable in 2016, pursuant to 956 CMR 6.08 (3).

According to the 2016 Affordability and Premium Tables included in the 2016 Schedule HC Instructions, private insurance was not affordable for the Appellant in 2016. The Appellant’s adjusted gross income was \$28,208 in 2016, and was 239.66% of the Federal Poverty Level. She could afford to pay \$99 per month for health insurance, and health insurance would have cost her \$143 monthly since she was 23 years old in 2016 and resided in Hampden County.

Employer-sponsored insurance was available to the Appellant in 2016, but was also unaffordable. It would have cost her \$152 monthly. According to the 2016 Affordability Table included in the 2016 Schedule HC Instructions, she could afford to pay \$99 monthly for health insurance.

The Appellant was income eligible for subsidized health insurance and health insurance subsidies, however, her eligibility was blocked by her access to employer-sponsored insurance that met Minimum Essential Coverage Standards [26 CFR 1.36-B-2 (a) and (c)] and was affordable. The insurance offered by the Appellant’s employer in 2016 was affordable since it cost less than \$223 monthly, 9.5% of her household income. (26 CFR 1.36B-2 and 956 CMR 12.04 (1) (b).

The Appellant should not be fined for failure to have health insurance in 2016. There was no affordable insurance available to her. Private insurance and employer-sponsored insurance were not affordable; and subsidized insurance was not available.

PENALTY ASSESSED

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

CONNECTOR APPEALS UNIT

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: July 25, 2017

Decision Date: August 7, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone, on July 25, 2017. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

- Exhibit 1: Notice of Hearing sent to Appellant dated June 22, 2017
- Exhibit 2: Appeal Case Information Sheet from Schedule HC 2016
- Exhibit 3: Statement of Grounds for Appeal 2016 and supporting documents, signed by Appellant on March 23, 2016

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 31 years old in 2016. Appellant filed a 2016 Massachusetts tax return as a single person with no dependents claimed (Exhibit 2).
2. Appellant lived in Essex County, MA in 2016 (Exhibit2).
3. Appellant's Adjusted Gross Income for 2016 was \$24,007 (Exhibit 2).

CONNECTOR APPEALS UNIT

4. From January through April 2016, Appellant worked at a temporary job and Appellant did not believe that employer sponsored health insurance was available (Testimony of Appellant).
5. In April, 2016, Appellant was hired for a permanent job (Testimony of Appellant).
6. When Appellant was hired in April 2016, Appellant began a waiting period until Appellant could become eligible for employer sponsored insurance (Testimony of Appellant).
7. Appellant became eligible for employer sponsored insurance in August 2016 (Testimony of Appellant).
8. Appellant was covered by employer sponsored insurance from August through December, 2016 (Exhibit 2).
9. Appellant has been assessed a penalty for four months for 2016 (Exhibit 2).
10. Appellant filed for an appeal of the penalty on March 27, 2017, claiming that the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities (Exhibit 3).
11. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
12. According to Table 2 of HC for 2016, Appellant earning less than \$35,010 was income eligible for government subsidized health insurance.
13. Appellant was unaware of the availability of government subsidized health insurance and Appellant did not apply for such insurance (Testimony of Appellant).
14. Appellant lived with a family member to help keep expenses low (Testimony of Appellant).
15. Appellant had the following monthly expenses for basic necessities during 2016: rent \$300; food \$150; supplies \$50; clothing \$75; telephone \$70; car payment \$400; car insurance \$80; gasoline \$130 and student loans \$35. These expenses totaled approximately \$1,290 (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

CONNECTOR APPEALS UNIT

taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2016, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

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

Appellant worked at a temporary job from January through April 2016. Appellant did not believe that employer sponsored health insurance was available to Appellant. Appellant was hired for a permanent job in April 2016. Appellant began a waiting period until Appellant could become eligible for employer sponsored insurance. Appellant became eligible and signed up for employer sponsored insurance in August 2016. According to Table 2 of HC for 2016, Appellant, earning less than \$35,010 was income eligible for health insurance during the months that Appellant did not have access to employer sponsored health insurance. However, Appellant was unaware of the availability of government subsidized insurance. and Appellant did not apply for such insurance See Schedule HC for 2016 and Testimony of Appellant, which I find to be credible. Since Appellant potentially had access to affordable insurance, we need to consider whether Appellant experienced a financial hardship as defined by 956 CMR 6.08.

During 2016, Appellant lived with a family member in order to keep expenses low. Appellant had monthly expenses of \$1,290, and Appellant's monthly income was \$2,000. Since Appellant probably would have been eligible for government subsidized health insurance, purchasing subsidized health insurance would not have caused a serious deprivation of food, shelter, clothing and other necessities. However, since Appellant was not aware of the availability of government subsidized health insurance and since Appellant started a job with employer sponsored health insurance in April 2016, and was in a waiting period until August 2016, I find that the penalty should be waived in full.

Appellant should note that I have based this decision on the facts as I have found them for 2016. Appellant should note that a similar decision may not be reached if Appellant fails to obtain health insurance in the future. If Appellant should lose health insurance in the future, Appellant should call the Health Connector and apply for health insurance.

PENALTY ASSESSED

Number of Months Appealed: 4

Number of Months Assessed: 0

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

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

CONNECTOR APPEALS UNIT

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

CONNECTOR APPEALS UNIT

The record shows, and I so find:

1. The Appellant is 56 years old and is single. Appellant lives in Barnstable County.
2. Appellant is employed retail food sales. He works part time and is not offered health insurance by his employer.
3. Appellant does have health insurance in 2017.
4. The Appellant's monthly expenses totaled \$1,038.00, consisting of taxes \$300.00, light \$30.00, heat \$333.00, cable \$20.00, car insurance \$50.00, car gas \$70.00, food \$240.00, toiletries \$15.00.
5. The Appellant submitted a written Statement of Appeal dated March 28, 2017, stating "Other. During 2016 other circumstances, such as: Applying the Affordability Tables in Schedule HC to you is inequitable" But should also have appealed under "During 2015, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities." I will hear the appeal under both categories.
6. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2016. Table 1 sets forth the income eligibility standards for various family sizes at 150% of the federal poverty level and Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard for the government-subsidized health insurance program. See Mass. G.L. c. 118H, s.3(a)(1). Tables 5 and 6 set forth the tax penalties for 2015.
7. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant may have been eligible for subsidized health insurance, since Appellants income of \$30,670.00 was less than \$35,310.00. The monthly premium for health insurance available on the private market in Barnstable County for a 55 year old single person with zero dependents was \$384.00. The tables reflect that Appellant could afford \$127.79. This is more than what the appellant is deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions)

CONNECTOR APPEALS UNIT

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellant submitted a written Statement of Appeal dated March 28, 2017, stating “Other. During 2016 other circumstances, such as: Applying the Affordability Tables in Schedule HC to you is inequitable” But should also have appealed under “During 2015, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities.” I will hear the appeal under both categories.

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

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

CONNECTOR APPEALS UNIT

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

Appellant reported a federal AGI of \$30,670.00 in 2016, and Appellant's filing status was single with no dependents. EX 2. According to the Affordability Schedule established by the Connector's board and included in the Instructions and Worksheets of the 2016 Massachusetts Schedule HC, Appellant could afford to pay \$127.79 monthly for health insurance. *See* 2016 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to him from the Premium Tables, at a cost of \$384.00 monthly for coverage with zero dependents *Id.* at Table 4.

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

Appellant is deemed to afford \$127.79 for health insurance coverage because of his income. Private insurance in the market place was \$384.00 per month. On these facts, I find that Appellant has shown that he was precluded from purchasing affordable health insurance during 201. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that he is exempt from a tax penalty for his non-compliance with the individual mandate.

Accordingly, Appellant's appeal is ALLOWED, and the 2015 penalty assessed is OVERTURNED.

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 2016 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

CONNECTOR APPEALS UNIT

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

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CONNECTOR APPEALS UNIT

The record shows, and I so find:

1. The Appellant is 50 years old and is single. Appellant lives in Worcester County.
2. Appellant is employed as an independent contractor. He was unemployed for a significant period of time in 2016.
3. Appellant does not have health insurance in 2017.
4. The Appellant's monthly expenses totaled \$2,211.00, consisting of rent \$725.00 cell phone \$100.00, car payment \$188.00, car insurance \$96.00, car gas \$200.00, personal loan \$327.00, food \$300.00, credit card \$150.00, entertainment \$100.00, clothing \$25.00.
5. The Appellant submitted a written Statement of Appeal dated March 29, 2017, stating "During 2015, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities.
6. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2016. Table 1 sets forth the income eligibility standards for various family sizes at 150% of the federal poverty level and Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard for the government-subsidized health insurance program. See Mass. G.L. c. 118H, s.3(a)(1). Tables 5 and 6 set forth the tax penalties for 2015.
7. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant may have been eligible for subsidized health insurance, since Appellants income of 24,674.00 was less than \$35,310.00. The monthly premium for health insurance available on the private market in Worcester County for a 49 year old single person with zero dependents was \$270.00. The tables reflect that Appellant could afford \$86.35. This is more than what the appellant is deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions)

ANALYSIS AND CONCLUSIONS OF LAW

CONNECTOR APPEALS UNIT

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

The Appellant submitted a written Statement of Appeal dated March 29, 2017, stating “During 2015, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities.

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

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

Appellant reported a federal AGI of \$24,674.00 in 2016, and Appellant’s filing status was single with no dependents. EX 2. According to the Affordability

CONNECTOR APPEALS UNIT

Schedule established by the Connector's board and included in the Instructions and Worksheets of the 2016 Massachusetts Schedule HC, Appellant could afford to pay \$86.35 monthly for health insurance. See 2016 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to him from the Premium Tables, at a cost of \$270.00 monthly for coverage with zero dependents *Id.* at Table 4.

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

Appellant is deemed to afford \$86.35 for health insurance coverage because of his income. Private insurance in the market place was \$270.00 per month. On these facts, I find that Appellant has shown that he was precluded from purchasing affordable health insurance during 2016. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that he is exempt from a tax penalty for his non-compliance with the individual mandate.

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

PENALTY ASSESSED

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 2016 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

CONNECTOR APPEALS UNIT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

The record shows, and I so find:

1. The Appellants filed their Federal Income Tax return as a married couple with one dependent claimed. The Appellants were 58 and 59 years old in 2016 (Exhibit 2).
2. The Appellants lived in Barnstable County, MA in 2016 (Exhibit 2).
3. The Appellants' Federal Adjusted Gross Income for 2016 was \$78,903 (Exhibit 2, Testimony of Appellants).
4. The Appellants did not have any health insurance coverage for the months of January through October 2016. The Appellants were insured for the months of November and December 2016 (Exhibit 2, Testimony of Appellant Spouse).
5. The Appellants have each been assessed a seven-month tax penalty for 2016. The Appellants filed an appeal of the assessment in April 2017 (Exhibits 3, 4).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
7. In accordance with Table 3 of Schedule HC for 2016, a married couple filing a joint Federal tax return with one dependent claimed, with an adjusted gross income of \$78,903 could afford to pay \$500 per month for health insurance. In accordance with Table 4, a family with one spouse age 59 living in Barnstable County, could have purchased private insurance for \$766 per month for a plan (Schedule HC for 2016). Private insurance was not affordable for the Appellants in 2016.
8. The Head of Household was employed by a company that did provide access to health insurance at a cost of \$387.38 bi-weekly. The insurance offered to the Appellants through the spouse's employment was not affordable for the Appellants during the period of January through October 2016 (Exhibits 2, 4, Schedule HC for 2015 and Spouse Testimony).

CONNECTOR APPEALS UNIT

9. As of November 2016, the Appellants were able to enroll in an affordable health insurance plan through an employer (Exhibit 4 and Spouse Testimony).
10. The Appellants would not have been eligible for ConnectorCare coverage in 2016 because the couple's income exceeded \$60,270 (See Table 2 of Schedule HC-2016 and 956 CMR 12.04).

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellants had no health insurance in 2015. The Appellants have both been assessed a penalty for 12 months. The Appellants submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply to them 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 Appellants 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 Appellants because they experienced a financial hardship as defined in 956 CMR 6.08.

In accordance with Table 3 of Schedule HC for 2016, the Appellants filing the Federal tax return as a married couple with one dependent claimed with an adjusted gross income of \$78,903 could afford to pay \$500 per month for health insurance. According to Table 4, the Appellants with one spouse, age 59, living in Barnstable County, could have purchased a private insurance plan for \$766 per month. See Schedule HC for 2016. Private insurance was not affordable for the Appellants in 2016.

CONNECTOR APPEALS UNIT

The Appellants also had no access to affordable employer-sponsored health insurance for the period of January through October 2016. The insurance offered to the Head of Household by their employer would have cost approximately \$839.45 per month during this period of time. This is more than the \$500 the Appellants were deemed able to afford. Appellants would not have been eligible for ConnectorCare coverage based upon the couple's income which more less than \$60,270. See Table 2 of Schedule HC 2016 and 956 CMR 12.04 for eligibility criteria. Since affordable insurance was not available to the Appellants in 2016, it is unnecessary to address financial hardship pursuant to 956 CMR 6.08 (1). The Appellants' seven-month penalty is waived.

The Appellants should note that the waiver of their penalties is based upon the facts that I have determined to be true in 2016. The Appellants should not assume that a similar determination will be made for 2017 should they again be assessed a penalty for failure to have health insurance.

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 2016.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant turned 38 years old in November 2016. The Appellant filed their Federal Income Tax return as an individual with no dependents claimed (Exhibit 2).
2. The Appellant lived in Bristol County, MA in 2016 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2016 was \$27,432 (Exhibit 2, Testimony of Appellant).
4. The Appellant did not have any health insurance coverage during 2016 (Exhibit 2, Testimony of Appellant).
5. The Appellant has been assessed a tax penalty for all of 2016. The Appellant filed an appeal of the assessment in April 2016 (Exhibits 3, 4).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
7. In accordance with Table 3 of Schedule HC for 2016, the Appellant filing the Federal tax return with no dependents claimed, with an adjusted gross income of \$27,432 could afford to pay \$96 per month for health insurance. In accordance with Table 4, the Appellant, age 38, living in Bristol County, could have purchased private insurance for \$221 per month for a plan (Schedule HC for 2016). Private insurance was not affordable for the Appellant in 2016.
8. The Appellant would have been eligible for ConnectorCare coverage in 2016 because Appellant's income was less than \$35,310. The Appellant had no access to affordable insurance through employment (See Table 2 of Schedule HC-2016 and 956 CMR 12.04).
9. The Appellant testified that after fourteen years with the same company, they were laid off in November 2015. The Appellant was informed that they could continue the employer sponsored health insurance under the COBRA

CONNECTOR APPEALS UNIT

program, but the cost was three times more expensive than what the Appellant was paying while employed. The Appellant received unemployment compensation of \$210 weekly until May 2016. The Appellant found a new position with an hourly rate of \$16. The Appellant's new employer did not offer health insurance. The Appellant was unaware of the Massachusetts Health Connector and the existence of subsidized health care until December 2016 when they received their tax forms. The Appellant enrolled in a health insurance program for January 2017. I found the Appellant's testimony credible.

10. The Appellant's monthly expenses included: Rent-\$300; Truck payment-\$400; truck insurance-\$50; gasoline \$217; telephone-\$80 and food-\$260. The Appellant testified that they were living with a girlfriend and two children and trying to provide support even though they could not be claimed as tax dependents. The Appellant did not have sufficient funds to purchase health insurance (Exhibit 4 and Testimony of the Appellant).
11. The Appellant is currently employed full time and has health insurance (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellant had no health insurance in 2016. The Appellant has been assessed a penalty for 12 months. The Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply to them 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

CONNECTOR APPEALS UNIT

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 2016, the Appellant filing the Federal tax return with no dependents claimed with an adjusted gross income of \$27,432 could afford to pay \$96 per month for health insurance. According to Table 4, the Appellant, age 38, living in Bristol County, could have purchased a private insurance plan for \$221 per month. See Schedule HC for 2016. Private insurance was not affordable for the Appellant in 2016.

The Appellant had no access to affordable employer-sponsored health insurance in 2016. The Appellant would have been eligible for ConnectorCare coverage based upon the Appellant's income which was less than \$35,310. See Table 2 of Schedule HC 2016 and 956 CMR 12.04 for eligibility criteria. Since affordable insurance was available to the appellant in 2016, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1).

The Appellant was unemployed for the first four months of 2016. The Appellant found employment in May 2016 but this employer did not offer health insurance. The Appellant testified that since they were earning \$16 per hour, health insurance was not affordable given their substantial living expenses. The Appellant explained that they did not know about ConnectorCare until they received tax information at the end of 2016. The Appellant enrolled in a plan once aware that they could receive help with paying for the plan. The cost of purchasing health insurance would have caused the appellant to experience a serious financial hardship in 2016. See 956 CMR 6.08(1)(e). The Appellant's penalty for all twelve months 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 2016. The Appellant should not assume that a similar determination will be made for 2017 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 2016.

CONNECTOR APPEALS UNIT

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2016;
3. Appellant's Letter in Support of Appeal (1 page, undated);
- 4 & 4A. Official Attestation of Health Insurance Abroad—English Translation and Original (2 pages, 3/27/17);
5. Leisure/Business Travel Insurance Certification (2 pages, 6/24/2016 – 12/20/2016);
6. DOR Statement of Grounds for Appeal of Health Insurance Mandate (2 pages); and
7. Health Connector's Notice of Hearing (3 pages; dated 7/11/17).

FINDINGS OF FACT

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

1. 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 2016 Massachusetts income tax return. The information in Exhibit 1 is consistent with the testimony and other documentary evidence at the hearing, except as noted below.

2. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2016. See 956 Code Mass. Regs. 6.05. 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 2016.¹

¹ The DOR Instructions are published online at <http://www.mass.gov/dor/2016ScheduleHCInstructions> and are also available in the

Massachusetts Health Connector Appeals Unit

3. DOR assessed a 5 month penalty on the Appellant's 2016 Massachusetts personal income tax return. Exhibit 1. The basis for the penalty assessment is that the Appellant was insured for the months of September – December 2016 (4 months) and was not insured earlier in 2016. Exhibit 1. (The penalty calculation is 12 months minus 4 months insured [September – December] = 8 months uninsured minus the 3-month administrative grace period [June, July & August] = 5 penalty months [January – May].)

4. I find that the Appellant did not reside in the United States prior to June 2016. Before he arrived in the United States the Appellant was insured in the country of his citizenship. Testimony, Exhibit 3 and Exhibits 4 and 4A.

5. The Appellant resided in Massachusetts beginning in June 2016. During the months of June, July and August he was unemployed. During this period the Appellant purchased 180 days of leisure and travel insurance coverage from AIG. Testimony, Exhibit 3 and Exhibit 5.

6. In August 2016 the Appellant obtained a job at a company located in Massachusetts. The Appellant enrolled in his new employer's health plan, with coverage that began in September 2016. Testimony, Exhibit 1 and Exhibit 3.

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellant's appeal from the Department of Revenue's (DOR) assessment of a tax penalty because the Appellant did not have health insurance coverage for all of 2016. The issue to be decided is whether the penalty should be waived, either in whole or in part. See Exhibits 1 and 2.

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 board of directors for the Commonwealth

state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2016.

Massachusetts Health Connector Appeals Unit

Health Insurance Connector Authority (Health Connector or Connector). Mass. Gen. Laws c. 111M, sec. 2 (a).² Any health insurance policy must also satisfy the Massachusetts minimum credible coverage standards (“MCC”) in order to avoid the penalty. Mass. Gen. Laws c. 111M, sec. 2 (b). See also 956 Code Mass. Regs. 5.01 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. General Laws c. 111M, sec. 2(b). There is, however, a three-month grace period for any lapse in coverage to allow the taxpayer to make the transition between health insurance policies. Connector’s Administrative Bulletin 03-10, applying Mass. Gen. Laws c. 111M, sec. 2 (b). See also DOR Instructions, at page HC-3. The 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 – 2015 that the Appellant signed and filed in this case. See Exhibit 2.

The appeal in this case is resolved under the Massachusetts statute that requires that Massachusetts residents must have health insurance coverage. See Mass. Gen. Laws c. 111M, sec. 2 (a), above. The hearing evidence shows that the Appellant lived abroad and that he did not arrive in the United States until June 2016. During this period, therefore, he was not subject to the requirements of the Massachusetts individual mandate, which I summarized earlier. In addition, the evidence shows that the Appellant had health insurance coverage for January through May in his home country. See, e.g., Findings of Fact, No. 4, above.

The evidence also shows that after the Appellant relocated to Massachusetts he obtained employer-sponsored health insurance that took effect in September 2016 and continued for the remainder of the year, as set forth in Exhibit 1. Thus, the issue for consideration is coverage for the months of June, July and August 2016 when the Appellant was a Massachusetts resident. As the DOR has already determined, the Appellant is not subject to a penalty for these three months due to the 3-month administrative grace period. See Findings of Fact, Nos. 3, 5 and 6, above.

² The schedule is reprinted in DOR Tables 3 and 4 referred to in this Decision.

Massachusetts Health Connector Appeals Unit

For the foregoing reasons the Appellant is not subject to a penalty. Accordingly, I vacate the entire penalty assessed for 2016.

PENALTY ASSESSED

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

NOTIFICATION OF ASSESSMENT

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

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

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: August 9, 2017

Decision Date: August 29, 2017

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 Code of Massachusetts Regulations 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 Massachusetts General Laws chapter 111M, section 4 and 956 Code of Massachusetts Regulations 6.07.

HEARING RECORD

The Appellant (Husband) appeared for the hearing, which I conducted by telephone. His Wife 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 Appellant's testimony under oath and the following documents that were admitted into evidence as exhibits:

Massachusetts Health Connector Appeals Unit

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2016;
3. Health Connector's 2013 Final Appeal Decision (4 pages, dated 5/29/14);
4. Health Connector's 2014 Final Appeal Decision (6 pages, dated 3/19/16); and
5. Health Connector's Notice of Hearing (3 pages; dated 7/11/17).

FINDINGS OF FACT

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

1. 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 2016 Massachusetts income tax return. The information in Exhibit 1 is consistent with the testimony and other documentary evidence at the hearing.

2. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2016. See 956 Code Mass. Regs. 6.05. 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 2016.¹

3. The Husband filed a timely appeal (Exhibit 2) from the 7 month penalty that the DOR assessed on the 2016 state income tax return that he filed jointly with his Wife

¹ The DOR Instructions are published online at <http://www.mass.gov/dor/2016ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2016.

Massachusetts Health Connector Appeals Unit

(Exhibit 1). The DOR did not assess a penalty against the Wife for 2016 (Exhibit 1), and she did not sign the Statement of Grounds for Appeal (Exhibit 2).

4. Husband and Wife were married in November 2016. Testimony.

5. Prior to their marriage in 2016, the Wife filed successful appeals from the penalties assessed against her as a single person by the DOR for the 2014 and 2015 tax years. The 2014 and 2015 tax penalty appeal decisions are based on factual records that are not relevant in 2016. Exhibits 3 and 4.

6. The Wife was employed in 2016. She was enrolled in her Employer's employer-sponsored health plan for all of 2016. Exhibit 1 and Testimony.

7. The Husband was insured for the months of November and December 2016 under his Wife's employer-sponsored health plan as soon as he became eligible for coverage upon their marriage in November 2016. Testimony and Exhibit 1.

8. The Husband was not insured for the months of January – October 2016. Exhibit 1 and Testimony. DOR assessed a 7 month penalty after deducting the Husband's two months of coverage (November and December) and the 3 month administrative grace period (August, September and October). Exhibit 1.

9. The Husband was unemployed for the months of January – May 2016 after he sustained injuries on the in late 2015 that resulted in his leaving his prior job. The Husband did not receive unemployment insurance benefits during this period as the state Division of Unemployment Assistance rejected his application for benefits. Testimony.

10. The Husband obtained a new job in June 2016. His new employer did not offer him health insurance coverage as a job benefit. The Husband earned \$14 per hour on this job. Testimony.

11. The federal adjusted gross income reported on the Husband and Wife's joint income tax return for 2016 is \$69,588. Exhibit 1. Most of the income was earned by the Wife. See Findings of Fact, Nos. 9 and 10, above.

Massachusetts Health Connector Appeals Unit

12. Individual health insurance coverage would have cost the Husband \$216 per month. DOR Table 4 (Region 2).

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Husband's appeal from the Department of Revenue's (DOR) assessment of a tax penalty because he was insured only for the months of November and December 2016. The issue to be decided is whether the penalty should be waived, either in whole or in part. See Exhibits 1 and 2.

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 board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector). Mass. Gen. Laws c. 111M, sec. 2 (a).² Any health insurance policy must also satisfy the Massachusetts minimum credible coverage standards ("MCC") in order to avoid the penalty. Mass. Gen. Laws c. 111M, sec. 2 (b). See also 956 Code Mass. Regs. 5.01 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. General Laws c. 111M, sec. 2(b). There is, however, a three-month grace period for any lapse in coverage to allow the taxpayer to make the transition between health insurance policies. Connector's Administrative Bulletin 03-10, applying Mass. Gen. Laws c. 111M, sec. 2 (b). See also DOR Instructions, at page HC-3. The 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 – 2015 that the Appellant signed and filed in this case. See Exhibit 2.

The evidence presented in this appeal shows that the Husband was insured for the months of November and December 2016 under his Wife's employer-sponsored health

² The schedule is reprinted in DOR Tables 3 and 4 referred to in this Decision.

plan as soon as he became eligible to enroll based on their marriage in November 2016. Since the Wife was insured for all of 2016, the issue is whether a penalty should be assessed because the Husband was not insured in 2016 prior to November.

The Husband has demonstrated that he could not afford health insurance prior to their marriage. See Mass. Gen. Laws c. 111M, sec. 2 (a), above. Individual coverage would have cost \$216 per month, as set forth in DOR Table 4. The Husband was not employed for the five-month period January – May 2016, and his application for unemployment insurance benefits was denied. The Appellant obtained a new job in June 2016 but he was earning only \$14 per hour.

After considering the circumstances I conclude that the entire penalty assessed for 2016 should be waived under the Health Connector’s financial hardship regulation. See 956 Code Mass. Regs. 6.08 (1) (e) (“[Appellant] experienced financial circumstances such that the expense of purchasing health insurance . . . would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities.”).

PENALTY ASSESSED

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

NOTIFICATION OF ASSESSMENT

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

Massachusetts Health Connector Appeals Unit

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

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: August 9, 2017

Decision Date: August 30, 2017

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 Code of Massachusetts Regulations 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 Massachusetts General Laws chapter 111M, section 4 and 956 Code of Massachusetts Regulations 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 Appellant's testimony under oath and the following documents that were admitted into evidence as exhibits:

Massachusetts Health Connector Appeals Unit

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellants' Statement of Grounds for Appeal – 2016;
3. Appellants' Letter in Support of Appeal (1 page, dated 3/30/17);
4. Appellants' Bank Payments Statement (2 pages, Nov. 2016);
5. Appellants' Bank Payments Statement (11 pages, Sept. – Dec. 2016); and
6. Health Connector's Notice of Hearing (3 pages; dated 7/11/17).

FINDINGS OF FACT

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

1. 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 2016 Massachusetts income tax return. The information in Exhibit 1 is consistent with the testimony and other documentary evidence at the hearing.

2. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2016. See 956 Code Mass. Regs. 6.05. 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 2016.¹

¹ The DOR Instructions are published online at <http://www.mass.gov/dor/2016ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2016.

Massachusetts Health Connector Appeals Unit

3. DOR assessed a 3 month penalty against the Husband and a 3 month penalty against the Wife (total penalty = 6 months) on the Appellants' 2016 Massachusetts personal income tax return. Exhibit 1. The basis for the penalty assessment is that both Husband and Wife were insured for the months of January – June 2016 (6 months) but not for the months of July – December 2016 (6 months). Exhibit 1. I find that the DOR's assessment is factually correct, based on Exhibit 1, the Appellants' letter in support of their appeal (Exhibit 3), and the Appellants' hearing testimony. (The penalty calculation is 12 months minus 6 months insured = 6 months uninsured minus the 3-month administrative grace period = 3 penalty months.)

4. At the beginning of 2016 the Husband was 25 years old (the Wife is younger), and they resided in [name of city or town omitted] in Middlesex County, Massachusetts. Exhibit 1.

5. The Appellants' 2016 tax return was filed as a married couple filing jointly with no dependents and reports \$62,498 in federal adjusted gross income (AGI). Exhibit 1.

6. The Appellants' 2016 AGI is more than 300% of the federal poverty level for a two-person household (47,790). DOR Table 2. I find that the Appellants' income fluctuated in 2016 due to changes in their employment status, as set forth below.

7. Under DOR Table 3, the Appellants could afford to pay 7.60% of their income, or \$396 per month, for health insurance in 2016. This calculation assumes that the Appellants' income was stable throughout the year, which it was not. (The calculation is 7.60% multiplied by \$62,498 AGI = \$4,749.84 per year divided by 12 months = \$395.82 per month.)

8. Under DOR Table 4 (Region 2), health insurance coverage would have cost the Appellants \$286 per month for married couple's coverage at the Husband's age (0-30 age bracket) and location in Massachusetts.

9. The Husband was employed as a master plumber earning \$47.50 per hour in January – June 2016. For this period the Appellants were both insured under the Husband's employer-sponsored health plan. Exhibit 3 and Testimony.

Massachusetts Health Connector Appeals Unit

10. In July 2016 the Husband began to work in a retail position earning \$13 per hour. The retail job did not offer employer-sponsored health insurance benefits, and both Appellants lost their health insurance coverage for the remainder of 2016. Exhibit 3 and Testimony.

11. In mid-September 2016 the Wife contracted Lyme disease, though it took several months to confirm the diagnosis. The Wife was unable to continue working after late September, and the Husband became the sole support of the household. Exhibit 3 and Testimony.

12. The Appellants incurred nearly \$3,000 in out-of-pocket expenses in 2016 due to the Wife's illness. Exhibit 3 and Testimony. See also Exhibits 4 and 5.

13. In late 2016 the Husband returned to work as a master plumber in order to provide financial support, including the cost of the Appellants' apartment. Exhibit 3 and Testimony.

14. In December 2016 the Appellants made a \$86 monthly premium payment to the Health Connector for health insurance coverage starting in January 2017. Exhibit 5, page 1, and Testimony.

16. In January 2017, the Husband obtained a new job with employer-sponsored health insurance benefits. The Appellants enrolled in this health plan (withdrawing from the Health Connector coverage), but they still incur out-of-pocket expenses for the Wife's illness because her physician is not covered by the group health plan. Testimony.

ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellants' appeal from the Department of Revenue's (DOR) assessment of a tax penalty because the Appellants (Husband and Wife) did not have health insurance coverage for July through December in 2016. The issue to be decided is whether the penalty should be waived, either in whole or in part. See Exhibits 1 and 2.

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

Massachusetts Health Connector Appeals Unit

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 board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector). Mass. Gen. Laws c. 111M, sec. 2 (a).² Any health insurance policy must also satisfy the Massachusetts minimum credible coverage standards (“MCC”) in order to avoid the penalty. Mass. Gen. Laws c. 111M, sec. 2 (b). See also 956 Code Mass. Regs. 5.01 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. General Laws c. 111M, sec. 2(b). There is, however, a three-month grace period for any lapse in coverage to allow the taxpayer to make the transition between health insurance policies. Connector’s Administrative Bulletin 03-10, applying Mass. Gen. Laws c. 111M, sec. 2 (b). See also DOR Instructions, at page HC-3. The 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 – 2015 that the Appellant signed and filed in this case. See Exhibit 2.

In this case, it is undisputed that the Appellants both had health insurance coverage for the months of January – June 2016 through the Husband’s employer-sponsored health plan but lost that coverage for the remainder of the year when the Husband changed jobs. The Appellants resumed health insurance coverage starting in January 2017, initially through a Health Connector health plan that they arranged in late December 2016 and ultimately through another employer-sponsored health plan that the Husband obtained through the new job that he started in January 2017.

After the 3-month grace period is deducted (July-September), the issue is whether a penalty should be imposed against both the Husband and Wife for the months of October through December 2016. During this period, the Appellants sustained a reversal of their financial circumstances. First, the Husband had switched to a retail job beginning in July that substantially reduced his hourly pay to \$13 per hour. Second, the Wife contracted Lyme disease and was unable to continue working after September 2016. This unexpected situation left the Husband as the sole financial support of the household

² The schedule is reprinted in DOR Tables 3 and 4 referred to in this Decision.

Massachusetts Health Connector Appeals Unit

in late 2016 and continuing into 2017. It also meant that the Appellants incurred nearly \$3,000 in out-of-pocket expenses in 2016 due to the Wife's illness.

After considering the Appellants' circumstances (including their renewed health insurance coverage beginning in early 2017), I conclude that the entire penalty assessed against both Husband and Wife for 2016 should be waived under the Health Connector's financial hardship regulation. In late 2016, at least, the reasonable inference from the evidence is that the Appellants were no longer able to afford health insurance coverage due to the decrease in the Husband's earnings and the Wife's inability to work due to her unexpected illness at a young age. See 956 Code Mass. Regs. 6.08 (1) (e) ("[Appellants] 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."). Waiving the penalty is also consistent with the spirit of another provision in the Health Connector's financial hardship regulations. See 956 Code Mass. Regs. 6.08 (1) (d) (par. 3) ([Appellant] "incurred a significant, unexpected increase in essential expenses [due to] "the sudden responsibility for providing full care for an . . . other family member")

PENALTY ASSESSED

Number of Months Appealed (Husband): 3 Number of Months Assessed: 0

Number of Months Appealed (Wife): 3 Number of Months Assessed: 0

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Massachusetts Health Connector Appeals Unit

NOTIFICATION OF ASSESSMENT

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

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

1. Appellant, age 29 during 2016, from Hampshire County, filed single on the tax return with a family size of one.
2. The federal AGI was \$43,708.00.
3. Appellant had health insurance through the employer for July through December 2016, but did not have it for January through June 2016. Appellant had previously had health insurance through the employer but had reduced hours that made Appellant ineligible for health insurance for a period of months. The hours were reduced to allow Appellant to take courses in preparation for entrance to a nursing school program.
4. Appellant could afford \$277 per month based on the tables in Schedule HC, and the cost would be \$206 based upon those tables. However, during the months that Appellant did not have health insurance, her income was less than during the time she had health insurance.
5. Appellant's expenses for food, shelter, clothing, and transportation used most of the income during the time Appellant did not have health insurance.
6. Appellant continues to have health insurance through the employer.

ANALYSIS AND CONCLUSIONS OF LAW

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

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

Appellant's employment hours were reduced during part of 2016, and Appellant lost the health insurance through the employer. Appellant's hours were then increased and health insurance was again available through the employer for the months of July through December 2016. During the months Appellant did not have health insurance, Appellant's income was lower, and expenses for food, shelter, clothing and transportation used most of the income during that time. Paying for health insurance would have caused a serious deprivation of food, shelter, clothing and transportation.

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 2016 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have

CONNECTOR APPEALS UNIT

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: August 10, 2017 Decision Date: August 17, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone on August 10, 2017. Appellant also appeared for Appellant Spouse. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant.

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 12, 2017
- Exhibit 2: Appeal Case Information from Schedule HC 2016
- Exhibit 3: Statement of Grounds for Appeal, dated March 13, 2017
- Exhibit 4: Statement in Support of Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. In 2016, Appellant was 30 years old and Appellant Spouse was 29. They filed a Massachusetts tax return as married filing jointly, with three dependents claimed (Exhibit 2).

CONNECTOR APPEALS UNIT

2. Appellants lived in Hampden County, MA in 2016 (Exhibit 2).
3. Appellants' Adjusted Gross Income for 2016 was \$107,709 (Exhibit 2).
4. Employer sponsored health insurance was not available to Appellant or Appellant Spouse in 2016 (Testimony of Appellant).
5. Appellant Spouse was insured by government subsidized health insurance from January through March 2016. Appellant was uninsured for the entire year (Testimony of Appellant and Exhibit 2).
6. Appellant has been assessed a penalty for twelve months for 2016. Appellant Spouse has been assessed a penalty for six months (Exhibit 2)
7. Appellants filed for an appeal of the penalty on March 13, 2017. Appellants claimed that the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities (Exhibit 3).
8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
9. According to Table 3 of Schedule HC for 2016 a married couple filing as married, filing jointly with three dependents claimed and with a Federal Adjusted Gross Income of \$107,709 could afford to pay \$730 per month for health insurance.
10. According to Table 4, Appellants, ages 30 and 29 and living in Hampden county, could have purchased private insurance at a monthly cost of \$143 for an individual and \$286 for a married couple. Private insurance was considered affordable for Appellants in 2016.
11. According to Table 2 of Schedule HC for 2016, Appellants, earning more than \$85,230 would not have met the income eligibility guidelines for government subsidized insurance.
12. Appellant had been out of work for the entire year of 2015 and borrowed money to help pay for expenses. Appellant paid back the loans during 2016 (Testimony of Appellant).

CONNECTOR APPEALS UNIT

13. Appellants had the following monthly expenses for basic necessities during 2016: Homeowners insurance \$92; real estate taxes \$204; utilities \$600; Food and supplies \$1,500; clothes \$333; car payments \$1,375; car insurance \$230; home repairs \$1,250; and loan from when out of work \$2,083. These expenses totaled approximately \$7,667 (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

Appellant did not have insurance for twelve months and Appellant Spouse was uninsured for nine months in 2016. Appellants have been assessed a tax penalty for twelve and six 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 so that the purchase of insurance which met minimum creditable coverage standards was not affordable. See 956 CMR 6.08.

Neither Appellant had employer sponsored insurance available in 2016. According to Appellants’ modified adjusted gross income for 2016, Appellants were able to afford \$730 per month for health insurance under Table 3 of Massachusetts Schedule HC. Appellants could have purchased private insurance for \$143 for an individual and \$286 for a married couple. Private insurance was deemed to be affordable to Appellants. See Schedule HC for Healthcare Tables 2, 3 and 4 and Testimony of Appellant, which I find to be credible.

Since Appellants potentially had access to affordable insurance, we need to consider whether Appellants experienced a financial hardship as defined by 956 CMR 6.08. Appellants had many expenses especially since Appellant had been unemployed in 2015. Appellants had expenses for basic necessities in the amount of \$7,667 per month. Appellants’ modified adjusted gross income for 2016 was \$8,975 per month. The expense of purchasing health insurance would not have caused Appellants a serious deprivation of food, shelter, clothing or other necessities.

CONNECTOR APPEALS UNIT

I find that Appellants did not suffer a hardship that made the purchase of health insurance not affordable. The penalty is upheld.

PENALTY ASSESSED

Number of Months Appealed: 12/6

Number of Months Assessed: 12/6

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

CONNECTOR APPEALS UNIT

21, 2016. Appellant testified that appellant's divorce decree provided that the appellant would pay appellant's former spouse \$636.00 biweekly until such time as the appellant's former spouse earned more than \$30,000 annually in which case appellant would no longer have to pay child support. Appellant also testified that he paid about \$1300.00 to provide camping and daycare for his two young children during the summer months. Appellant testified that according to the divorce decree the appellant and the former spouse would alternate using the children as dependents every other year. Appellant testified that the appellant did not claim appellant's children as dependents in tax year 2016. Appellant testified that he worked at two jobs and that neither job offers employer-sponsored health insurance. Appellant further testified that appellant attempted to be included in appellant's former spouse's employer-sponsored insurance but was unable to do so because of the employer's policies. Appellant testified that appellant's former spouse is doing well in the former spouse's new employment and is expected to earn more than \$30,000.00 within the next year which will reduce or eliminate appellant's requirement to provide child support. Appellant testified that prior to the divorce the appellant and the family had MassHealth coverage. Appellant testified that between appellant's home living expenses and the cost of child support and childcare rendered the appellant unable to afford private health insurance.

The hearing officer kept the record open until August 21, 2017 in order for the Connector to provide information regarding appellant's coverage of insurance coverage through either MassHealth or the Connector. On August 28, 2017 the Connector Appeals Unit provided the Hearing Officer information that the Appeals Unit could find no record of appellant's enrollment with the Health Connector for the period in question. The Appeals Unit also provided copies of notices to individuals stating that if some members of their household were enrolled through the Health Connector and some members were enrolled in MassHealth, the individual would only find information about Health Connector enrollment in this section. The notice also says "you will not be able to view MassHealth notices or make premium payments you may owe to MassHealth on this site."

Exhibit 1: Notice of Hearing dated July 12, 2017.

Exhibit 2: Appellant's Schedule HC information dated July 12, 2017.

Exhibit 3: Appellant's Statement of Grounds for Appeal dated March 22, 2017

Exhibit 4: A separate letter from the appellant further discussing additional grounds for appeal. That letter was dated March 18, 2017.

Exhibit 5: Appellant's letter to Health Insurance Processing Center dated February 17, 2016.

Exhibit 6: Appellant's Job Update Form to Health Insurance Processing Center dated February 17, 2016.

CONNECTOR APPEALS UNIT

Exhibits 7, 8 & 9: Appellant's three earnings statements from appellant's primary employer for the period beginning January 10, 2016 through February 20, 2016.

Exhibit 10: MassHealth's Termination Letter to appellant dated August 7, 2016 with the termination date of August 21, 2016.

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was a 43 year old single individual residing in Worcester County in 201.
2. According to appellant's Schedule HC information appellant was uninsured for 3 months of 2016. Appellant is appealing a 6 month penalty.
3. I find appellant was insured for eight months and that appellant is subject to a one month penalty.
4. Appellant's Federal Adjusted Gross Income was \$79,079.00 in 2016.
5. I find that appellant's testimony that appellant filed as a single individual with no dependents in 2016 in accordance with the appellant's divorce decree to be credible.
6. I find that appellant was enrolled in MassHealth from January 1, 2016 to August 21, 2016. This finding is based on appellant's Exhibit 10.

ANALYSIS AND CONCLUSION 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.

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.

956 CMR 6.05 instructs the Connector Board to adopt an affordability schedule annually. 956 CMR 6.05, s. 2 permits the Connector Board to adopt a Premium schedule that establishes the lowest level of Premium that is deemed by the Board to be available for minimum creditable coverage. The 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets establish the affordability schedule and the lowest level of Premium coverage for 2016. Table 3, Affordability, shows that a single individual with a Federal Adjusted Gross Income over \$47,081.00 can afford a premium that is 8.133% as a percentage of income. Appellant's Adjusted Gross Income of \$79,079.00 divided by 12 months and that amount divided by 8.13% equals \$575.76.00 as the figure that the appellant can afford to pay for a monthly health insurance premium.

CONNECTOR APPEALS UNIT

Table 4, Premiums, states that the lowest premium level for single individual aged 43 in Worcester County to be \$237.00 monthly which Appellant could afford. This suggests that the Appellant's penalty for 1 month should be upheld. However, I find that the expenses associated with separate living expenses, child support, and child care created a special financial hardship for the appellant.

I find that Appellant has presented evidence of a hardship pursuant to 956 CMR 6.08 (1. e). Specifically, Appellant's purchase of health insurance would have caused a serious deprivation of food, clothing, and other necessities. Since the appellant has presented evidence of a hardship in 2016, Appellant should not be fined for failure to have health insurance for the 1 month in question.

I find that the Appellant is not subject to a tax penalty in 2016.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

Exhibit 4: Appellant's letter of March 17, 2017 providing additional information about the grounds for appeal.

Exhibit 5: Appellant's Form I – 797C from Department of Homeland Security dated March 29, 2016. (I – 485. Application to Register Permanent Residents or Adjusts Status.)

Exhibit 6: Appellant's spouse's Department of Homeland Security Form I-797C. (I-30 Petition for Alien Relative.)

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was a 30 year old married individual residing in Barnstable County in 2016.
2. According to appellant's Schedule HC information, appellant was uninsured for 12 months of 2016. Appellant is appealing a 12 month penalty.
3. I find appellant's spouse's testimony credible that appellant was absent from Massachusetts until October 13, 2016. (Appellant's spouse'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." Residents who do not obtain insurance are subject to a tax penalty.

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.

2016 Massachusetts Schedule HC Health Care instructions states that if an individual moved into Massachusetts during 2016, the mandate to obtain and maintain health insurance applies beginning on the first day of the third month following the month the individual became a resident of Massachusetts. I find that since appellant did not arrive in Massachusetts until October 13, 2016, appellant was not required to have health insurance in 2016.

I find that the appellant is not subject to a tax penalty in 2016.

PENALTY ASSESSED

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

CONNECTOR APPEALS UNIT

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

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CONNECTOR APPEALS UNIT

1. The appellant is 32-years-old, is single, and does not have children. From January through the end of March, 2016, she resided in Essex County, MA; and for the remainder of the year, she resided in Middlesex County. She did not have health insurance in 2016. (Testimony, Ex. 2)
2. The appellant moved to Massachusetts from Maine in January, 2016 for a job. She lived with a friend until the end of March, and then moved into her own apartment for the rest of the year. (Testimony)
3. The appellant's employer did not offer health insurance. In or around March, 2016, she investigated health insurance options through the Health Connector and determined that she had missed the open enrollment period and could not obtain insurance until the next period opened. She enrolled in a plan at the end of the year effective February 1, 2017, for which she pays approximately \$209.00/month. (Testimony)
4. The appellant has two student loans with an outstanding balance of \$127,977.86. In 2016, she paid approximately \$526.00/month for those loans. (Testimony, Ex. 1)
5. The appellant reported an adjusted gross income of \$41,136.00 on her 2016 federal tax return, and reported that she was single with no dependents. (Ex. 2)
6. In January and February, 2016, the appellant had regular monthly expenses of approximately \$1783.00 for utilities and internet (\$80.00), automobile insurance (\$131.00), automobile loan (\$261.00), cell phone (\$65.00), gasoline (\$120.00), food (\$500.00), student loan debt (\$526.00) and credit card debt (\$100.00). That amount increased to \$2608.00 when she began to pay rent (\$825.00) for an apartment in April. (Testimony, Ex. 1)

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

ANALYSIS AND CONCLUSIONS OF LAW

Massachusetts General Laws c. 111M, section 2, also known as the "individual mandate", requires every adult resident of the state to obtain health insurance

CONNECTOR APPEALS UNIT

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 2016 because the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities.

The appellant did not have insurance from January through December. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a tax penalty; for Tax Year 2016, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Since the appellant was uninsured for the entire year, she was assessed and is appealing a penalty of twelve months.

The appellant testified credibly that she moved to Massachusetts from Maine in January, 2016, for a job. She testified that her employer did not offer health insurance. She testified that she lived with a friend until the end of March and then moved to her own apartment for the rest of the year. She testified that she investigated health insurance options through the Health Connector in March and determined that she had missed the open enrollment period and could not enroll until the next open period. Finally, she testified that she enrolled in a plan at the end of the year effective February 1, 2017, for which she pays approximately \$209.00/month.

(It is noted that pursuant to 45 CFR § 155.410, individuals may enroll in coverage only during Open Enrollment, which for 2016 was November 1, 2015, to January 31, 2016. Outside of open enrollment, an individual may be granted a special enrollment period, during which s/he can enroll in coverage, but only if the individual experiences a qualifying life event, such as a change in household composition or loss of coverage. A move to Massachusetts is considered a qualifying life event, and it is not known why the appellant’s newly established residence in the state was not considered when she was determined to be outside the open enrollment period. See 45 CFR § 155.420.)

It appears that the appellant did not specify on her 2016 Schedule HC that she was a new resident of the state. Since the appellant moved to Massachusetts from Maine in January, she is eligible for a waiver of a portion of the penalty to which she might be subject in accordance with the following analysis. The instructions on the 2016 Schedule HC, (page HC-2) set forth the following relevant information for part-year residents: “If you moved into Massachusetts during 2016, the mandate to obtain and maintain health insurance applies to you beginning on the first day of [the] third

CONNECTOR APPEALS UNIT

month following the month you became a resident of Massachusetts.” Accordingly, since the appellant moved to the state in January, the mandate applies to her beginning on March 1, 2016, in which case she is potentially only subject to a penalty of nine months for purposes of this analysis.

The evidence provided by the appellant established that her income for 2016, \$41,136.00, was greater than 300% of the federal poverty level, which for 2016 was \$35,310.00 for a single person. Pursuant to the Code of Massachusetts Regulations, 956 CMR 6.05(1), the Connector has established an affordability schedule that sets forth the percentage of an individual’s adjusted gross income which s/he can be expected to contribute toward the cost of private health insurance that meets minimum creditable coverage standards. Table 3 of the Affordability Schedule indicates that an individual filing separately with no dependents with a federal adjusted gross income between \$35,311.00 and \$41,195.00 is deemed to be able to afford a monthly premium of \$254.00 (7.40% of \$41,136.00). Table 4 of the Premium Schedule indicates that a 31-year-old individual (the appellant’s age in 2016) in Essex and Middlesex County (where the appellant resided in 2016) could have purchased private health insurance for \$216.00 per month, less than the monthly amount deemed affordable from Table 3. Thus, according to the foregoing analysis, the appellant could have purchased affordable private health insurance in 2016.

Even though health insurance may have been affordable to the appellant under the law, she may nevertheless not be subject to a penalty for failing to get health insurance for the months in question if she can show that she experienced a hardship during 2016. Examples of hardships include being homeless or overdue in rent or mortgage payments, receiving a shut-off notice for utilities, or incurring unexpected increases in basic living expenses due to domestic violence, death of a family member, sudden responsibility for providing care for a family member or fire, flood or natural disaster. In addition, the appellant’s tax penalty for 2016 could be waived if she experienced financial circumstances such that the expense of purchasing health insurance would have caused her to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08.

The evidence presented by the appellant in this case is 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 2016 she incurred basic monthly expenses of approximately \$1783.00 (January through March) and \$2608.00 (April through December). Those expenses were less than her regular monthly pre-tax income of approximately \$3428.00, thereby making a monthly health insurance premium of \$216.00/month seemingly manageable. This is true of the first three months where the approximate difference between income and expenses was \$1645.00. However, for the rest of the year, the difference was \$820.00, in which case a monthly premium of \$216.00 could easily have caused an undue hardship,

CONNECTOR APPEALS UNIT

particularly in light of 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). In addition, the appellant enrolled in insurance for 2017 thereby demonstrating that the mandate to obtain insurance was not lost on her.

Therefore, based upon the foregoing, the appellant's request for a waiver from the penalty is granted for the twelve months for which she was assessed, and the nine months to which she is subject. The determination that the appellant is eligible for a hardship waiver is with respect to 2016, only and is based upon the extent of information submitted by the appellant in this appeal.

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 2016.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

The record shows, and I so find:

1. The appellant is 57-years-old and his wife is 54-years-old. They have two adult children. They resided in Worcester County, MA in 2016. The appellant did not have health insurance in 2016. His wife had insurance for the whole year. (Testimony, Ex. 2)
2. The appellant last had health insurance two years ago through his former employer. He was not subject to a penalty for being uninsured in 2014 and 2015 because his income fell below the threshold for assessment of a penalty. (Testimony)
3. The appellant's wife is employed by a school district and had employer health insurance in 2016. The open enrollment period occurs in May of each year, and by the time she inquired about the possibility of adding the appellant to her plan, the period had closed. (Testimony)
4. The appellant is a veteran who was on active duty for three years, and inactive duty for three years. He has never applied for health benefits through the Department of Veterans Affairs because he does not believe he is entitled to them as a matter of principle. His wife has made inquiries of the Department on his behalf and hoped that he would pursue the matter in 2017, but at the time of the instant hearing, he did not have insurance. (Testimony, Ex. 1A)
5. The appellant works in construction and was employed in 2016 by a contractor who did not offer health insurance. (Testimony)
6. The appellant reported an adjusted gross income of \$60,757.00 on his jointly filed 2016 federal tax return, and reported that he was married with no dependents. Of that amount, the appellant earned approximately \$20,000.00. (Ex. 2)
7. In 2016, the appellant and his wife had regular monthly expenses of approximately \$3593.00 for their mortgage (\$893.00), real estate taxes (\$133.00), homeowner's insurance (\$100.00), water and sewer service (\$78.00), trash removal (\$35.00), electricity (\$95.00), heat (\$133.00), automobile insurance for two cars (\$108.00), automobile loan (\$300.00), internet and cable package (\$158.00), cell phones (\$40.00), gasoline for two vehicles (\$320.00), food (\$600.00) and credit card debt (\$600.00). In addition, the appellant paid \$350.00 for repair of his furnace, and \$400.00 for vehicle repairs. (Testimony, Ex. 1A)

CONNECTOR APPEALS UNIT

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

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant submitted a statement of grounds for appeal (Ex. 1), claiming that the individual mandate does not apply to him because during 2016, “other” circumstances prevented him from obtaining insurance. His wife also submitted a letter with the statement (Ex. 1A) in which she stated in part that although their gross income looks good on paper, they are struggling to make ends meet and paying for health insurance would have been a hardship.

The appellant did not have insurance from January through December. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a tax penalty; for Tax Year 2016, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Since the appellant was uninsured for the entire year, he was assessed and is appealing a penalty of twelve months.

The appellant’s wife testified credibly that the appellant has not had health insurance for the past two years and has not been subject to a penalty in either year because his income was too low. She testified that she hoped he would apply to the Department of Veterans Affairs for health benefits in 2016, but he does not feel he is entitled to them as a matter of principle. Finally, she testified that she has health insurance through her employer, and that she inquired about adding him to her plan, but had missed the open enrollment period which occurred in May.

The evidence provided by the appellant established that his joint income for 2016, \$60,757.00, was greater than 300% of the federal poverty level, which for 2016 was \$47,790.00 for a two-person family. Pursuant to the Code of Massachusetts

CONNECTOR APPEALS UNIT

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 no dependents with a federal adjusted gross income between \$55,756.00 and \$63,720.00 is deemed to be able to afford a monthly premium of \$375.00 (7.40% of \$60,757.00). Table 4 of the Premium Schedule indicates that a 56-year-old individual (the appellant's age in 2016 and the older of the two) in Worcester County (where the appellant resided in 2016) could have purchased private health insurance for \$646.00 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 2016.

(Inasmuch as the appellant's wife was unable to investigate the possibility of enrolling her husband in her employer provided insurance plan because the open enrollment period had passed, no analysis of the cost and whether it might have been affordable is necessary under the circumstances.)

Therefore, based upon the foregoing, since the appellant established that he had missed the open enrollment period for his wife's employer health insurance, and the cost of private health insurance was unaffordable, his 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 2016, only and is based upon the extent of information submitted by the appellant in this appeal.

PENALTY ASSESSED

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

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

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

CONNECTOR APPEALS UNIT

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant and their spouse filed their Federal Income Tax return as a married couple with two dependents claimed. The Appellant spouse was 28 years old as of February 2016 (Exhibit 2).
2. The Appellant and their two tax dependents have health insurance through MassHealth (Appellant Testimony).
3. The family lived in Middlesex County, MA in 2016 (Exhibit 2).
4. The Appellants' Federal Adjusted Gross Income for 2016 was \$42,895 (Exhibit 2, Appellant Testimony).
5. The Appellant spouse did not have any health insurance coverage during 2016 (Exhibit 2, Appellant Testimony).
6. The Appellant spouse has been assessed a tax penalty for all of 2016. The Appellant spouse filed an appeal of the assessment in April 2017 (Exhibits 2, 3, 4).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
8. In accordance with Table 3 of Schedule HC for 2016, the Appellants filing their Federal tax return as a married couple with two dependents claimed, with an adjusted gross income of \$42,895 could afford to pay \$175 per month for health insurance. In accordance with Table 4, the Appellant spouse, age 28, living in Middlesex County, could have purchased private insurance for \$143 per month for a plan (Schedule HC for 2016). Private insurance was affordable for the Appellant spouse in 2016.
9. The Appellant spouse would have been eligible for ConnectorCare coverage in 2016 because the Appellants' income was less than \$72,750. The Appellant spouse is self-employed and had no access to affordable insurance

CONNECTOR APPEALS UNIT

through employment (See Table 2 of Schedule HC-2016 and 956 CMR 12.04 (Appellant Testimony)).

10. The Appellant testified that when the couple applied for subsidized health insurance, the Appellant was unemployed and their spouse was self-employed as a painter. The Appellant and the two children were eligible for MassHealth. The Appellant spouse was not eligible for MassHealth but the Appellants were aware that the Appellant spouse was eligible for ConnectorCare. The couple felt that the monthly premium was an additional expense the family could not afford (Appellant testimony).
11. The Appellant testified to the following monthly expenses: mortgage, including taxes and insurance- \$1,604; heat and electricity- \$350; water/sewer - \$100; car insurance for two vehicles totaling \$550; gasoline - \$200; student loan payment -\$200; cable/telephone-\$145; cell phones-\$140 and food-\$600. The Appellant testified that they met their monthly expenses using credit cards and are \$30,000 in debt. I found the Appellant's testimony to be credible.
12. The Appellant spouse remains uninsured (Appellant testimony).

ANALYSIS AND CONCLUSIONS OF LAW

The Appellant spouse has appealed the Department of Revenue's (DOR) assessment of a tax penalty for 2016. The Appellant spouse did not have any health insurance in 2016 and has been assessed a twelve-month penalty.

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

The Appellants submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply to their household because of financial

CONNECTOR APPEALS UNIT

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 spouse 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 spouse because the Appellants experienced a financial hardship as defined in 956 CMR 6.08.

In accordance with Table 3 of Schedule HC for 2016, the Appellant spouse, filing the Federal tax return as a married person with two dependents claimed, with an adjusted gross income of \$48,895 could afford to pay \$201 per month for health insurance. According to Table 4, the Appellant spouse age 28, living in Middlesex County, could have purchased a private insurance plan for \$143 per month. See Schedule HC for 2016. Private insurance was affordable for the Appellant spouse in 2016.

The Appellant spouse is self-employed and had no access to affordable employer-sponsored health insurance in 2016. The Appellant spouse would have been eligible for ConnectorCare coverage based upon Appellants' income which was less than \$72,750 See Table 2 of Schedule HC 2016 and 956 CMR 12.04 for eligibility criteria. Since affordable insurance was available to the Appellant spouse in 2016, it must be determined whether Appellants experienced a financial hardship pursuant to 956 CMR 6.08 (1).

The only income available to the household of four is the income of the Appellant spouse. The Appellant testified in detail to monthly living expenses that in fact exceeded the household's monthly income. The Appellant and their spouse have used credit cards to meet these expenses and have \$30,000 in credit card debt. The cost of purchasing health insurance would have caused the Appellants to experience a financial hardship. See 956 CMR 6.08(1)(e). The Appellant spouse's penalty for all twelve months is waived.

The Appellants should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2016. The Appellants should not assume that a similar determination will be made for 2017 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 2016.

CONNECTOR APPEALS UNIT

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant turned 39 years old in May 2016. The Appellant filed their Federal Income Tax return as a Head of Household with one dependent claimed (Exhibit 2).
2. The Appellant's tax dependent has health insurance through a parent (Appellant Testimony).
3. The Appellant lived in Middlesex County, MA in 2016 (Exhibit 2).
4. The Appellant's Federal Adjusted Gross Income for 2016 was \$70,434 (Exhibit 2, Appellant Testimony).
5. The Appellant did not have any health insurance coverage during 2016 (Exhibit 2, Appellant Testimony).
6. The Appellant has been assessed a tax penalty for all of 2016. The Appellant filed an appeal of the assessment in April 2017 (Exhibits 2, 3).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
8. In accordance with Table 3 of Schedule HC for 2016, the Appellant filing the Federal tax return with one dependent claimed, with an adjusted gross income of \$70,434 could afford to pay \$446 per month for health insurance. In accordance with Table 4, the Appellant, age 39, living in Middlesex County, could have purchased private insurance for \$221 per month for a plan (Schedule HC for 2016). Private insurance was affordable for the Appellant in 2016.
9. The Appellant would not have been eligible for ConnectorCare coverage in 2016 because the Appellant's income was more than \$47,790. The Appellant had access to affordable insurance through employment for part of the year, but the Appellant failed to enroll in a timely manner (See Table 2 of Schedule HC-2016 and 956 CMR 12.04 (Appellant Testimony)).

CONNECTOR APPEALS UNIT

10. The Appellant testified that they were employed as a teacher. The Appellant had changed jobs at the end of 2015. Based on their past experience when hired at their prior job, the Appellant said that they believed that they were automatically enrolled in a health insurance plan upon hire. The Appellant said that they were unaware that they had to take some action to enroll in a plan. The Appellant learned at the end of February 2016 that they were not insured and was told that they had missed the sixty-day time limit to enroll in a plan. In May 2016, the Appellant received a pink slip advising that they would not be rehired in September. The Appellant said that they were facing unemployment and could not afford insurance. I found the Appellant's testimony to be credible.
11. The Appellant's monthly expenses included: rent, including heat, -\$1,760; electricity-\$100; telephone-\$260; cable- \$184; car loan-\$315; car insurance-\$240; gasoline- \$195 and food- \$520. In addition, the Appellant was paying approximately \$864 per semester to help with their child's college expenses and incurred approximately \$700 in Veterinary bills during the summer of 2016 (Appellant Testimony).
12. The Appellant testified that they found a teaching position and is currently insured.

ANALYSIS AND CONCLUSIONS OF LAW

The Appellant has appealed the Department of Revenue's (DOR) assessment of a tax penalty for 2016. The Appellant did not have any health insurance in 2016 and has been assessed a twelve-month penalty.

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.

CONNECTOR APPEALS UNIT

The Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply to their household because of financial hardship and other circumstances. 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 2016, the Appellant filing the Federal tax return with one dependent claimed with an adjusted gross income of \$70,434 could afford to pay \$446 per month for health insurance. According to Table 4, the Appellant, age 39, living in Middlesex County, could have purchased a private insurance plan for \$221 per month. See Schedule HC for 2016. Private insurance was affordable for the Appellant in 2016.

The Appellant had access to affordable employer-sponsored health insurance for some months in 2016 but due to a misunderstanding failed to enroll in a plan in a timely manner. The Appellant would not have been eligible for ConnectorCare coverage based upon the Appellant's income which was more than \$47,790 See Table 2 of Schedule HC 2016 and 956 CMR 12.04 for eligibility criteria. Since affordable insurance was available to the Appellant in 2016, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1).

The Appellant changed jobs at the end of tax year 2015. The Appellant was employed as a teacher beginning January 2016. Based on past experience at their prior teaching position, the Appellant believed that they were automatically enrolled in a health insurance plan upon hire. The Appellant was not aware that further steps needed to be taken to select a plan and that by the time the Appellant discovered that fact, they had missed the open enrollment period. In May of 2016 the Appellant's employer informed the Appellant that they would not be rehired in September. Facing unemployment, the Appellant felt that they could not afford health insurance. The Appellant's dependent was insured through a parent. The Appellant's monthly living expenses were high and the cost of purchasing health insurance would have caused the Appellant to experience a financial hardship. See 956 CMR 6.08(1)(e). The Appellant's penalty for all twelve months 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 2016. The Appellant should not assume that a similar determination will be made for 2017 should they again be assessed a penalty for failure to have health insurance.

CONNECTOR APPEALS UNIT

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 2016.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant turned 28 years old in January 2016. The Appellant filed their Federal Income Tax return as a Head of Household with two dependents claimed (Exhibit 2).
2. The Appellant's tax dependents have health insurance (Appellant Testimony).
3. The Appellant lived in Hampden County, MA in 2016 (Exhibit 2).
4. The Appellant's Federal Adjusted Gross Income for 2016 was \$49,155 (Exhibit 2, Appellant Testimony).
5. The Appellant did not have any health insurance coverage during 2016 (Exhibit 2, Appellant Testimony).
6. The Appellant has been assessed a tax penalty for all of 2016. The Appellant filed an appeal of the assessment in March 2017 (Exhibits 2, 3).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
8. In accordance with Table 3 of Schedule HC for 2016, the Appellant filing the Federal tax return with two dependents claimed, with an adjusted gross income of \$49,155 could afford to pay \$201 per month for health insurance. In accordance with Table 4, the Appellant, age 28, living in Hampden County, could have purchased private insurance for \$143 per month for a plan (Schedule HC for 2016). Private insurance was affordable for the Appellant in 2016.
9. The Appellant would have been eligible for ConnectorCare coverage in 2016 because the Appellant's income was less than \$60,270. The Appellant had no access to affordable insurance through employment (See Table 2 of Schedule HC-2016 and 956 CMR 12.04 (Appellant Testimony)).

CONNECTOR APPEALS UNIT

10. The Appellant's monthly expenses included: mortgage with taxes and insurance of \$1,500; heat of \$90-\$120; electricity of \$220; telephone and cable of \$205; car insurance of \$160; gasoline of \$240; food of \$433 and a credit card payment of \$50-\$60. The Appellant testified that they had a difficult time finding steady employment in 2016. The Appellant had multiple jobs but did not make it past the probationary period. As a result, the Appellant did not have access to affordable employer sponsored health insurance. The Appellant also testified that there were weeks during the year that they did not have any income and as a result fell behind in their mortgage and credit card payments. The Appellant's bank negotiated a payment plan to catch up and not lose their home. The Appellant argues that they could not afford health insurance under these circumstances. I found the Appellant's testimony to be credible (Exhibit 4).

ANALYSIS AND CONCLUSIONS OF LAW

The Appellant has appealed the Department of Revenue's (DOR) assessment of a tax penalty for 2016. The Appellant did not have any health insurance in 2016 and has been assessed a twelve-month penalty.

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 submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply to their household 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 Appellant experienced a financial hardship as defined in 956 CMR 6.08.

CONNECTOR APPEALS UNIT

In accordance with Table 3 of Schedule HC for 2016, the Appellant filing the Federal tax return with two dependents claimed with an adjusted gross income of \$49,155 could afford to pay \$201 per month for health insurance. According to Table 4, the Appellant, age 28, living in Hampden County, could have purchased a private insurance plan for \$143 per month. See Schedule HC for 2016. Private insurance was affordable for the Appellant in 2016.

The Appellant had no access to affordable employer-sponsored health insurance in 2016. The Appellant would have been eligible for ConnectorCare coverage based upon the Appellant's income which was less than \$60,270 See Table 2 of Schedule HC 2016 and 956 CMR 12.04 for eligibility criteria. Since affordable insurance was available to the Appellant in 2016, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1).

The Appellant did not have steady employment in 2016. The Appellant was able to find employment, but none of the jobs lasted beyond the probationary period. There were weeks when the Appellant had no income. The Appellant's monthly expenses were significant and the Appellant did fall behind in their mortgage payment. The cost of purchasing health insurance would have caused the Appellant to experience a financial hardship. See 956 CMR 6.08(1)(e). The Appellant's penalty for all twelve months 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 2016. The Appellant should not assume that a similar determination will be made for 2017 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 2016.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant and their spouse filed their Federal Income Tax return as a married couple with two dependents claimed. The Appellant was 45 years old as of March 2016 (Exhibit 2).
2. The family lived in Middlesex County, MA in 2016 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2016 was \$53,258 (Exhibit 2, Appellant Testimony).
4. The Appellant's spouse did have health insurance coverage during 2016. The Appellant did not have health insurance for any months of 2016 (Exhibit 2, Appellant Testimony).
5. The Appellant has been assessed a tax penalty for all of 2016. The Appellant filed an appeal of the assessment in April 2017 (Exhibits 2, 3, 4).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
7. In accordance with Table 3 of Schedule HC for 2016, the Appellant, filing their Federal tax return as a married couple with two dependents claimed, with an adjusted gross income of \$53,258 could afford to pay \$262 per month for health insurance. In accordance with Table 4, the Appellant, age 45, living in Middlesex County, could have purchased private insurance for \$270 per month for a plan (Schedule HC for 2016). Private insurance was not affordable for the Appellant in 2016.
8. The Appellant would have been financially eligible for ConnectorCare coverage in 2016 because the tax household's income was less than \$72,750. The Appellant did not have access to health insurance through their employer but did have access to affordable insurance through their spouse's employment. Due to an inadvertent error, the Appellant missed the open enrollment period and was unable to obtain coverage through their

CONNECTOR APPEALS UNIT

spouse's employer (See Table 2 of Schedule HC-2016 and 956 CMR 12.04 (Appellant Testimony)).

9. The Appellant testified that in tax year 2015 they were insured under MassHealth but this insurance was terminated when the Appellant got married. The Appellant said that their partner had health insurance but due to receiving inaccurate information from the employer, the couple missed the open enrollment period. The Appellant could not be added to the spouse's plan and the Appellant said that they could not afford to purchase private insurance (Exhibit 4; Appellant testimony).
10. The Appellant's monthly expenses in 2016 included: mortgage including taxes and insurance-\$1,200; heat-\$300; electricity-\$200-\$300; telephone-\$150; car insurance for two vehicles-\$260; food-\$867; gasoline-\$400 and a credit card payment of \$75. The Appellant testified that they have outstanding student loans but was unable to make the monthly payments. I found the Appellant's testimony to be credible.
11. The Appellant testified that they are currently insured (Exhibit 4; Appellant testimony).

ANALYSIS AND CONCLUSIONS OF LAW

The Appellant has appealed the Department of Revenue's (DOR) assessment of a tax penalty for 2016. The Appellant did not have any health insurance in 2016 and has been assessed a twelve-month penalty.

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 submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply to their household because of financial

CONNECTOR APPEALS UNIT

hardship and other circumstances. 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 2016, the Appellant, filing the Federal tax return as a married person with two dependents claimed, with an adjusted gross income of \$53,258 could afford to pay \$262 per month for health insurance. According to Table 4, the Appellant age 45, living in Middlesex County, could have purchased a private insurance plan for \$270 per month. See Schedule HC for 2016. Private insurance was not affordable for the Appellant in 2016.

The Appellant was financially eligible for ConnectorCare coverage based upon the Appellant's income which was less than \$72,750 See Table 2 of Schedule HC 2016 and 956 CMR 12.04 for eligibility criteria. The Appellant had no access to affordable insurance through their employer. The Appellant was eligible to be included in the health insurance plan provided by their spouse's employer, but do to an inadvertent misunderstanding, failed to enroll in the plan during the open enrollment period.

The Appellant testified in detail to substantial monthly living expenses for the tax household of four in 2016. The cost of purchasing health insurance would have caused the Appellant to experience a financial hardship. See 956 CMR 6.08(1)(e). The Appellant's penalty for all twelve months 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 2016. The Appellant should not assume that a similar determination will be made for 2017 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 2016.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

CONNECTOR APPEALS UNIT

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Cc: Connector Appeals Unit

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FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant and their spouse filed their Federal Income Tax return as a married couple with no dependents claimed. The Appellant was 36 years old as of February 2016 (Exhibit 2).
2. The couple lived in Middlesex County, MA in 2016 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2016 was \$62,262 (Exhibit 2, Appellant Testimony).
4. The Appellant's spouse did have health insurance coverage during 2016. The Appellant did not have health insurance for the period of February through December 2016 (Exhibit 2, Appellant Testimony).
5. The Appellant has been assessed an eight-month tax penalty. The Appellant filed an appeal of the assessment in April 2017 (Exhibits 2, 3, 4).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
7. In accordance with Table 3 of Schedule HC for 2016, the Appellant, filing their Federal tax return as a married couple with no dependents claimed, with an adjusted gross income of \$62,262 could afford to pay \$394 per month for health insurance. In accordance with Table 4, the Appellant, age 36, living in Middlesex County, could have purchased private insurance for \$221 per month for a single plan and \$442 for a married couple (Schedule HC for 2016). The Appellant's spouse was paying \$200 per month for a single plan sponsored by their employer. The cost of insuring both spouses exceeded \$394. Private insurance was not affordable for the Appellant in 2016.
8. The Appellant would not have been eligible for ConnectorCare coverage in 2016 because the couple's income was greater than \$47,790. (See Table 2 of Schedule HC-2016 and 956 CMR 12.04).

CONNECTOR APPEALS UNIT

9. The Appellant testified that they lost their insurance effective February 2016. The Appellant said that the cost of their spouse's health insurance would have increased from \$200 per month to more than \$400 per month had they been added to the plan. The Appellant said that their employer offered insurance at a cost of \$230 per month for a single plan. The Appellant argues that the couple could not afford to insure both of them and meet their monthly living expenses in 2016 (Appellant Testimony).
10. The Appellant testified that their monthly child support payment is \$866. The couple's monthly living expenses include: rent-\$600; two car loans totaling \$555; car insurance- \$207; gasoline- \$303; food-\$433 and a student loan payment of \$300. The Appellant also said that the couple had maternity care expenses and owe their doctor for co-payments. The Appellant said that they did get behind in their rent but a friend lent them money. I found the Appellant's testimony credible.

ANALYSIS AND CONCLUSIONS OF LAW

The Appellant has appealed the Department of Revenue's (DOR) assessment of a tax penalty for 2016. The Appellant did not have health insurance for eleven months of 2016 and has been assessed an eight-month penalty.

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 submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply to their household 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

CONNECTOR APPEALS UNIT

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 2016, the Appellant, filing the Federal tax return as a married person with no dependents claimed, with an adjusted gross income of \$62,262 could afford to pay \$394 for health insurance. According to Table 4, the Appellant age 36, living in Middlesex County, could have purchased a private insurance plan for \$221 per month for a single plan and \$442 for a married couple. See Schedule HC for 2016. The Appellant's spouse was paying \$200 monthly for their employer sponsored health insurance. The additional cost of \$221 for the Appellant exceeds the \$394 the couple was deemed able to afford according to Table 3 of Schedule HC for 2016 above. Private insurance was not affordable for the Appellant in 2016.

The Appellant was not financially eligible for ConnectorCare coverage based upon the Appellant's income which was more than \$47,790 See Table 2 of Schedule HC 2016 and 956 CMR 12.04 for eligibility criteria. The Appellant was eligible to be included in the health insurance plan provided by their spouse's employer, but this would have raised the cost of insurance to more than \$400 per month. The cost of the Appellant's employer sponsored health insurance was \$230 per month. Adding this to their spouse's cost would result in monthly premium payments of \$430, which also exceeds the \$394 the couple was deemed able to pay. Since affordable insurance was not available to the Appellant in 2016, it is not necessary to evaluate whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1). The Appellant's penalty for all eight months of 2016 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 2016. The Appellant should not assume that a similar determination will be made for 2017 should they again be assessed a penalty for failure to have health insurance.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

CONNECTOR APPEALS UNIT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: August 18, 2017 Decision Date: September 15, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone on August 18, 2017. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified. At the end of the hearing, the record was left open so that Appellant could submit further documents. Appellant submitted further documents, and they were marked as an exhibit.

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 13, 2017
- Exhibit 2: Appeal Case Information from Schedule HC 2016
- Exhibit 3: Statement of Grounds for Appeal, dated 4/7/17
- Exhibit 4: Proof of Health Insurance

FINDINGS OF FACT

The record shows, and I so find:

1. In 2016, Appellant was 45 years old and filed a Massachusetts tax return as a single person with no dependents claimed (Exhibit 2, Testimony of Appellant).

CONNECTOR APPEALS UNIT

2. Appellant was assessed a penalty for twelve months for 2016 (Exhibit 2).
3. Appellant was insured with Medicare and MassHealth for the entire year of 2016 (Exhibit 4 and Testimony of Appellant).
4. Appellant filed taxes online and answered the health insurance questions incorrectly. Appellant was unable to get back to the return to correct the answer (Testimony of Appellant).
3. Appellant filed for an appeal of the penalty on April 7, 2017. Appellant claimed that Appellant was covered by health insurance for the entire year of 2016 (Exhibit 3 and Testimony of Appellants).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

Appellant was covered by Medicare and MassHealth during the entire year of 2016. Appellant filed taxes online and answered the health insurance questions incorrectly. Appellant was unable to get back to the return to correct the answer. See Exhibits 3, 4 and Testimony of Appellant, which I find to be credible.

I find that the penalty assessed should be waived in full.

PENALTY ASSESSED

Number of Months Appealed: 12

Number of Months Assessed: 0

CONNECTOR APPEALS UNIT

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: August 18, 2017

Decision Date: September 20, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held on August 18, 2017. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

- Exhibit 1: Notice of Hearing sent to Appellant dated July 13, 2017
- Exhibit 2: Appeal Case Information Sheet from Schedule HC 2016
- Exhibit 3: Statement of Grounds for Appeal 2016 signed by Appellant on April 19, 2017
- Exhibit 4: Statement in Support of Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 48 years old in 2016 and filed a 2016 Massachusetts tax return as single, with no dependents claimed (Exhibit 2).
2. Appellant lived in Essex County, MA in 2016 (Exhibit 2).
3. Appellant's Adjusted Gross Income for 2016 was \$30,098 (Exhibit 2).

CONNECTOR APPEALS UNIT

4. From January through May, 2016, Appellant was insured by health insurance from the Health Connector at a cost of \$375 per month (Exhibits 2, 4 and Testimony of Appellant).
5. Beginning in March 2016, Appellant was required to move and Appellant's living expenses increased substantially (Testimony of Appellant).
6. Appellant attempted to change to a different, less expensive health insurance plan through the Health Connector (Testimony of Appellant).
7. Although Appellant enrolled in a new plan and set up a payment, Appellant later found out that there was no coverage (Testimony of Appellant).
8. At about the time that Appellant found out about the lack of coverage, Appellant's employer informed Appellant that the employer was going to offer employer sponsored health insurance (Testimony of Appellant).
9. Appellant decided to wait to enroll in the employer sponsored insurance (Testimony of Appellant).
10. Appellant's employer took many months to actually offer the coverage to its employees. Appellant began coverage under employer sponsored health insurance in 2017 (Testimony of Appellant).
11. Appellant was assessed a penalty for four months. Appellant filed for an appeal of the penalty on April 19, 2017, claiming that the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities (Exhibits 2 and 3).
12. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
13. According to Table 3 of Schedule HC for 2016 a single person with no dependents with an adjusted gross income of \$30,098 could afford to pay \$125 per month for private insurance. According to Table 4, Appellant, aged 48 and living in Essex County could have purchased private insurance for \$270 per month.
14. Private insurance was not considered to be affordable for Appellant in 2016 (Schedule HC for 2016).
15. According to Table 2 of Schedule HC for 2016, Appellant, earning less than \$35,010, would have met the income eligibility guidelines for government subsidized insurance.
16. Appellant was not homeless during 2016. Appellant did not fall behind in rent payments nor receive any shut-off notices (Testimony of Appellant).
17. Appellant did not incur a significant and unexpected increase in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or a fire, flood, natural disaster, or other unexpected natural or human-caused event (Testimony of Appellant).

CONNECTOR APPEALS UNIT

18. Appellant had the following monthly expenses for basic necessities during 2016: rent \$1390; utilities \$60; telephone \$90; food \$433; supplies \$20; clothing \$20; car insurance \$100; car maintenance \$100; gasoline \$90; medical \$17; student loans \$225. These expenses totaled approximately \$2,545 per month (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

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

From January through May, 2016, Appellant was insured by health insurance from the Health Connector at a cost of \$375 per month. In May, Appellant applied to change to a different, less expensive health insurance plan. Although Appellant thought that the new plan was in place, Appellant later found out that there was no coverage. Appellant stopped pursuing the Health Connector plan as Appellant was told that Appellant’s employer would begin offering employer sponsored health insurance and decided to wait for the employer sponsored insurance. According to Tables 3 and 4 of Schedule HC for 2016 private insurance was not considered affordable for Appellant, based upon Appellant’s modified adjusted gross income. Appellant was income eligible for government subsidized health insurance and Appellant did try to enroll in the government subsidized health insurance but was unable to successfully do so. Employer sponsored health insurance was not immediately available, but Appellant was able to enroll in employer sponsored health insurance in 2017. See Schedule HC for 2016, Exhibit 4 and Testimony of Appellant, which I find to be credible.

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

CONNECTOR APPEALS UNIT

PENALTY ASSESSED

Number of Months Appealed: 4

Number of Months Assessed: 0

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: August 18, 2017 Decision Date: September 26, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone on August 18, 2017. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified. At the end of the hearing the record was left open until September 1, 2017, so that Appellant could send in information on the current available employer sponsored health insurance. No further documents were received and the record is now closed.

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 13, 2017
- Exhibit 2: Appeal Case Information from Schedule HC 2016
- Exhibit 3: Statement of Grounds for Appeal 2016 signed on March 17, 2017

FINDINGS OF FACT

The record shows, and I so find:

1. In 2016, Appellant was 48 years old and filed a 2016 Massachusetts tax return as single with no dependents claimed (Exhibit 2, Testimony of Appellant).
2. Appellant lived in Norfolk County, MA in 2016 (Exhibit 2).
3. Appellant's federal adjusted gross income for 2016 was \$38,908 (Exhibit 2 and Testimony of Appellant).

CONNECTOR APPEALS UNIT

4. During 2015, Appellant was employed in a well-paying job and insured by employer sponsored health insurance (Testimony of Appellant).
5. In July 2015, Appellant lost the well-paying job and the employer sponsored health insurance (Testimony of Appellant).
6. Appellant was hired for a new job but the pay is about one half of the pay from the previous job (Testimony of Appellant)
7. Appellant is eligible for employer sponsored health insurance through the current job but Appellant did not know the cost or the details (Testimony of Appellant).
8. Appellant did not sign up for employer sponsored health insurance during 2016 (Testimony of Appellant).
9. The record was left open until September 1, 2017 so that Appellant could submit documents regarding the employer sponsored insurance, but no further documents were received.
10. Appellant did not apply for health insurance through the Massachusetts Health Connector during 2016 (Testimony of Appellant).
11. Appellant struggled financially after the loss of the job in 2015 and throughout 2016 (Testimony of Appellant).
12. Appellant did not have a permanent home during 2016. Appellant stayed with various friends and family members. Appellant also slept in the car for several weeks (Testimony of Appellant).
13. Appellant had the following monthly expenses for basic necessities during 2016: telephone \$150; food \$433; supplies \$86; clothing \$41; car payment \$487; car insurance \$125; gasoline \$173; child support \$589; medical copays for children \$83; pay-off of loans from job loss \$100. These expenses totaled approximately \$2,267 per month (Testimony of Appellant).
14. Appellant has been assessed a penalty for twelve months for 2016. Appellant filed for an appeal of the penalty on March 17, 2017. Appellant claimed that Appellant was homeless (Exhibit 3).
15. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
16. According to Table 3 of Schedule HC for 2016 a person filing as single with no dependents and with a Federal Adjusted Gross Income of \$38,908 could afford to pay \$239 per month for health insurance. According to Table 4, Appellant, age 48 and living in Norfolk County, could have purchased private insurance for \$270 per month. Private insurance was not considered affordable for Appellant in 2016.
17. According to Table 2 of Schedule HC for 2016, Appellant, earning more than \$35,310 would not have been eligible for government subsidized health insurance.

CONNECTOR APPEALS UNIT

ANALYSIS AND CONCLUSIONS OF LAW

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

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

Appellant did not have insurance for twelve months in 2016. 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 as homelessness so that the purchase of insurance which met minimum creditable coverage standards was not affordable. See 956 CMR 6.08 (1)(a).

Appellant was eligible for employer sponsored health insurance, but Appellant did not know the cost. Appellant did not submit documents regarding the employer sponsored insurance during the open record period. Private insurance was not considered affordable for Appellant. Appellant, earning more than \$35,310 would not have been income eligible for government subsidized health insurance. See Schedule HC for 2016 and Testimony of Appellant, which I find to be credible.

Since Appellant may have had access to affordable employer sponsored health insurance during the months that a penalty was assessed, we must examine the claim that the tax penalty should be waived because of a hardship pursuant to 956 CMR 6.08. Appellant lost a good-paying job in 2015 and struggled financially in 2016. Appellant didn’t have a permanent home in 2016. Appellant stayed with various friends and family and sometimes slept in his car. See Testimony of Appellant, which I find to be credible.

I find, therefore, that pursuant to 956 CMR 6.08 (1)(a), Appellant experienced a hardship such that insurance would not have been affordable. The penalty assessed 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 2016 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

CONNECTOR APPEALS UNIT

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

ADDENDUM

Appellant should note that I have based this decision on the facts as I have found them for 2016. Appellant should note that a similar decision may not be reached if Appellant fails to obtain health insurance in the future.

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: August 18, 2017

Decision Date: September 20, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held on August 18, 2017. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified.

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

- Exhibit 1: Notice of Hearing sent to Appellant dated July 13, 2017
- Exhibit 2: Appeal Case Information Sheet from Schedule HC 2016
- Exhibit 3: Statement of Grounds for Appeal 2016 signed by Appellant on March 6, 2017
- Exhibit 4: Statement in Support of Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 50 years old in 2016 and filed a 2016 Massachusetts tax return as single, with no dependents claimed (Exhibit 2).
2. Appellant lived in Suffolk County, MA in 2016 (Exhibit 2).
3. Appellant's Adjusted Gross Income for 2016 was \$55,163 (Exhibit 2).
4. From January through August, 2016, Appellant worked and had insurance through employer sponsored health insurance (Exhibits 2, 4 and Testimony of Appellant).

CONNECTOR APPEALS UNIT

5. In August 2016, Appellant's job ended and Appellant was no longer covered by employer sponsored health insurance. Appellant did not have health insurance from September through December 2016 (Testimony of Appellant).
6. After August 2016, Appellant lived out of state for several months (Testimony of Appellant).
7. Appellant did not work during September through December 2016 (Testimony of Appellant).
8. During September through December Appellant's support for basic expenses came from Appellant's savings (Testimony of Appellant).
9. Appellant struggled to pay basic living expenses during September through December 2016 (Testimony of Appellant).
10. Appellant did not apply for private or government subsidized health insurance in 2016 (Testimony of Appellant).
11. Appellant was in the process of moving out of state at the time of the hearing (Testimony of Appellant).
12. Appellant was assessed a penalty of two months (Exhibit 2).
13. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
14. According to Table 3 of Schedule HC for 2016 a single person with no dependents with an adjusted gross income of \$55,163 could afford to pay \$374 per month for private insurance. According to Table 4, Appellant, aged 50 and living in Suffolk County could have purchased private insurance for \$323 per month.
15. Private insurance was considered to be affordable for Appellant in 2016 (Schedule HC for 2016).
16. According to Table 2 of Schedule HC for 2016, Appellant, earning more than \$35,010, would not have met the income eligibility guidelines for government subsidized insurance.
17. Appellant was not homeless during 2016. Appellant did not fall behind in rent payments nor receive any shut-off notices (Testimony of Appellant).
18. Appellant did not incur a significant and unexpected increase in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or a fire, flood, natural disaster, or other unexpected natural or human-caused event (Testimony of Appellant).
19. Appellant had the following monthly expenses for basic necessities during 2016: rent \$900; utilities \$100; telephone \$90; food \$400; supplies \$100; clothing \$75; public transportation \$50; child support \$700. These expenses totaled approximately \$2,415 per month (Testimony of Appellant).

CONNECTOR APPEALS UNIT

ANALYSIS AND CONCLUSIONS OF LAW

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

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

Appellant has been assessed a tax penalty for two months. However, Appellant has provided proof that Appellant did not have insurance for four months, so the applicable penalty should be one month. 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.

From January through August 2016, Appellant was employed and was covered by employer sponsored health insurance. Appellant’s job ended in August 2016 and Appellant was no longer covered by employer sponsored health insurance. Appellant did not work from September through December 2016 and Appellant’s support for basic expenses came from Appellant’s savings. Appellant lived outside of Massachusetts for part of the time during September through December 2016. Appellant was in the process of permanently moving out of Massachusetts at the time of the hearing. According to Tables 3 and 4 of Schedule HC for 2016 private insurance was considered affordable for Appellant, based upon Appellant’s modified adjusted gross income but Appellant did not apply for private insurance. Appellant also did not apply for government subsidized health insurance when Appellant became unemployed. See Schedule HC for 2016 and Testimony of Appellant, which I find to be credible. Since Appellant potentially had access to affordable insurance, we need to consider whether Appellant experienced a financial hardship as defined by 956 CMR 6.08.

Appellant was not homeless during 2015. Appellant did not fall behind in rent payments nor receive any shut-off notices. Appellant did not incur a significant and unexpected increase in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or a fire, flood, natural disaster, or other unexpected natural or human-caused event. Appellant worked at several different positions. Appellant did not earn any income from September through December. Appellant’s basic monthly expenses were \$2,415. Appellant’s average monthly income was \$4,597, but the income was zero during the months that Appellant did not have insurance. Appellant lived out of state during some of the time during September through December and Appellant was planning to permanently leave Massachusetts at the time of the hearing. Given Appellant’s circumstances, I find that the penalty should be waived in full. See Testimony of Appellant, which I find to be credible and 956 CMR 6.08 (3).

CONNECTOR APPEALS UNIT

I find that the penalty assessed against Appellant for 2016 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 2016 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: August 14, 2017

Decision Date: September 13, 2017

AUTHORITY

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

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. Gen. Laws ch. 111M, Section 4 and 956 Mass. Code Regs. 6.07. Appellant, who was a resident of Massachusetts during 2016, appeals the assessment of a 2016 tax penalty for failure to comply with the individual health insurance mandate of Mass. Gen. Laws ch. 111M, § 2.

HEARING RECORD

Appellant appeared at the hearing which was conducted by telephone on August 14, 2016. The hearing record consists of testimony heard from Appellant and the following documents which were admitted into evidence:

Exhibit 1: Appeal dated April 30, 2017;

Exhibit 2: Notice of Hearing dated July 18, 2017;

Exhibit 3: Appeal Case Information print-out dated July 18, 2017 generated from Appellant's 2016 Massachusetts Schedule HC; and

Exhibit 4: Appellant's utility billing records submitted post-hearing.

CONNECTOR APPEALS UNIT

FINDINGS OF FACT

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

1. Appellant was a single resident of Massachusetts during 2016. Testimony of Appellant; Exhibits 1, 3 and 4.
2. Appellant was employed in two part-time jobs during 2016, but the employers did not offer any health insurance coverage. Testimony.
3. Appellant's monthly living expenses during 2016 were as follows:

Rent	\$795.00
Electric	\$90.00 - \$100.00
Gas	\$60.00 - \$70.00
Mobile Phone	\$50.00
Auto Insurance	\$38.00
Auto Repairs	\$58.33
Gasoline	\$200.00
Food	\$400.00
Student Loans	\$67.00
Clothing	\$25.00
Total	\$1,783.33 - \$1,793.33

Testimony of Appellant.

4. Appellant had difficulty keeping up with monthly living expenses and received shut-off warning notices from gas and electric utility providers. Testimony; Exhibit 1 at 3-4. Appellant does not have the shut-off notices and was unable to obtain copies from the utility providers. *Id.*
5. Appellant's electric bills for 2016 show outstanding balances that reflected arrearages between 60 and 150 days. Exhibit 4. The electric bills also show a "Good Neighbor" program hardship credit of \$349.99 in June of 2016. *Id.*
6. Appellant's gas bills for 2016 show outstanding balances that reflected arrearages between 30 and 150 days. Exhibit 4. These bills also show that Appellant was approved for a low-income discount. *Id.*

CONNECTOR APPEALS UNIT

7. Appellant filed an individual Massachusetts Resident Income Tax Return for 2016, reporting a Federal Adjusted Gross Income of \$32,060.00. Exhibit 3. The Schedule HC filed with the return reported no health insurance coverage for Appellant during 2016 that met minimum creditable coverage (“MCC”) requirements. *Id.*
8. Based on Appellant’s 2016 Schedule HC, the Department of Revenue assessed a 12-month tax penalty which Appellant appeals. Exhibit 3.

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

ANALYSIS AND CONCLUSIONS OF LAW

The Health Care Reform Act of 2006 (the “HCRA”) requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage “so long as it is deemed affordable” under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). For part-year residents, the individual health insurance mandate applies beginning on the first day of third month following the month in which the individual became a resident of Massachusetts. *See* 2015 Schedule HC Instructions and Worksheets, *supra* at HC-2.

Individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”), which was set at \$17,655.00 for family of one in 2016 and \$23,895.00 for a family of two, are not subject to any penalty for non-compliance with the individual mandate. *See* Massachusetts Department of Revenue Technical Information Release (“TIR”) 16-2, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2016-releases/tir-16-2.html>. In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. Mass. Gen. Laws ch. 111M, § 2. This provision, as implemented by 956 Mass. Code Regs., interprets the 63-day gap in coverage to be three months. *See* Administrative Bulletin 03-10 (Dec. 7, 2010), available at www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf; *see also* 830 Code Mass. Regs. 111M.2.1(5)(c). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months.

CONNECTOR APPEALS UNIT

Since Appellant's reported household income in 2016 (\$32,060.00) was more than 150 percent of the applicable FPL (\$17,655.00 for a family of one), which makes Appellant subject to the individual mandate tax penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to Appellant in 2016. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and, second, to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2016 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a Federal AGI of \$32,060.00 in 2016, and Appellant's filing status was single with no dependents. Exhibit 3. According to the Affordability Schedule established by the Connector's board and included in the Instructions and Worksheets of the 2016 Massachusetts Schedule HC, Appellant could afford to pay 5.0 percent of the reported Federal AGI or \$133.58 monthly ($\$32,060.00 \times 5.0\% = \$1,603.00 \div 12 = \$133.58$) for health insurance. See 2016 Schedule HC Instructions and Worksheets, *supra* at Table 3.

Appellant had no access to employer-sponsored health insurance coverage, affordable or otherwise, and private health insurance would have cost \$384.00 monthly for individual coverage based on Appellant's age (55+) and county of residence (Barnstable) which would not have been affordable according to the Affordability Schedule. *Id.* at Table 4. However, the income reported on Appellant's 2016 Massachusetts return is below the eligibility cut-off of \$35,310.00 (family of one) for affordable government-subsidized health insurance. See 2016 Schedule HC Instructions and Worksheets, *supra* at Table 2.

Since Appellant did not obtain affordable government-subsidized health insurance, Appellant is subject to the HCRA's tax penalty unless Appellant demonstrates a qualifying hardship. 956 Mass. Code Regs. 6.08. To qualify for a waiver or reduction of a tax penalty based on hardship, an Appellant "must establish that, based on all his circumstances, health insurance that provided minimum creditable coverage was not affordable to him because he experienced a hardship." 956 Mass. Code Regs. 6.08(1). Appellant credibly testified to receiving utility shut-off notices during 2016 which is consistent with the 2016 gas and electric billing statements in the record at Exhibit 4 showing chronic arrearages of multiple months. Under the Connector's regulations, receipt of a shut-off notice for an essential utility is recognized as a qualifying ground for hardship. 956 Mass. Code Regs. 6.08(1)(b). On this record, I find that Appellant has successfully demonstrated a qualifying hardship in 2016 and, therefore, is excused from the individual mandate penalty.

CONNECTOR APPEALS UNIT

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

PENALTY ASSESSED

Number of Months Appealed: 12

Number of Months Assessed: 0

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

ADDENDUM

Appellant was advised during the hearing that health care navigators are available to assist individuals in applying for affordable health insurance coverage. The local navigator organization in Appellant's vicinity is Community Action Committee of Cape Cod & Islands, Inc., 210 Jones Road, Unit #14 Falmouth MA 02540; Phone: 508-771-1727; Website: <http://www.cacci.cc>. Appellant could also seek assistance from a certified application counselor at: Falmouth Hospital, 100 Ter Huen Drive Falmouth MA 02540; Phone: 508-495-7156; Website: www.capecodhealth.org.

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: August 14, 2017

Decision Date: August 31, 2017

AUTHORITY

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

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. Gen. Laws ch. 111M, Section 4 and 956 Mass. Code Regs. 6.07. Appellants, a married couple who were residents of Massachusetts during 2016, appeal the assessment of a 2016 tax penalty for failure to comply with the individual health insurance mandate of Mass. Gen. Laws ch. 111M, § 2.

HEARING RECORD

Appellants appeared at the hearing which was conducted by telephone on August 14, 2016. The hearing record consists of testimony heard from Appellants and the following documents which were admitted into evidence:

Exhibit 1: Appeal dated May 5, 2017 with attachments;

Exhibit 2: Notice of Hearing dated July 18, 2017; and

Exhibit 3: Appeal Case Information print-out dated July 18, 2017 generated from Appellant's 2016 Massachusetts Schedule HC.

FINDINGS OF FACT

CONNECTOR APPEALS UNIT

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

1. Appellants were a married couple who resided in Massachusetts during 2016. Testimony of Appellants; Exhibits 1 and 3.
2. Appellant Husband established lawful presence in the United States in May of 2016 and was issued a Social Security number on May 25, 2016. Exhibit 1 at 6, 8; Testimony.
3. Appellant Wife was employed during 2016 and attempted to add Appellant Husband to the employer-sponsored health insurance plan as a dependent; however, the Employer declined to allow the enrollment, initially based on lack of lawful status and, after Appellant Husband established lawful presence, because the annual open enrollment period had expired. Exhibit 1 at 6-7; Testimony. Consequently, Appellant Husband had no health insurance coverage in 2016. Appellant Husband enrolled in Appellant Wife's employer-sponsored plan for 2017. Testimony.
4. Appellants filed a joint Massachusetts Resident Income Tax Return for 2016 as a married couple, reporting a Federal Adjusted Gross Income of \$48,205.00. Exhibit 3. The Schedule HC filed with the return reported no health insurance coverage for Appellant Husband during 2016 that met minimum creditable coverage ("MCC") requirements. *Id.*
5. Based on Appellants' 2016 Schedule HC, the Department of Revenue assessed a 12-month tax penalty which Appellants appeal. Exhibit 3.

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

ANALYSIS AND CONCLUSIONS OF LAW

The Health Care Reform Act of 2006 (the "HCRA") requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage "so long as it is deemed affordable" under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject

CONNECTOR APPEALS UNIT

to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). For part-year residents, the individual health insurance mandate applies beginning on the first day of third month following the month in which the individual became a resident of Massachusetts. *See* 2016 Schedule HC Instructions and Worksheets, *supra* at HC-2.

Individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”), which was set at \$17,655.00 for family of one in 2016 and \$23,895.00 for a family of two, are not subject to any penalty for non-compliance with the individual mandate. *See* Massachusetts Department of Revenue Technical Information Release (“TIR”) 16-2, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2016-releases/tir-16-2.html>. In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. Mass. Gen. Laws ch. 111M, § 2(b). This provision, as implemented by 956 Mass. Code Regs., interprets the 63-day gap in coverage to be three months. *See* Administrative Bulletin 03-10 (Dec. 7, 2010), available at www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf; *see also* 830 Code Mass. Regs. 111M.2.1(5)(c). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months.

Appellant Husband first became a lawful resident of Massachusetts in May of 2016. Therefore the individual mandate did not apply until the first day of the third month following commencement of residency which was August 1, 2016. Accordingly, no penalty for non-compliance with the individual mandate is due for the seven-month period of January through July. I will now address the appeal with respect to the penalty for the months of August through December.

Since Appellants’ reported household income in 2016 (\$48,205.00) was more than 150 percent of the applicable FPL (\$23,895.00 for a family of two), which makes Appellants subject to the individual mandate tax penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to Appellant Husband in 2016. In determining affordability, consideration is given first to the amount an appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and, second, to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. *See* 2016 Schedule HC Instructions and Worksheets, *supra*.

Appellants reported a Federal AGI of \$48,205.00 in 2016, and their filing status was married with no dependents. Exhibit 3. According to the Affordability Schedule established by the Connector’s board and included in the Instructions and Worksheets of the 2016 Massachusetts Schedule HC, Appellants could afford to pay 7.4 percent of

CONNECTOR APPEALS UNIT

the reported Federal AGI or \$297.26 monthly ($\$48,205.00 \times 7.4\% = \$3,567.17 \div 12 = \$297.26$) for health insurance. See 2016 Schedule HC Instructions and Worksheets, *supra* at Table 3.

Appellant Husband had no access to employer-sponsored health insurance coverage, affordable or otherwise, and the income reported on Appellant's 2016 Massachusetts return exceeded the eligibility cut-off of \$47,790.00 (family of two) for government-subsidized health insurance. See 2016 Schedule HC Instructions and Worksheets, *supra* at Table 2. Private health insurance would have cost \$143.00 monthly for individual coverage based on Appellant Husband's age (under 30) and county of residence (Suffolk) which would have been affordable according to the Affordability Schedule. *Id.* at Table 4.

Since Appellant Husband did not obtain affordable private health insurance, Appellants are subject to the HCRA's tax penalty unless they demonstrate a qualifying hardship. 956 Mass. Code Regs. 6.07, 6.08. Appellants have not alleged any hardship grounds recognized under the applicable regulations at 956 Mass. Code Regs. 6.08, I conclude that the tax penalty for the months of August through December 2016 must be affirmed.

Accordingly, Appellants' appeal is ALLOWED in part and DENIED in part, and the 2016 penalty assessed is AFFIRMED in part and OVERTURNED in part.

PENALTY ASSESSED

Number of Months Appealed: 12

Number of Months Assessed: 5

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

CONNECTOR APPEALS UNIT

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CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: August 14, 2017

Decision Date: August 31, 2017

AUTHORITY

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

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. Gen. Laws ch. 111M, Section 4 and 956 Mass. Code Regs. 6.07. Appellant, who was a resident of Massachusetts during 2016, appeals the assessment of a 2016 tax penalty for failure to comply with the individual health insurance mandate of Mass. Gen. Laws ch. 111M, § 2.

HEARING RECORD

Appellant appeared at the hearing which was conducted by telephone on August 14, 2016. The hearing record consists of testimony heard from Appellant and the following documents which were admitted into evidence:

Exhibit 1: Appeal dated April 27, 2017;

Exhibit 2: Notice of Hearing dated July 18, 2017; and

Exhibit 3: Appeal Case Information print-out dated July 18, 2017 generated from Appellant's 2016 Massachusetts Schedule HC.

FINDINGS OF FACT

CONNECTOR APPEALS UNIT

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

1. Appellant resided in Massachusetts during 2016. Testimony of Appellant; Exhibits 1 and 3.
2. Appellant was employed during 2016 but worked insufficient hours to qualify for enrollment in the employer's health insurance plan. Testimony.
3. Appellant and Appellant's spouse separated in 2015 which caused Appellant and a dependent child to move in with Appellant's parents.
4. Appellant's monthly living expenses during 2016 were as follows:

Student Loans	\$50.00
Auto Lease	\$450.00
Auto Insurance	\$111.00
Gasoline	\$100.00
Food	\$520.00
Mobile Phone	\$120.00
Day Care and Child Activities	\$203.33 ¹
Legal Fees	\$333.33 ²
Assorted debt	\$100.00
Total	\$1,987.66

Testimony of Appellant.

5. Appellant filed an individual Massachusetts Resident Income Tax Return for 2016 as a head of household with one dependent, reporting a Federal Adjusted Gross Income of \$32,607.00. Exhibit 3. The Schedule HC filed with the return reported no health insurance coverage meeting minimum creditable coverage ("MCC") requirements. *Id.*

In addition to the foregoing facts, I take administrative notice of the 2016 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov/dor/docs/dor/health-care/2016/hc-instructions.pdf>, and in particular Tables 1 – 6 which, as will be

¹ Child care costs at \$120.00 per week during three summer months prorated over 12 months.

² \$4,000.00 retainer paid to divorce attorney prorated over 12 months.

CONNECTOR APPEALS UNIT

discussed below, include the Affordability Schedule and other financial information used in making 2016 individual mandate tax penalty determinations.

ANALYSIS AND CONCLUSIONS OF LAW

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

Individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”), which was set at \$17,655.00 for family of one in 2016, are not subject to any penalty for non-compliance with the individual mandate. *See* Massachusetts Department of Revenue Technical Information Release (“TIR”) 16-2, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2016-releases/tir-16-2.html>. In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. Mass. Gen. Laws ch. 111M, § 2(b). This provision, as implemented by 956 Mass. Code Regs., interprets the 63-day gap in coverage to be three months. *See* Administrative Bulletin 03-10 (Dec. 7, 2010), available at www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf; *see also* 830 Code Mass. Regs. 111M.2.1(5)(c). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months.

Since Appellant’s reported household income in 2016 (\$32,607.00) was more than 150 percent of the applicable FPL (\$17,655.00), which makes Appellant subject to the individual mandate tax penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to Appellant during 2016. In determining affordability, consideration is given first to the amount an appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and, second, to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. *See* 2016 Schedule HC Instructions and Worksheets, *supra*.

CONNECTOR APPEALS UNIT

Appellant reported a Federal AGI of \$32,607.00 in 2016, and Appellant's filing status was head of household with one dependent. Exhibit 3. According to the Affordability Schedule established by the Connector's board and included in the Instructions and Worksheets of the 2016 Massachusetts Schedule HC, Appellant could afford to pay 6.2 percent of the reported Federal AGI or \$168.47 monthly ($\$32,607.00 \times 6.2\% = \$2,021.63 \div 12 = \$168.47$) for health insurance. See 2016 Schedule HC Instructions and Worksheets, *supra* at Table 3.

Appellant had no access to employer-sponsored health insurance coverage, affordable or otherwise, during 2016. However, private health insurance would have cost \$143.00 monthly for individual coverage based on Appellant's age (under 30) and county of residence (Suffolk) which would have been affordable according to the Affordability Schedule. See 2016 Schedule HC Instructions and Worksheets, *supra* at Table 4. In addition, the income reported on Appellant's 2016 Massachusetts return is below the eligibility cut-off of \$47,790 for a family of two which qualified Appellant for government-subsidized health insurance. *Id.* at Table 2.

Since Appellant did not obtain affordable private or government-subsidized health insurance, the HCRA's tax penalty applies unless Appellant demonstrates a qualifying hardship. 956 Mass. Code Regs. 6.07, 6.08. Appellant reported a Federal AGI for 2016 of \$32,607.00 which provided \$2,717.00 in monthly income. This income exceeds the total of Appellant's itemized monthly living expenses. While the separation and increased financial obligations that faced Appellant in 2016 were undoubtedly difficult, I am constrained to find on this record that Appellant has not demonstrated financial circumstances such that the cost of health insurance coverage in 2016 would have caused a serious deprivation of food, shelter, clothing or other necessities. 956 Mass. Code Regs. 6.08(1)(e).³

Accordingly, Appellants' appeal is DENIED, and the 2016 penalty assessed is AFFIRMED.

PENALTY ASSESSED

Number of Months Appealed: 12

Number of Months Assessed: 12

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2016 for the amount equal to one half

³ In addition to serious deprivation of food, shelter, clothing or other necessities, Appellant checked, as a ground for appeal, "significant unexpected increase in essential expenses resulting directly from the consequences of domestic violence; death of a spouse, family member or partner *with primary responsibility for child care where household expenses were shared*; the *sudden* responsibility for providing *full care* for an aging parent or other family member, including a major, extended illness of a child that required you to hire a full-time caretaker for the child." Exhibit 1 at 3. However, Appellant conceded at the hearing that none of these circumstances were applicable.

CONNECTOR APPEALS UNIT

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date:
August 22, 2017

Decision Date:
August 29, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellants appeared at the hearing, which was held by telephone on August 22, 2017

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

Exhibit 1: Notice of Hearing dated July 19, 2017

Exhibit 2: Appeal Case Information from form Schedule HC

Exhibit 3: Statement of Grounds for Appeal-2016 dated April 30, 2017

Exhibit 4: Written Statement of Appeal

CONNECTOR APPEALS UNIT

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant is 40 years old and is Married. Appellant's wife is 32 years old. Appellants lived in Norfolk County and now live out of state.
2. Appellants' did have health insurance in 2017 until July 2017.
3. Appellant worked in retail food sales and his wife worked as an independent contractor. Appellant indicated that he did not purchase health insurance because he did not know how long his wife's contract would last.
4. The Appellant's monthly expenses totaled \$5,863.00, consisting of rent \$1,650.00, heat and electricity \$50.00, internet and cable \$145.00, 2 cell phones \$180.00, 2 car payments \$615.00, car insurance \$133.00, car gas \$200.00, food \$500.00, transportation \$300.00, entertainment \$200.00, credit card \$40.00, travel to India \$750.00, child care \$1,100.00.
5. The Appellants submitted a Statement of Grounds for Appeal-2016 dated April 30, 2017, stating as grounds for appeal "Other. During 2016 other circumstances, such as applying the Affordability Tables in Schedule HC to you is inequitable".
6. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2016. Table 1 sets forth the income eligibility standards for various family sizes at 150% of the federal poverty level and Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard for the government-subsidized health insurance program. See Mass. G.L. c. 118H, s.3(a)(1). Tables 5 and 6 set forth the tax penalties for 2016.
7. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant would not have been eligible for subsidized health insurance, since Appellants income of \$112,826.00 was more than \$60,270.00. The monthly premium for health insurance available on the private market in Norfolk County for a 39 year old married couple with a dependent was

CONNECTOR APPEALS UNIT

\$562.00.00. The tables reflect that Appellants could afford \$9764.39. This is less than what the appellants are deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions)

ANALYSIS AND CONCLUSIONS OF LAW

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

8. The Appellants submitted a Statement of Grounds for Appeal-2016 dated April 30, 2017, stating as grounds for appeal “Other. During 2016 other circumstances, such as applying the Affordability Tables in Schedule HC to you is inequitable”.

The Health Care Reform Act of 2006 requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage “so long as it is deemed affordable” under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). However, individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”) are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 13-1, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2013-releases/tir-13-1.html>. For 2016, 150 percent of the FPL was \$30,135.00 for a married couple with a dependent. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%20Care%20Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf>; see also 830 Mass. Code Regs. 111M.2.1(5)(c) (2008). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months. *Id.*

CONNECTOR APPEALS UNIT

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

Appellants reported a federal AGI of \$112,826.00 in 2016, and Appellant's filing status was married with a dependent. EX 2. According to the Affordability Schedule established by the Connector's board and included in the Instructions and Worksheets of the 2016 Massachusetts Schedule HC, Appellants could afford to pay \$764.39.00 monthly for health insurance. See 2016 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to them from the Premium Tables, at a cost of \$562.00 monthly for coverage. *Id.* at Table 4.

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

On these facts, I find that Appellants have not shown that they were precluded from purchasing affordable health insurance during 2016. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that they are not exempt from a tax penalty for their non-compliance with the individual mandate.

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

PENALTY ASSESSED

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

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

CONNECTOR APPEALS UNIT

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date:
August 22, 2017

Decision Date:
August 30, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on August 22, 2017

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

Exhibit 1: Notice of Hearing dated July 19, 2017

Exhibit 2: Appeal Case Information from form Schedule HC

Exhibit 3: Statement of Grounds for Appeal Dated May 3, 2017

Exhibit 3: Written Statement of Appeal

CONNECTOR APPEALS UNIT

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant is 26 years old and is single. Appellant lives in Worcester County.
2. Appellant is employed in the health field. Appellant's employer did not offer health insurance in 2016.
3. Appellant does have health insurance in 2017.
4. The Appellant's monthly expenses totaled \$2,000.00, consisting of rent \$500.00, cell phone \$60.00, car payment \$260.00, car insurance \$150.00, car gas \$200.00, food \$300.00, credit card \$100.00, clothing \$100.00, entertainment \$150.00, toiletries \$50.00, bill for cat expense of \$3,000.00, \$270.00.
5. The Appellant submitted a written Statement of Appeal dated May 3, 2017, stating "Other. During 2016 other circumstances, such as: applying the Affordability Tables in Schedule HC to you is inequitable: as grounds for appeal but in addition should have stated that "During 2016, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. I will hear her appeal under both grounds.
6. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2016. Table 1 sets forth the income eligibility standards for various family sizes at 150% of the federal poverty level and Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard for the government-subsidized health insurance program. See Mass. G.L. c. 118H, s.3(a)(1). Tables 5 and 6 set forth the tax penalties for 2016.
7. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant would not have been eligible for subsidized health insurance, since Appellants income of 40,013.00 was more than \$35,310.00. The monthly premium for health insurance available on the private market in Worcester County for a 25 year old single person with zero dependents was \$143.00. The tables reflect that Appellant could afford \$246.74. This is less than what the appellant is deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions)

CONNECTOR APPEALS UNIT

ANALYSIS AND CONCLUSIONS OF LAW

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

8. The Appellant submitted a written Statement of Appeal dated May 3, 2017, stating “Other. During 2016 other circumstances, such as: applying the Affordability Tables in Schedule HC to you is inequitable: as grounds for appeal but in addition should have stated that “During 2016, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. I will hear her appeal under both grounds.

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

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

CONNECTOR APPEALS UNIT

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

Appellant reported a federal AGI of \$40,013.00 in 2016, and Appellant's filing status was single with no dependents. EX 2. According to the Affordability Schedule established by the Connector's board and included in the Instructions and Worksheets of the 2016 Massachusetts Schedule HC, Appellant could afford to pay \$246.74 monthly for health insurance. *See* 2016 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to her from the Premium Tables, at a cost of \$143.00 monthly for coverage with zero dependents and her employer did not offer health insurance *Id.* at Table 4.

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

Appellant is deemed to afford \$246.74 for health insurance coverage because of her income. Private insurance in the market place was \$143.00 per month. On these facts, I find that Appellant has not shown that she was totally precluded from purchasing affordable health insurance during 2016. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that she is not totally exempt from a tax penalty for her non-compliance with the individual mandate.

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

PENALTY ASSESSED

Number of Months Appealed: 12 Number of Months Assessed: 6

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

CONNECTOR APPEALS UNIT

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

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

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date:
August 22, 2017

Decision Date:
August 30, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on August 22, 2017

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

Exhibit 1: Notice of Hearing dated July 19, 2017

Exhibit 2: Appeal Case Information from form Schedule HC

Exhibit 3: Statement of Grounds for Appeal Dated May 1, 2017

Exhibit 3: Written Statement of Appeal

CONNECTOR APPEALS UNIT

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant is 33 years old and is single. Appellant lives in Suffolk County.
2. Appellant is employed as a project coordinator. Appellant's employer did not offer health insurance in 2016.
3. Appellant does not have health insurance in 2017 but had it for the month of January 2017.
4. Appellant was divorced in 2016. She moved out of her apartment and had to buy new furnishings. Her employment changed several times in 2016. Due to the employment changes Appellant had health insurance in January & February 2016 and December 2016 (Appellant testimony), which I credit. Appellant is currently unemployed.
5. The Appellant's monthly expenses totaled \$3,666.00, consisting of rent \$1,666.00, internet and cable \$85.00, cell phone \$85.00, car insurance \$170.00, car gas \$240.00, food \$400.00, credit card \$500.00, clothing \$80.00, entertainment \$0.00, toiletries \$50.00, student loan \$120.00, storage \$120.00.
6. The Appellant submitted a written Statement of Appeal dated May 1, 2017, stating "Other. During 2016 other circumstances, such as: applying the Affordability Tables in Schedule HC to you is inequitable: as grounds for appeal but in addition should have stated that "During 2016, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. I will hear her appeal under both grounds.
7. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2016. Table 1 sets forth the income eligibility standards for various family sizes at 150% of the federal poverty level and Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard for the government-subsidized health insurance program. See Mass. G.L. c. 118H, s.3(a)(1). Tables 5 and 6 set forth the tax penalties for 2016.

CONNECTOR APPEALS UNIT

8. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant would not have been eligible for subsidized health insurance, since Appellants income of 36,511.00 was more than \$35,310.00. The monthly premium for health insurance available on the private market in Suffolk County for a 32 year old single person with zero dependents was \$216.00. The tables reflect that Appellant could afford \$225.15. This is less than what the appellant is deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions)

ANALYSIS AND CONCLUSIONS OF LAW

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

9. The Appellant submitted a written Statement of Appeal dated May 1, 2017, stating "Other. During 2016 other circumstances, such as: applying the Affordability Tables in Schedule HC to you is inequitable: as grounds for appeal but in addition should have stated that "During 2016, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. I will hear her appeal under both grounds.

The Health Care Reform Act of 2006 requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage "so long as it is deemed affordable" under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). However, individuals with incomes up to 150 percent of the Federal Poverty Level ("FPL") are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release ("TIR") 13-1, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2013-releases/tir-13-1.html>. For 2016, 150 percent of the FPL was \$17,655.00 for a single person with zero dependents. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www>.

CONNECTOR APPEALS UNIT

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

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

Appellant reported a federal AGI of \$36,511.00 in 2016, and Appellant's filing status was single with no dependents. EX 2. According to the Affordability Schedule established by the Connector's board and included in the Instructions and Worksheets of the 2016 Massachusetts Schedule HC, Appellant could afford to pay \$225.15 monthly for health insurance. *See* 2016 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to him from the Premium Tables, at a cost of \$216.00 monthly for coverage with zero dependents. *Id.* at Table 4.

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

Appellant is deemed to afford \$225.15 for health insurance coverage because of her income. Private insurance in the market place was \$216.00 per month. On these facts, I find that Appellant has not shown that she was totally precluded from purchasing affordable health insurance during 2016. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that she is not totally exempt from a tax penalty for her non-compliance with the individual mandate.

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

CONNECTOR APPEALS UNIT

PENALTY ASSESSED

Number of Months Appealed: ___12___ Number of Months Assessed: ___5___

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant is 22 years old and is Married. Appellant's wife is 22 years old. Appellants live in Suffolk County.
2. Appellant is employed in child education and his wife works in manufacturing. Neither employer offered offer health insurance.
3. Appellants do have health insurance in 2017.
4. Appellants had MassHealth in 2016 and were taken off of MassHealth in 2016 and couldn't afford private health insurance.
5. The Appellant's monthly expenses totaled \$2,910.00, consisting of rent \$900.00, heat & electricity \$25.00, internet and cable \$105.00, car insurance \$320.00, car gas \$100.00, food \$400.00, clothing \$150.00, entertainment \$400.00, credit card \$200.00, EZ pass \$50.00, student expenses \$50.00, Bus \$160.00.
6. The Appellants submitted a Statement of Grounds for Appeal-2016 dated May 6, 2017, stating as grounds for appeal "During 2016, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities".
7. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2016. Table 1 sets forth the income eligibility standards for various family sizes at 150% of the federal poverty level and Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard for the government-subsidized health insurance program. See Mass. G.L. c. 118H, s.3(a)(1). Tables 5 and 6 set forth the tax penalties for 2016.
8. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellants would not have been eligible for subsidized health insurance, since Appellants income of \$49,050.00 was more than \$47,790.00. The monthly premium for health insurance available on the private market in Suffolk County for a 21year old married couple was \$286.00. The tables reflect that Appellants could afford \$302.47. This is about what the appellants are deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions)

CONNECTOR APPEALS UNIT

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellants submitted a Statement of Grounds for Appeal-2016 dated May 6, 2017, stating as grounds for appeal “During 2016, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities”.

The Health Care Reform Act of 2006 requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage “so long as it is deemed affordable” under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). However, individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”) are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 13-1, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2013-releases/tir-13-1.html>. For 2016, 150 percent of the FPL was \$23,595.00 for a married couple. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf>; see also 830 Mass. Code Regs. 111M.2.1(5)(c) (2008). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months. *Id.*

Since Appellants’ 2016 income was more than 150 percent of the FPL, making them potentially subject to an individual mandate penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to them in 2016. In determining affordability, consideration is given first to the amount Appellants are deemed able to afford for health insurance premiums under the Affordability Schedule and second to the cost of health insurance that was available through employer-sponsored

CONNECTOR APPEALS UNIT

plans, government-subsidized programs or on the private insurance market. See 2016 Schedule HC Instructions and Worksheets, *supra*.

Appellants reported a federal AGI of \$49,050.00 in 2016, and Appellant's filing status was married. EX 2. According to the Affordability Schedule established by the Connector's board and included in the Instructions and Worksheets of the 2016 Massachusetts Schedule HC, Appellants could afford to pay \$302.47.00 monthly for health insurance. See 2016 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to them from the Premium Tables, at a cost of \$286.00 monthly for coverage and their employers did not offer health insurance to employees. *Id.* at Table 4.

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

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

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

PENALTY ASSESSED

Number of Months Appealed: ___4___ Number of Months Assessed: ___0___

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

CONNECTOR APPEALS UNIT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellants filed their Federal Income Tax return as a married couple with two dependents claimed. The Appellants were 38 and 37 years old in 2016 (Exhibit 2).
2. The Appellants lived in Worcester County, MA in 2016 (Exhibit 2).
3. The Appellants' Federal Adjusted Gross Income for 2016 was \$100,231 (Exhibit 2, Testimony of Appellant).
4. The Appellants had health insurance in January and February 2016. The Appellants did not have any health insurance coverage for the months of March through December 2016. The Appellants' children were also uninsured for this period (Exhibit 2, Testimony of Appellant).
5. The Appellants have each been assessed a seven-month tax penalty for 2016. The Appellants filed an appeal of the assessment in April 2017 (Exhibits 3, 4).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
7. In accordance with Table 3 of Schedule HC for 2016, a married couple filing a joint Federal tax return with two dependents claimed, with an adjusted gross income of \$100,231 could afford to pay \$679 per month for health insurance. In accordance with Table 4, a married couple with children, with one spouse age 38 living in Worcester County, could have purchased private insurance for \$562 per month for a plan (Schedule HC for 2016). Private insurance was affordable for the Appellants in 2016.
8. The Head of Household had access to employer sponsored health insurance for the period of May through December at a cost of \$806 monthly. The Appellant's spouse had access to employer sponsored insurance in 2016 at a cost of \$2,115. The insurance offered to the Appellants through their employment was not affordable for the Appellants during the period of

CONNECTOR APPEALS UNIT

March through December 2016 (Schedule HC for 2015 and Appellant Testimony).

9. The Appellants would not have been eligible for ConnectorCare coverage in 2016 because the household's income exceeded \$72,750 (See Table 2 of Schedule HC-2016 and 956 CMR 12.04).
10. The Appellant testified that the family was insured through their employer in January and February 2016 but lost coverage because the Appellant was laid off. The Appellant said that they found subsequent employment but was only paid approximately half of what they had been earning. The Appellant said that the 2016 income figure includes money from their 401K that they were forced to cash in to pay the family's monthly living expenses. The couple used credit cards to meet their living expenses as well. The Appellant testified that they were in arrears with their mortgage payments and could not afford health insurance. The Appellant's credible testimony is supported by the documentation submitted from the law firm representing the Appellant's mortgage holder, Hometown Bank (Exhibit 4).

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellants had health insurance in January and February 2016 but were uninsured for the period of March through December. The Appellants have both been assessed a penalty for 7 months. The Appellants submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply to them 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 Appellants through

CONNECTOR APPEALS UNIT

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 Appellants because they experienced a financial hardship as defined in 956 CMR 6.08.

In accordance with Table 3 of Schedule HC for 2016, the Appellants filing the Federal tax return as a married couple with two dependents claimed with an adjusted gross income of \$100,231 could afford to pay \$679 per month for health insurance. According to Table 4, the Appellants with one spouse, age 38, living in Worcester County, could have purchased a private insurance plan for \$562 per month. See Schedule HC for 2016. Private insurance was affordable for the Appellants in 2016.

The Appellants also had no access to affordable employer-sponsored health insurance for the period of March through December 2016. The insurance offered by their employers would have cost at least \$806 per month during this period of time. This is more than the \$679 the Appellants were deemed able to afford. The Appellants would not have been eligible for ConnectorCare coverage based upon the couple's income which more than \$72,750. See Table 2 of Schedule HC 2016 and 956 CMR 12.04 for eligibility criteria.

Since affordable insurance was available to the Appellants in 2016, it must be determined whether the Appellants experienced a financial hardship pursuant to 956 CMR 6.08 (1). The Appellant testified credibly that they lost their health insurance in March 2016 after the Appellant lost their job. The Appellant obtained subsequent employment, but their income was approximately half of what it had been. The tax year 2016 adjusted gross income figure includes income received when the Appellant cashed out their pension plan in order to meet the family's day to day living expenses. The couple also used credit card debt to meet these expenses. The Appellants fell behind in their mortgage payments and received a notice from their lender of Intention to Foreclose. The cost of purchasing health insurance would have caused the Appellants to experience additional financial hardship. See 956 CMR 6.08(1)(e). The Appellants penalty for all seven months is waived.

The Appellants should note that the waiver of their penalties is based upon the facts that I have determined to be true in 2016. The Appellants should not assume that a similar determination will be made for 2017 should they again be assessed a penalty for failure to have health insurance.

PENALTY ASSESSED

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

CONNECTOR APPEALS UNIT

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant turned 54 years old in October 2016. The Appellant filed their Federal Income Tax return as an individual with no dependents claimed (Exhibit 2).
2. The Appellant lived in Essex County, MA in 2016 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2016 was \$20,500 (Exhibit 2, Appellant Testimony).
4. The Appellant did not have health insurance during any months of tax year 2016 (Exhibit 2, Appellant testimony).
5. The Appellant has been assessed a twelve-month tax penalty for 2016. The Appellant filed an appeal of the assessment in May 2017 (Exhibits 2,3).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
7. In accordance with Table 3 of Schedule HC for 2016, the Appellant filing the Federal tax return as a single person with no dependents claimed, with an annual adjusted gross income of \$20,500 could afford to pay \$49 per month for health insurance. In accordance with Table 4, the Appellant, age 54, living in Essex County, could have purchased private insurance for \$314 per month for a plan (Schedule HC for 2016). Private insurance was not affordable for the Appellant in 2016.
8. The Appellant would have been eligible for ConnectorCare coverage during 2016 because Appellant's income was less than \$35,310 and the Appellant had no access to affordable employer-sponsored insurance (See Table 2 of Schedule HC-2016 and 956 CMR 12.04) (Appellant Testimony).
9. The Appellant testified that they were unemployed for several years, including all of tax year 2016. The Appellant said that their income was an inheritance from their deceased mother. The Appellant explained that they

CONNECTOR APPEALS UNIT

were struggling to meet their monthly living expenses and could not afford to purchase health insurance.

10. The Appellant's monthly living expenses for 2016 included: real estate taxes and water bill- \$330; home insurance \$125; gas heat-\$78; electricity-\$94; car insurance-\$144; excise tax \$9 and a credit card payment of \$726. The Appellant testified that they used credit cards to purchase food, clothing, gasoline and car repairs because their income was less than their monthly expenses for 2016. I found the Appellant's testimony credible (Exhibit 4; Appellant Testimony).
11. The Appellant is currently employed and has health insurance (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 in the Appellant's Schedule HC for 2016, the Appellant had no health insurance in tax year 2016. The Appellant has been assessed a twelve-month penalty. The Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply in this case because of financial hardship. To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met minimum creditable coverage standards was available to the Appellant through employment, through private insurance, or through a government sponsored program. If affordable insurance was available, it must be determined if such insurance was not affordable to the Appellant because the Appellant experienced a financial hardship as defined in 956 CMR 6.08.

CONNECTOR APPEALS UNIT

In accordance with Table 3 of Schedule HC for 2016, the Appellant filing the Federal tax return as a single person with no dependents claimed, with an adjusted gross income of \$20,500 could afford to pay \$49 per month for health insurance. According to Table 4, the Appellant, age 54, living in Essex County, could have purchased a private insurance plan for \$314 per month. See Schedule HC for 2016. Private insurance was not affordable for the Appellant in 2016.

The Appellant was unemployed and had no access to employer-sponsored health insurance in 2016. The Appellant would have been eligible for ConnectorCare coverage based upon Appellant's income which was less than \$35,310. See Table 2 of Schedule HC 2016 and 956 CMR 12.04 for eligibility criteria. Since affordable insurance was available to the Appellant in 2016, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1).

The Appellant was unemployed for all of tax year 2016. The Appellant met their monthly living expenses using an inheritance and credit card debt. The Appellant prepared a detailed list of expenses which verified that the Appellant's monthly expenses exceeded their income. The cost of purchasing health insurance for 2016 would have caused the Appellant to experience a serious financial hardship. See 956 CMR 6.08(1)(e). The Appellant's penalty for all twelve months is therefore waived.

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2016. 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 2016.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant turned 29 years old in February 2016. The Appellant filed their Federal Income Tax return as an individual with no dependents claimed (Exhibit 2).
2. The Appellant lived in Essex County, MA in 2016 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2016 was \$56,319 (Exhibit 2, Appellant Testimony).
4. The Appellant did not have health insurance during any months of tax year 2016 (Exhibit 2, Appellant testimony).
5. The Appellant has been assessed a twelve-month tax penalty for 2016. The Appellant filed an appeal of the assessment in May 2017 (Exhibits 2,3,4).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
7. In accordance with Table 3 of Schedule HC for 2016, the Appellant filing the Federal tax return as a single person with no dependents claimed, with an annual adjusted gross income of \$56,319 could afford to pay \$382 per month for health insurance. In accordance with Table 4, the Appellant, age 29, living in Essex County, could have purchased private insurance for \$143 per month for a plan (Schedule HC for 2016). Private insurance was affordable for the Appellant in 2016.
8. The Appellant testified that they had access to employer sponsored health insurance at a cost of approximately \$61 per week. The monthly cost of this insurance was \$264 and is less than the \$382 per month the Appellant was deemed able to afford in accordance with Table 3 of Schedule HC for 2016.
9. The Appellant would not have been eligible for Connector Care coverage during 2016 because Appellant's income was more than \$35,310 and the

CONNECTOR APPEALS UNIT

Appellant had access to affordable employer-sponsored insurance (See Table 2 of Schedule HC-2016 and 956 CMR 12.04) (Appellant Testimony).

10. The Appellant's monthly living expenses of \$2,082 for 2016 included: rent-\$1,100; heat-\$40; electricity-\$40; car insurance-\$110; telephone-\$99; gasoline-\$260 and food \$433. The Appellant purchased new tires at a cost of \$500 in tax year 2016. The Appellant argues that insurance is not a need for them to survive (Exhibit 4; Appellant Testimony).
11. The Appellant did not fall behind in their rent or utility payments and did not experience any family emergencies or natural or human caused disasters that resulted in an unexpected increase in living expenses (Appellant testimony).
12. The Appellant testified that they are currently employed by the same employer as they had in 2016 and is enrolled in employer sponsored health insurance (Appellant testimony).

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellant had no health insurance in tax year 2016. The Appellant has been assessed a twelve-month penalty. The Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply in this case because of financial hardship. To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met minimum creditable coverage standards was available to the Appellant through employment, through private insurance, or through a government sponsored program. If affordable insurance was available, it must be determined if such insurance was not

CONNECTOR APPEALS UNIT

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 2016, the Appellant filing the Federal tax return as a single person with no dependents claimed, with an adjusted gross income of \$56,319 could afford to pay \$382 per month for health insurance. According to Table 4, the Appellant, age 29, living in Essex County, could have purchased a private insurance plan for \$143 per month. See Schedule HC for 2016. Private insurance was affordable for the Appellant in 2016.

The Appellant would not have been eligible for ConnectorCare coverage based upon Appellant's income which was greater than \$35,310. In addition, the Appellant had access to health insurance through their employer at a cost of approximately \$264 per month. This is less than the \$382 the Appellant was deemed able to pay. See Table 2 of Schedule HC 2016 and 956 CMR 12.04 for eligibility criteria. Since affordable insurance was available to the Appellant in 2016, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1).

The Appellant argued in their letter that health insurance was not a need to survive. The Appellant also noted that they do not receive any type of government assistance. The Appellant's monthly living expenses were approximately \$2,082 per month. The Appellant did not fall behind in their rent or utility payments and did not experience any natural or human caused event that resulted in the Appellant incurring significant unexpected expenses. Given the Appellant's income of \$56,319 and the fact that private and employer sponsored health insurance was available and affordable for the Appellant in 2016, the Appellant did not demonstrate that the cost of purchasing health insurance for 2016 would have caused the Appellant to experience a serious financial hardship. See 956 CMR 6.08(1)(e). The Appellant's penalty for all twelve months is upheld.

PENALTY ASSESSED

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

CONNECTOR APPEALS UNIT

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CONNECTOR APPEALS UNIT

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant and their spouse filed their Federal Income Tax return as a married couple with no dependents claimed (Exhibit 2).
2. The Appellants lived in Essex County, MA in 2016 (Exhibit 2).
3. The Appellants' Federal Adjusted Gross Income for 2016 was \$106,483 (Exhibit 2, Spouse testimony).
4. The Appellant's Spouse had health insurance for all twelve months of tax year 2016 (Exhibit 2; Spouse testimony)
5. The Appellant did not have health insurance during any months of tax year 2016 (Exhibit 2, Spouse testimony).
6. The Appellant has been assessed a twelve-month tax penalty for 2016. The Appellant filed an appeal of the assessment in May 2017 (Exhibits 2,3).
7. The Appellant's Spouse testified that the Appellant is not a U.S. citizen and was living in Massachusetts with an expired Visa. The couple married on October 25, 2016. The Appellant explained that the couple was going through the immigration process but it took until April 2017 for the Appellant to obtain proof of lawful presence in the United States. The Appellant could not purchase health insurance on their own without verifying their immigration status and could not be added to their Spouse's employer-sponsored insurance for the same reason. The Spouse's credible testimony is supported by a Social Security document dated April 18, 2017 (Exhibit 4).
8. The Appellant currently has health insurance through their Spouse's employer (Exhibit 4 and Spouse testimony).
9. The Appellant did not have access to health insurance through employment, private insurance or a government sponsored program in 2016 (Exhibit 4).

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

CONNECTOR APPEALS UNIT

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

The Appellant had no health insurance in tax year 2016. The Appellant has been assessed a twelve-month penalty. The Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply in this case because the Appellant had no access to insurance. 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.

The Appellant is not a U.S. citizen and was in Massachusetts with an expired Visa. The Appellant and their spouse had filed an application to obtain lawful status for the Appellant, but the process took until April 2017 to complete. The Appellant was unemployed and could not access private insurance. Under 45 CFR § 155.305(a), only persons who are lawfully present in the United States and who are otherwise eligible may purchase health and dental insurance through the Health Connector. The Appellant did not have access to a government sponsored program. The Appellant and their Spouse were married at the end of October 2016. The Appellant’s Spouse had insurance, but the Appellant could not be added to the plan after the marriage until proof of their immigration status could be obtained. Since the Appellant did not have access to affordable health insurance in 2016, the 12-month tax penalty is waived in full.

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2016. 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.

CONNECTOR APPEALS UNIT

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 2016.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant turned 26 years old in May 2016. The Appellant filed their Federal Income Tax return as an individual with no dependents claimed (Exhibit 2).
2. The Appellant lived in Worcester County, MA in 2016 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2016 was \$42,518 (Exhibit 2, Appellant Testimony).
4. The Appellant had health insurance from January through May 2016 but was uninsured for the seven-month period of June through December 2016 (Exhibit 2).
5. The Appellant has been assessed a four-month tax penalty for 2016. The Appellant filed an appeal of the assessment in May 2017 (Exhibits 2,3).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
7. In accordance with Table 3 of Schedule HC for 2016, the Appellant filing the Federal tax return as a single person with no dependents claimed, with an annual adjusted gross income of \$42,518 could afford to pay \$269 per month for health insurance. In accordance with Table 4, the Appellant, age 26, living in Worcester County, could have purchased private insurance for \$143 per month for a plan (Schedule HC for 2016). Private insurance was affordable for the Appellant in 2016.
8. The Appellant would not have been eligible for ConnectorCare coverage in 2016 because Appellant's income was greater than \$35,310. (See Table 2 of Schedule HC-2016 and 956 CMR 12.04) (Appellant Testimony).
9. The Appellant testified that they were covered under their parent's health insurance plan until they turned 26 in May. The Appellant said that they did not realize that there was a time limit to contact the Health Connector to

CONNECTOR APPEALS UNIT

enroll in a new health insurance plan. The Appellant attempted to purchase insurance in early September and was then informed of the 60-day time limit to obtain insurance after losing their prior coverage. The Appellant was told that they would have to have a qualifying life event to enroll in a plan for 2016. The Appellant testified that they had no idea why they waited but was unaware of the rules regarding enrollment. The Appellant testified credibly that they did purchase health insurance during the open enrollment period at the end of 2016 (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 health insurance through a parent for the first five months of 2016. The Appellant’s eligibility ended when they turned 26 in May. The Appellant was uninsured for the remaining seven months of 2016 and has been assessed a four-month penalty. The Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply in this case because of their lack of understanding of the rules regarding enrollment. 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 2016, the Appellant filing the Federal tax return as a single person with no dependents claimed with an adjusted gross income of \$42,518 could afford to pay \$269 per month for health insurance. According to Table 4, the Appellant, age 26, living in Worcester County, could have

CONNECTOR APPEALS UNIT

purchased a private insurance plan for \$143 per month. See Schedule HC for 2016. Private insurance was affordable for the Appellant in 2016.

As noted above, the Appellant had health insurance through a parent for the first five months of 2016. The Appellant lost this coverage when they turned 26 in May 2016. The Appellant did not investigate health insurance options until early September. Under 45 CFR § 155 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. 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. The Appellant experienced a qualifying life event at the end of May 2016 when they lost their health insurance. This event resulted in the Appellant's being given a 60-day special enrollment period to find health insurance.

The Appellant acknowledges that they did not contact the Health Connector until September 2016. The Appellant was unaware that they were under any time constraints and acknowledges that this was their mistake. The Appellant did obtain health insurance for 2017 during the open enrollment period at the end of tax year 2016. Under these circumstances, the Appellant's penalty for all four months is therefore waived.

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2016. 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 2016.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant turned 34 years old in July 2016. The Appellant filed their Federal Income Tax return as an individual with no dependents claimed (Exhibit 2).
2. The Appellant lived in Plymouth County, MA in 2016 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2016 was \$23,534 (Exhibit 2, Appellant Testimony).
4. The Appellant had health insurance from September through December 2016 but was uninsured for the eight-month period of January through August 2016 (Exhibit 2).
5. The Appellant has been assessed a five-month tax penalty for 2016. The Appellant filed an appeal of the assessment in April 2017 (Exhibits 2,3).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
7. In accordance with Table 3 of Schedule HC for 2016, the Appellant filing the Federal tax return as a single person with no dependents claimed, with an annual adjusted gross income of \$23,534 could afford to pay \$57 per month for health insurance. In accordance with Table 4, the Appellant, age 34, living in Plymouth County, could have purchased private insurance for \$256 per month for a plan (Schedule HC for 2016). Private insurance was not affordable for the Appellant in 2016.
8. The Appellant would have been eligible for ConnectorCare coverage during the first eight months of 2016 because Appellant's income was less than \$35,310. (See Table 2 of Schedule HC-2016 and 956 CMR 12.04) (Appellant Testimony).
9. The Appellant testified that they believe they had insurance coverage for January and February 2016 but was fired and lost the coverage. The

CONNECTOR APPEALS UNIT

Appellant said that they were unemployed until late March and secured another job that paid \$180 weekly but the job only lasted one month. The Appellant explained that with sporadic employment they could not afford health insurance. The Appellant then found stable employment with better wages. Once the Appellant secured stable employment, the Appellant applied for ConnectorCare health insurance and enrolled in September 2016 (Exhibit 4; Appellant Testimony).

10. For the period of January through May, the Appellant's monthly rent was \$650. The Appellant moved into a sublet in June 2016 at a cost of \$400 per month. The Appellant's additional expenses for 2016 included: car payment-\$250; car insurance \$80; gasoline-\$108; groceries-\$150 and a credit card payment of \$60. The Appellant had to borrow money from friends and family to meet their monthly expenses. I found the Appellant's testimony credible (Exhibit 4; 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 in the Appellant's Schedule HC for 2016, the Appellant had no health insurance for the first eight months of 2016. The Appellant said that this may have been an error because they thought they had insurance for January and February 2016¹. The Appellant has been assessed a five-month penalty. The Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply in this case because of financial hardship. To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met minimum creditable coverage

¹ Since the Appellant's 2016 tax penalty is waived for all five months of 2016 it was unnecessary to have the Appellant verify this testimony. The Appellant was advised that they could amend their 2016 tax return.

CONNECTOR APPEALS UNIT

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 2016, the Appellant filing the Federal tax return as a single person with no dependents claimed with an adjusted gross income of \$23,534 could afford to pay \$82 per month for health insurance. According to Table 4, the Appellant, age 34, living in Plymouth County, could have purchased a private insurance plan for \$256 per month. See Schedule HC for 2016. Private insurance was not affordable for the Appellant in 2016.

The Appellant lost their job in early 2016 and was unemployed until late March. The Appellant found subsequent employment that lasted only one month. The Appellant was able to secure more stable employment but had no access to affordable employer-sponsored health insurance for the first eight months of 2016. The Appellant would have been eligible for ConnectorCare coverage based upon Appellant's income which was less than \$35,310. See Table 2 of Schedule HC 2016 and 956 CMR 12.04 for eligibility criteria. The Appellant enrolled in ConnectorCare coverage in September 2016. Since affordable insurance was available to the Appellant in 2016, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1).

As noted above, during the first eight months of 2016 the Appellant changed jobs three times. The Appellant testified credibly that because their employment was not stable and their monthly rent was fairly high, they could not afford to purchase health insurance. The Appellant testified credibly regarding their monthly living expenses and the fact that they had to borrow money from family and friends to meet these expenses during the first eight months of 2016. Once the Appellant found reliable employment and was able to sublet a more affordable apartment, the Appellant enrolled in ConnectorCare coverage through the Health Connector. The cost of purchasing health insurance for the period of January through August 2016 would have caused the Appellant to experience a serious financial hardship. See 956 CMR 6.08(1)(e). The Appellant's penalty for all five months is therefore waived.

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2016. 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: 5 Number of Months Assessed: 0

CONNECTOR APPEALS UNIT

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

Appeal Decision: Penalty Overturned in Full

Penalty Upheld

Penalty Overturned in Part

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date: March 2, 2017

Decision Date: August 11, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing, which was held by telephone on March 2, 2017. 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

Exhibit 2: Dismissed Appeal - Statement of Grounds not Received (August 24, 2016)

Exhibit 3: Request to reopen appeal (October 27, 2016)

Exhibit 4: Notification of Hearing on February 7, 2017 (January 19, 2017)

Exhibit 5: Notification of Hearing on March 2, 2017 (February 10, 2017)

Exhibit 6: Appellant's Form 1040 for 2015

Exhibit 7: Final Appeal Decision for the 2014 Tax Year Penalty (PA14-411) (November 17, 2015)

FINDINGS OF FACT

CONNECTOR APPEALS UNIT



The record shows¹, and I so find:

1. During 2015, the appellant was 35/36 years old, single with no dependents and lived in Middlesex County. The appellant lived with their grandmother, renting a room from her.²
2. The appellant worked as a coach for a private employer during 2015. The appellant's employer did not offer health insurance to its employees during 2015. The employer experienced financial hardship during 2015, employees' paychecks were frequently delayed, and eventually the employer closed and filed bankruptcy in November. The appellant had a long commute to work and to competitions. (Testimony & Exhibit 3)
3. The appellant had no health insurance during 2015 because they believed the expense was too high to be affordable.
4. The appellant filed their 2015 income tax as single with no dependents. The appellant's annual adjusted gross income was \$39,918. The appellant reported on their Schedule HC, filed with their 2015 income tax return, that they had no health insurance at all, and they were assessed a 12-month penalty. (Exhibit 1)
5. The appellant's appeal was initially dismissed for failure to submit a Statement of Grounds for Appeal - 2015, but it was reopened when they requested that the dismissal be vacated. The appellant explained the basis for their appeal in this request, namely that health insurance was not affordable. (Testimony & Exhibits 2 & 3)
6. At the hearing, the appellant outlined their living expenses. They lived with their grandmother for financial reasons and regularly incurred late fees for bills because their paychecks were often late. Their monthly expenses were as follows: rent - \$500; car insurance - \$388; car payments - \$150 until May, and then \$470 (the appellant's car was totaled and they had to continue payments on the old car along with the new car payments through the end of the year); oil changes - \$45 (monthly because of amount of driving for work); gasoline - \$250; and internet/phone - \$110. For the year, the appellant paid \$3,957 in federal income taxes, \$1,616 in state income taxes and \$2,542 in payroll taxes (FICA and Medicare), or \$676 per month in taxes. These taxes bring the appellant's monthly expenses to \$2,439 (using the higher car payment amount). The appellant's adjusted gross income of \$39,918 equates to \$3,326 per month, or \$887 more per month than the listed expenses. The appellant believed they couldn't afford to buy food, so the appellant's grandmother fed them. The appellant had around \$8,000 in debt in 2015. (Testimony & Exhibits 3 & 6)

¹ The findings are all taken from the appellant's testimony, unless an exhibit is specifically cited.

² Although it is technically not the correct usage, "they," "them" etc. will be used to refer to the appellant rather than "he," "him" etc. or "she," "her" etc. to help maintain the confidentiality of the appellant's identity.

CONNECTOR APPEALS UNIT

7. I take administrative notice of the information set forth in Tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors of the Health Connector Authority for 2015. Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard for the government-subsidized ConnectorCare health insurance program. See Mass.G.L. c. 118H, §3(a)(1). Tables 5 and 6 set forth the tax penalties in effect for 2015.

Health insurance is potentially available through three sources in Massachusetts: (1) a government-subsidized program; (2) an employer-sponsored health plan; or (3) a private health plan for individuals. Looking at government-subsidized insurance first, the appellant was not eligible based on their income. Employer-sponsored health insurance was not an option. Looking finally at private health plans, the appellant was deemed able to afford \$240 per month for health insurance based on their income and family size. A private health plan for a 35/36 year old in Middlesex County would have cost \$209 per month for an individual, and accordingly was deemed affordable. (Tables 2, 3 & 4 of the Schedule HC Instructions)

ANALYSIS AND CONCLUSIONS OF LAW

Mass.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 claiming that the individual mandate penalty did not apply because the appellant was unable to afford health insurance.

As stated above, the appellant was deemed able to afford health insurance on the private market. The question then becomes whether some financial hardship or other circumstances warrants waiving some or all of the penalty. Here, I have found that the appellant’s monthly income exceeded their expenses. They owed a large debt, however, and their housing expenses (rent and utilities) were extremely modest because they lived with their grandmother to save money. Various living expenses are not included in the appellant’s tally, including food and clothing. The appellant’s paychecks came irregularly, resulting in late fees on bills and uncertainty regarding ability to meet expenses. Under these circumstances, I conclude that the penalty 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 2015 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

CONNECTOR APPEALS UNIT



If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2015.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

Appeal Decision: Penalty Overturned in Full

Penalty Upheld

Penalty Overturned in Part

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date: February 8, 2017 Decision Date: August 14, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing, which was held by telephone on February 8, 2017. The hearing record remained open until February 22, 2017, to permit the appellant to submit evidence of the amount the appellant paid for taxes for 2015. The appellant failed, however, to submit any additional information. Accordingly, the hearing record consists of the appellant's testimony and the following documents which were admitted into evidence at the hearing:

Exhibit 1: Appeal Case Information from Schedule HC

Exhibit 2: Statement of Grounds for Appeal - 2015 (November 20, 2016)

Exhibit 2A: Signed typewritten statement

Exhibit 3: Notification of Hearing (January 19, 2017)

FINDINGS OF FACT

The record shows¹, and I so find:

¹ The findings are all taken from the appellant's testimony, unless an exhibit is specifically cited.

CONNECTOR APPEALS UNIT

1. During 2015, the appellant was 52/53 years old and single, living in Plymouth County.
2. During 2015, the appellant was self-employed. The business was a struggle, with only one month's financial cushion, and the appellant had been filing for an extension on their taxes every year to save money to pay the taxes.² After working hard to improve the business, the appellant was able to pay their 2015 taxes and put something down for 2016, and was working towards paying quarterly estimates again. The appellant did not have health insurance because they did not believe it was affordable for them. (Testimony & Exhibit 2A)
3. The appellant filed their 2015 income tax return as single with no dependents. The appellant's annual adjusted gross income was \$21,275. The appellant reported on their Schedule HC, filed with their 2015 income tax return, that they had no health insurance at all, and they were assessed a 12-month penalty. (Exhibit 1)
4. The appellant submitted a Statement of Grounds for Appeal - 2015, dated November 20, 2016, stating as the reason for the appeal "Other." The appellant testified at the hearing that they were not sure what they meant by "Other," but they submitted a typewritten statement with the Statement explaining the circumstances set forth above and asserting that payment of a penalty would set them back again financially when they were finally coming out of it. (Exhibits 2 & 2A)
5. The appellant outlined their monthly expenses at the hearing as follows: mortgage and taxes - \$1,600; car insurance - \$67; utilities (electric, phone, cable and internet)- \$400; heat - \$50; food - \$260; clothing (uniforms) - \$8; and gasoline - \$100, for a total of \$2,485 per month. The appellant's gross income, without taking any taxes into account, was \$1,773 per month, or significantly less than their expenses. The appellant also owed approximately \$10,000 on business and personal credit cards. (Testimony & Exhibit 1)
6. I take administrative notice of the information set forth in Tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors of the Health Connector Authority for 2015. Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard for the government-subsidized ConnectorCare health insurance program. See Mass.G.L. c. 118H, §3(a)(1). Tables 5 and 6 set forth the tax penalties in effect for 2015.
7. Health insurance is potentially available through three sources in Massachusetts: (1) a government-subsidized program; (2) an employer-sponsored health plan; or (3) a private health plan for individuals. Looking at government-subsidized insurance first, the appellant was eligible for ConnectorCare based on their income. Turning to employer-sponsored health insurance, none was available to the appellant. Looking finally at private health plans, the appellant was deemed able to afford \$49 per month for health insurance. A private health plan for a 52/53 year old in Plymouth

² Although it is technically not the correct usage, "they," "them" etc. will be used to refer to the appellant rather than "he," "him" etc. or "she," "her" etc. to help maintain the confidentiality of the appellant's identity.

CONNECTOR APPEALS UNIT

County would have cost \$346 per month for an individual, and accordingly was not affordable. (Tables 2, 3 & 4 of the Schedule HC Instructions)

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply because the cost was not affordable.

As stated above, the appellant should have been eligible for government-subsidized health insurance, and so health insurance was deemed affordable. The question then becomes whether some financial hardship warrants waiving some or all of the penalty, notwithstanding the appellant’s eligibility for ConnectorCare. I have found that the appellant’s monthly expenses exceeded their monthly income, even without the addition of any health insurance premiums. In addition, the appellant owed approximately \$10,000 in credit card debt.

The appellant offered that with their business on the upswing, they may be able to afford health insurance going forward without the setback from the penalty assessed for 2015. Under these circumstances, I conclude that the penalty should be waived in full for tax year 2015, but that the issue should be re-examined anew should the appellant fail to purchase health insurance in subsequent 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 2015 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 2015.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

Appeal Decision: Penalty Overturned in Full

Penalty Upheld

Penalty Overturned in Part

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date: March 2, 2017

Decision Date: August 18, 2017

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellants are a married couple (Husband and Wife). Wife appeared on their behalf at the hearing, which was held by telephone on March 2, 2017. The hearing record consists of the testimony and the following documents which were admitted into evidence:

Exhibit 1: Appeal Case Information from Schedule HC

Exhibit 2: Letter requesting reopening of appeal (December 27, 2016)

Exhibit 2A: Transaction history of payments to Connector

Exhibit 3: Notification of Hearing (February 10, 2017)

FINDINGS OF FACT

The record shows¹, and I so find:

1. During 2015, Husband and Wife were 42/43 and 45/46, respectively. They lived in Norfolk County. They had two children who were 10 and 19.

¹ The findings are all taken from the appellant's testimony, unless an exhibit is specifically cited.

CONNECTOR APPEALS UNIT

2. In December 2014, the appellants decided to re-enroll in an unsubsidized Massachusetts Health Connector (Connector) insurance plan for 2015. They submitted a premium payment at the end of December, and had coverage in January 2015. Later payments were, however, returned, and the appellants followed up numerous times with the Connector. This situation continued until June 2015, and they made their last payment that month. There were brief time periods when the appellants had coverage and other periods when they did not. (Testimony & Exhibits 2 & 2A)
3. In September 2015, feeling fed up with the Connector, the appellants submitted their first premium payment to Tufts Medical Plan (Tufts), and they were enrolled in a Tufts plan from October through December 2015. They are still enrolled with Tufts.
4. I find that the appellants made a reasonable effort to enroll in health insurance for all of 2015.
5. The appellants filed their 2015 income tax return as Married Filing Joint. The appellants' combined annual adjusted gross income was \$181,877. The appellants reported on their Schedule HC, filed with their 2015 income tax return, that they had health insurance during January and from October to December 2015, and they were each assessed a five-month penalty, for a total of ten months. (Exhibit 1)
6. The appellants failed to file a Statement of Grounds for Appeal - 2015, and their appeal was dismissed. They requested that the appeal be reopened, and it was. In support of the reopening, they explained the circumstances set forth above. (Exhibit 2)

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellants submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply because they attempted to purchase health insurance but were repeatedly stymied by the Connector.

Appellants were uninsured for only part of the year. Appellant did not have insurance in the months of February to September, a total of eight months. According to Mass.G.L. c. 111M, §2, residents are permitted a 63-day gap between periods of coverage without facing a penalty. This 63-day gap in coverage is interpreted under Administrative Bulletin 03-11: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, to be three months. As a result, gaps of three months are not subject to penalty. Thus, the appellants are appealing the penalty of five months each or ten months in total.

I have found that the appellants made a reasonable effort to enroll in health insurance through the Connector during all of 2015. Accordingly, I conclude that the penalty should be waived in full.

CONNECTOR APPEALS UNIT

PENALTY ASSESSED

Number of Months Appealed: 10 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 2015 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 2015.

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.