

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-34

Appeal Decision : Penalty waived in full
Hearing Issue: Appeal of the 2017 Tax Year Penalty
Hearing Date: July 27, 2018
Decision Date: September 17, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing, which was held by telephone on July 27, 2018. The procedures to be followed during the hearing were reviewed with the appellant. The appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified. At the end of the hearing, the record was left open until August 17, 2018 to give the appellant time to submit additional evidence. Documents were received by the appellant on August 6, 2018. These have been marked as exhibits and admitted in evidence. The record is now closed.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2017
- Exhibit 2: Statement of Grounds for Appeal 2017 signed and dated by Appellant on May 7, 2018
- Exhibit 3: Notice of Hearing sent to Appellant dated July 3, 2018 for hearing on July 27, 2018
- Exhibit 4: Appellant's 1095-B 2017 Federal form
- Exhibit 5: Appellant's Health Insurance card, 2017
- Exhibit 6: Guide to Benefits, 2017, Appellant's health insurance plan

FINDINGS OF FACT:

The record shows, and I so find:

1. Appellant was 23 years old in 2017. He filed a 2017 Massachusetts tax return as a single person with no dependents claimed (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Suffolk County, MA in 2017 (Exhibit 1).
3. Appellant had a Federal Adjusted Gross Income of \$53,547 in 2017 (Testimony of Appellant, Exhibit 1).
4. Appellant had health insurance under his parents' plan in 2017 until November. His parents lived out of the Commonwealth and their plan was an out-of-state plan. Though Appellant left his parents' plan at the end of

November, he obtained coverage in Massachusetts as of September 1, 2017 when he got a job (Testimony of Appellant, Exhibits 4, and 5).

5. Appellant has been assessed a tax penalty of five months, January through May, 2017 because the coverage he had during those months did not meet the Commonwealth's minimum creditable coverage standards. He has appealed this assessment (Exhibits 1 and 2).

6. Appellant's health insurance plan met the Federal standards set under the Patient Protection and Affordable Care Act. It had no annual maximum or life-time maximum for covered benefits. It had an annual deductible for individuals using in-network services of \$3,000. The plan covered preventive care at no cost, and visits to preventive care physicians and specialists, emergency rooms, and in-patient care after the deductible was met and with co-payments. It also covered prescription drugs (Exhibits 4 and 5).

ANALYSIS AND CONCLUSIONS OF LAW

Appellant had health insurance during 2017. The insurance the appellant had from January through August, however, did not meet the Commonwealth's minimum creditable coverage standards. Appellant obtained coverage which met the Commonwealth's standards as of September. Since he had this coverage from September on, he is entitled to a three-month grace period prior to obtaining this coverage. See the testimony of the appellant which I find to be credible. The appellant has been assessed a penalty for five months, January through May. The appellant has appealed the penalty. See Exhibit 1 and 2. The issue on appeal is whether the tax penalty assessed for January through May, 2017 should be waived, either in whole or in part.

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

To determine if the penalty should be waived in whole or in part, we must consider whether the insurance the appellant had from January through May, 2017 substantially met the Commonwealth's minimum creditable coverage standards as set out in 956 CMR 5.00 et. seq.

Appellant had health insurance under his parents' plan until November, 2017. His parents lived out of the Commonwealth and their plan was on -out-of-state plan. Appellant left his parents' plan at the end of November after he obtained coverage in Massachusetts. Appellant's parents' health insurance plan met the Federal standards set under the Patient Protection and Affordable Care Act. It had no annual maximum or life-time maximum for covered benefits. It had an annual deductible for individuals using in-network services of \$3,000. The plan covered preventive care at no cost, and visits to preventive care physicians and specialists, emergency rooms, and in-patient care after the deductible was met and with co-payments. It also covered prescription drugs. See the testimony of the appellant which I find to be credible and Exhibits 5 and 6.

The appellant's plan substantially met the Commonwealth's standards. The appellant's penalty is, therefore, waived in its entirety. I also note that Appellant has had health insurance which meets the Commonwealth's minimum creditable coverage standards since September, 2017.

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

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA1736

Appeal Decision : Penalty waived in full

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: July 27, 2018

Decision Date: September 16, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

One of the appellants appeared at the hearing, which was held by telephone on July 27, 2018. The procedures to be followed during the hearing were reviewed with the appellant. The appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

Exhibit 1: Appeal Case Information from Schedule HC 2017

Exhibit 2: Statement of Grounds for Appeal 2017 signed and dated by Appellants on May 11, 2018 with letter in support attached

Exhibit 3: Notice of Hearing sent to Appellant dated July 3, 2018 for hearing on July 27, 2018

Exhibit 4: Letter to Appellant from health insurer terminating coverage dated March 31, 2017

Exhibit 5: Connector e-mail to Appellant dated May 10, 2017 acknowledging payment for coverage

Exhibit 6: August 22, 2017 letter to Appellant from Massachusetts Office of Patient Protection granting waiver

Exhibit 7: E-mail to Appellant from Health Services Administrators dated August 29, 2017

Exhibit 8: Letter to Appellant from Federal Department of Health and Human Services dated March 29, 2018 regarding hardship exemption

FINDINGS OF FACT:

The record shows, and I so find:

1. Appellants were 29 and 28 years old in 2017. They filed a 2017 Massachusetts tax return jointly with no dependents claimed. (Exhibit 1, Testimony of Appellant).
2. Appellants lived in Middlesex County, MA in 2017 (Exhibit 1).
3. Appellant had a Federal Adjusted Gross Income of \$77,413 in 2017 (Exhibit 1).
4. One of the appellants had health insurance all year through the graduate school he attended. He has not been assessed a penalty for any part of 2017 (Testimony of Appellant, Exhibit 1).

5. The other appellant had health insurance from January through April and from September through December, 2017. She has been assessed a one-month penalty for the month of August. Appellant has appealed this assessment (Testimony of Appellant, Exhibits 1 and 2).
6. The appellant who was uninsured was employed as an independent contractor all of 2017. She was not offered health insurance through her job (Testimony of Appellant).
7. Appellant's health insurance was terminated as of April 30, 2017 (Exhibit 4).
8. Appellant immediately attempted to obtain health insurance through the Connector. She set up an online account to pay premiums. She was informed by the Connector on May 10th that a payment of \$212.56 was going to be withdrawn from her account within a few days (Exhibit 5, Testimony of Appellant).
9. Shortly after paying the premium, the appellant left the country until July. When she returned, she learned that she not been enrolled in the plan she had chosen. The Connector returned her premium payment to her (Exhibit 2 attachment, Testimony of Appellant).
10. By the time Appellant learned that she was not enrolled, she was unable to enroll outside of the open enrollment period. Appellant applied to the Office of Patient Protection for a waiver. She obtained a waiver and was then able to obtain health insurance (Exhibit 6, Testimony of Appellant).
11. Both appellants have had health insurance in 2018 (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

The appellant has been assessed a tax penalty for August, 2017. The appellant has appealed the penalty. See Exhibits 1 and 2. The issue on appeal is whether the tax penalty assessed for August, 2017 should be waived.

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

45 CFR 155.410 and 420 provide for open enrollment periods during which individuals may enroll in health care plans and for special open enrollment periods when individuals may enroll outside of the open enrollment period if they have a qualifying life event. Examples of a qualifying event include the loss of health insurance from a job, moving outside of a health insurer's service area, loss of MassHealth, getting married, a change in household dependents, among other things. If an individual has a qualifying event, the individual may apply for coverage through the Connector within 60 days of the event, even outside of an open enrollment period. In Massachusetts, if an individual does not have a qualifying life event, the individual may apply to the Office of Patient Protection to obtain a waiver of the requirement. With the waiver, the individual may purchase and enroll in a health insurance plan outside of the open enrollment period.

After Appellant lost her health insurance at the end of April, 2017, she immediately attempted to obtain insurance through the Connector. She set up an online payment account and was informed by the Connector on May 10th,

2017 that \$212.56 would be withdrawn from her account within a few days. Appellant then left the country until July. When she returned, she learned that she did not have coverage. It is unclear from the record what happened with the payment and why the appellant did not end up with coverage. See Exhibits 4, and 5. Whatever the cause, the appellant then applied for a waiver from the Office of Patient Protection so that she could enroll in a plan outside of the open enrollment period. She obtained a waiver and was then able to enroll in a plan with an effective start date of September 1, 2017. See Exhibit 6 and the testimony of the appellant which I find to be credible.

I determine that Appellant's one-month penalty should be waived. Whatever the reason, Appellant had problems enrolling in a health insurance plan despite her efforts. She tried to get insurance through the Connector and then applied to the Office of Patient Protection to obtain a waiver so that she could enroll outside of the normal open enrollment period. Appellant clearly wanted health insurance and made diligent efforts to obtain it. Appellant's penalty is waived.

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

PENALTY ASSESSED

Number of Months Appealed: 1 Number of Months Assessed: 0

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA1737

Appeal Decision : Penalty waived in full

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: July 27, 2018

Decision Date: September 10, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing, which was held by telephone on July 27, 2018. The procedures to be followed during the hearing were reviewed with the appellant. The appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

Exhibit 1: Appeal Case Information from Schedule HC 2017

Exhibit 2: Statement of Grounds for Appeal 2017 signed and dated by Appellant on May 7, 2018 with letter of support attached

Exhibit 3: Notice of Hearing sent to Appellant dated July 3, 2018 for hearing on July 27, 2018

FINDINGS OF FACT:

The record shows, and I so find:

1. Appellant was 56 years old 2017. She filed a 2017 Massachusetts tax return as a single individual with no dependents (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Plymouth County, MA in 2017. She was homeless in January and February, 2017. She stayed with different friends and relatives and some times lived in her car (Testimony of Appellant, Exhibit 1).
3. Appellant had a Federal Adjusted Gross Income of \$50,996 in 2017 (Exhibit 1).
4. Appellant had a full-time job in January at which she earned \$15 an hour. She was laid off mid-January. She had health insurance through this job, but lost the coverage at the end of January (Testimony of Appellant).
5. Appellant got another job in mid-January. Appellant earned \$20 an hour and worked full-time. She was offered health insurance, but only after she had been on the job for sixty days. She attempted to get the offered insurance, but her employer never enrolled her. She complained to her immediate supervisor and office manager, but neither could get her the coverage. She continued to ask for the coverage and finally on August 1, 2017, she obtained health insurance. The coverage cost her \$215 a month (Testimony of Appellant).

6. Appellant changed jobs in November, 2017. She still had health insurance after changing jobs (Testimony of Appellant, Exhibit 1).
7. Appellant also had a part-time job in 2017. She was not offered health insurance through this job (Testimony of Appellant).
8. Appellant had health insurance in January, and then from August through December, 2017. She has been assessed a penalty for three months. Appellant has appealed this assessment (Exhibits 1 and 2, Testimony of Appellant).
9. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
10. According to Table 3 of Schedule HC for 2017, the appellant with no dependents claimed, and with an adjusted gross income of \$50,996 could afford to pay \$346 per month for health insurance. According to Table 4, Appellant, age 56 and living in Plymouth County, could have purchased insurance for \$441 per month. Individual coverage was not affordable for the appellant in 2017.
11. According to Table 2 of Schedule HC for 2017, Appellant who earned more than \$35,640 per year would have not been income-eligible for the Connector Care program (Table 2 of Schedule HC-2017, Exhibit 1).
12. Appellant had the following monthly expenses for basic necessities in 2017: rent including electricity and heat-\$600; food and household necessities-\$800; cell phone-\$70; clothing-none; car payment-\$400; car insurance-\$200; gas-\$100. Appellant also had to pay \$450 to \$500 a month for medicines and supplies because she is diabetic (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

The appellant has been assessed a tax penalty for three months of 2017. The appellant has appealed the penalty. See Exhibits 1 and 2. Appellant had health insurance coverage in January and from August through December. She is entitled to a three-month grace period prior to obtaining her coverage in August. The grace period for the appellant is May through July, 2017. The issue on appeal is whether the tax penalty for February through April should be waived, either in whole or in part.

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

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

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

According to Table 3 of Schedule HC for 2017, the appellant filing as a single individual with no dependents claimed with a Federal adjusted gross income of \$50,996 could afford to pay \$346 per month for health insurance. According to Table 4, Appellant, 56 years old and living in Plymouth County, could have purchased insurance for \$441 per month. Insurance through the individual market was not affordable for the appellant. See Schedule HC for 2017, and Exhibit 1.

The appellant had no access to affordable insurance through employment from February through April. While she was offered health insurance through her job, she could not enroll until she had been on the job for sixty days. After sixty days, Appellant sought to enroll, but she was not actually given coverage until August. This was despite numerous efforts by the appellant to get her employer to give her coverage. See the testimony of the appellant which I find to be credible.

According to Table 2 of Schedule HC for 2017, Appellant, earning more than \$35,640 per year, would have been ineligible for the Connector Care program based upon income. There is no evidence in the record that the appellant was eligible for any other government-sponsored program.

Appellant had no affordable insurance available to her in 2017. None was available through her job or through the individual market. The appellant was also ineligible for ConnectorCare, and there is no evidence in the record indicating that the appellant would have been eligible for any other government program. The penalty for February through through April is, therefore, waived. See Massachusetts General Laws, Chapter 111M, Section 2.

I also note that the appellant was homeless in January and February of 2017. She lived in her car, and moved from friend to friend or relative during this period. See the testimony of the appellant which I find credible. Pursuant to 956 CMF 6.08(a), Appellant's penalty would be waived because of financial hardship.

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

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-63

Appeal Decision : Penalty waived in full

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: August 9, 2018

Decision Date: September 25, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

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

Exhibit 1: Appeal Case Information from Schedule HC 2017

Exhibit 2: Statement of Grounds for Appeal 2017 signed and dated by Appellant on May 6, 2018 with letters of support attached

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

Exhibit 4: Appellant's Form MA 1099-HC for 2017

Exhibit 5: Summary of Benefits and Coverage for Appellant's health plan, 2017

Exhibit 6: Connector Final Appeal Decision for 2014 Tax Year dated April 13, 2016

Exhibit 7: Connector Final Appeal Decision for 2015 Tax Year dated February 4, 2017

FINDINGS OF FACT:

The record shows, and I so find:

1. The appellant was 53 years old in 2017. He filed a 2017 Massachusetts tax return as a single individual with no dependents claimed (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Hampden County, MA in 2017 (Exhibit 1).
3. Appellant had a Federal Adjusted Gross Income of \$64,184 in 2017. (Testimony of Appellant, Exhibit 1).
4. In 2017, Appellant worked out of state where he was a member of a trade union. He has been a member of this union and worked in the trades outside of Massachusetts for over fifteen years (Testimony of Appellant, Exhibit 6).

5. Appellant has had health insurance through his union for numerous years, including 2014 through 2017. In 2017, though he worked for different employers, he retained health insurance through the union as he moved from job to job (Testimony of Appellant, Exhibits 6 and 7)

6. Appellant's health insurance coverage, which Appellant had for all of 2017, did not meet the Massachusetts minimum creditable coverage standards. The plan, though broad, did not include coverage for maternity services benefits for female dependents. Appellant did not have a female dependent in 2017. The plan did provide prenatal, delivery, and post-natal care for members and their spouses (Testimony of Appellant, Exhibit 2 attachment, Exhibit 5).

7. In 2017, the Appellant's plan covered a wide range of services, including free preventive care, screenings, and immunizations, visits to specialists, diagnostic testing including imaging, prescription drugs, out-patient surgery, emergency room visits, in-patient care, psychiatric services, maternity care (for member or spouses), home health care, and other services such as rehabilitation services. The annual deductible was \$300 for an individual and \$600 for family. The out-of-pocket limit for the plan was \$4,000 for an individual (Exhibit 5).

8. Since the appellant had insurance in 2017 that did not meet the Commonwealth's standards, the appellant has been assessed a penalty for twelve months. Appellant has appealed this assessment. (Exhibits 1 and 2, Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

Appellant had health insurance during 2017. The insurance, however, did not meet the Commonwealth's minimum creditable coverage standards. The appellant has been assessed a penalty for the whole year. The appellant has appealed the penalty. See Exhibit 1 and 2. The issue on appeal is whether the tax penalty assessed should be waived, either in whole or in part.

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

To determine if the penalty should be waived in whole or in part, we must consider whether the insurance the appellant had in 2017 substantially met the Commonwealth's minimum creditable coverage standards as set out in 956 CMR 5.00 et. seq.

Appellant's health insurance plan had broad coverage. In 2017, the Appellant's plan covered a wide range of services, including free preventive care, screenings, and immunizations, visits to specialists, diagnostic testing including imaging, prescription drugs, out-patient surgery, emergency room visits, in-patient care, psychiatric services, maternity care (for member or spouses), home health care, and other services such as rehabilitation services. The annual deductible was \$300 for an individual and \$600 for family. The out-of-pocket limit for the plan was \$4,000

for an individual. The plan did not offer benefits for maternity services for female dependents. It did offer these services for the member or spouse. See Exhibit 5 and Exhibit 2 attachment.

I determine that the health insurance plan that the appellant had for all of 2017 substantially met the Commonwealth's minimum creditable coverage standards. The one missing benefit was maternity services coverage for female dependents. Appellant had no female dependents in 2017. See Exhibit 1 and the testimony of the appellant which I find to be credible. The coverage was comprehensive in all other ways. See 956 CMR 5.00 et. seq.

Given that the appellant's plan substantially met the Commonwealth's standards, the appellant's penalty is waived in its entirety. See 956 6.08(2)(d).

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

PENALTY ASSESSED

Number of 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 2017.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-68

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

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: August 7, 2018

Decision Date: September 7, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2017;
3. [There is no Exhibit 3];
4. Appellant's 2017 IRS Form 1095-B (2 pages); and
5. Health Connector's Notice of Hearing (3 pages, dated 7/12/18);

FINDINGS OF FACT

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

1. The Appellant appealed from the Department of Revenue's assessment of a 12 month penalty for 2017. The basis for the penalty was that the Appellant did not have health insurance that satisfied the Massachusetts minimum creditable coverage ("MCC") requirements for 2017. Exhibits 1 and 2.
2. The Appellant appealed on the ground that his health insurance coverage did not meet MCC standards "because that is what your employer offered, and you felt that your circumstances prevented you from buying other insurance that met the requirements." Exhibit 2, page 2. The

Appellant likewise appealed from penalties assessed for 2014, 2014, and 2016. Exhibit 1. The Appellant testified that his appeals were approved in prior years. Testimony.

3. The Appellant is a union member who is insured under a union health plan established under a collective bargaining agreement between the union and all of his employers. For 2017 the Appellant estimated that he contributed approximately \$12,000 toward the cost of his health insurance. Under the terms of the collective bargaining agreement the Appellant is assessed a fixed amount for health insurance based on what he is paid. Testimony.
4. The Appellant was insured for all 12 months in 2017. I base this finding on the 2017 IRS Form 1095-B. Exhibit 4, page 1 (“covered all 12 months”).
5. The Appellant’s understanding is that his union health plan does not satisfy the state MCC standards because it does not offer coverage for spouses or for pregnancy. Testimony. The Appellant is not married. Testimony and Exhibit 1.
6. The Appellant filed a Massachusetts personal income tax return for 2017 as a single person with no dependents. The Appellant’s federal adjusted gross income (AGI) for 2017 was \$69,375. Exhibit 1.
7. The Appellant was 44 years old at the beginning of 2017 and resided in [name of city or town omitted] in Middlesex County, Massachusetts. Exhibit 1.
8. Based on DOR Table 3 the Appellant could afford to pay \$742 per month for health insurance coverage in 2017. (The calculation is 8.16% multiplied by \$69,375 AGI = \$5,661 per year divided by 12 months = \$471.75 per month.)
9. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage at his age and location for \$274 per month in 2017 (\$3,288 per year).
10. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant’s 2017 Massachusetts income tax return.
11. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2017. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2017. (The DOR instructions are published

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

ANALYSIS AND CONCLUSIONS OF LAW

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

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

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

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

In this case, the Form 1095-B that the Appellant received from the federal Internal Revenue Service (IRS) for 2017 establishes that he actually had health insurance for all 12 months in 2017 under his union collective bargaining agreement. Exhibit 4, page 1, and Testimony. The DOR nonetheless assessed a 12 month penalty because the union health plan did not satisfy the state's MCC requirements because it did not provide coverage for a spouse and pregnancy. See Mass. Code Regs. 5.03 (1).

Here, the Appellant had no choice. He was required to participate in the union health plan by the collective bargaining agreement, and he had to make financial contributions for his union coverage. It would have cost the Appellant at least an additional \$3,288 per year to buy a second health insurance policy through the Health Connector that met MCC standards. The Appellant, however, had no use for that additional coverage since he is not married. See, e.g., Findings of Fact, Nos. 5 and 9, above

Accordingly, I will waive the entire 12 month penalty assessed against the Appellant for 2017. See 956 Code Mass. Regs. 6.08 (2) and (3). See also Exhibit 2, page 2 (appeals ground no. 6).

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.

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-74

Appeal Decision: Penalty Upheld in Full

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: August 8, 2018

Decision Date: September 4, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

- Ex. 1—Statement of Grounds for Appeal—2017
- Ex. 2—Appeal Case Information from Schedule HC ¹
- Ex. 3—Notice of Hearing

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is 60-years-old, is single, and has adult children. He resided in Bristol County, MA in 2017. He did not have health insurance in 2017. (Testimony, Ex. 2)
2. The appellant has not had health insurance for many years. He believes that he was insured when Massachusetts enacted the Health Care Reform Act of 2006, but found that his policy was expensive and covered very little. He decided to forego insurance thereafter and to pay his medical expenses on an as-needed basis. (Testimony)
3. The appellant has paid a tax penalty every year since the Health Care Reform Act of 2006 was passed. (Testimony)

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

4. The appellant filed an appeal of the tax penalty in 2014 and 2016. In 2014, the Department of Revenue did not receive the documentation it requested in order to process his appeal. In 2016, he did not appear at the scheduled hearing and his appeal was dismissed (Testimony, Ex. 2)
5. The appellant was employed in 2017. (Testimony)
6. The appellant investigated the cost of private health insurance for 2017, but was unable to get any definitive answers as to cost and coverage. (Testimony)
7. The appellant reported an adjusted gross income of \$73,786.00 on his 2017 federal tax return, and reported that he was single with no dependents. (Ex. 2)
8. In 2017, the appellant had regular monthly expenses of approximately \$2997.00 for rent (\$1200.00), electricity (\$50.00), heat averaged over 12 months(\$200.00), automobile loan (\$300.00), automobile insurance for two vehicles (\$167.00), gasoline (\$240.00), and food (\$840.00). (Testimony)
9. The appellant has not obtained health insurance for 2018. (Testimony)

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

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant submitted a statement of grounds for appeal (Ex. 1), claiming that the individual mandate did not apply to him during 2017 for “other” reasons such as being a non-resident of the state or not qualifying for government subsidized 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 without facing a tax penalty; for Tax Year 2017, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Since the appellant was uninsured for the entire year, he was assessed and is appealing a penalty of twelve months.

The appellant testified that he has not had health insurance for many years because he found that the cost of a policy was high and covered little. He testified that he has paid a tax penalty every year since the Health Care Reform Act of 2006 was enacted for not having insurance. He testified that he attempted to investigate the cost of insurance for 2017 but could not get any definitive information. Finally he testified that he has not obtained insurance for 2018.

The evidence provided by the appellant established that his income for 2017, \$73,786.00, was greater than 300% of the federal poverty level, which for 2017 was \$35,640.00 for a single person. Pursuant to the Code of Massachusetts Regulations, 956 CMR 6.05(1), the Connector has established an affordability schedule that sets forth the percentage of an individual’s adjusted gross income which s/he can be expected to contribute toward

the cost of private health insurance that meets minimum creditable coverage standards. Table 3 of the Affordability Schedule indicates that an individual filing separately with no dependents with a federal adjusted gross income of \$47,521.00 and higher is deemed to be able to afford a monthly premium of \$501.75 (8.16% of \$73,786.00). Table 4 of the Premium Schedule indicates that a 59-year-old individual (the appellant's age in 2017) in Bristol County (where the appellant resided in 2017) could have purchased private health insurance for \$374.00 per month, less than the monthly amount deemed affordable from Table 3. Thus, according to the foregoing analysis, the appellant could have purchased affordable health insurance in 2017.

Even though private health insurance may have been affordable to the appellant under the law, he may nevertheless not be subject to a penalty for failing to get health insurance for the months in question if he can show that he experienced a hardship during 2017. Examples of hardships include being homeless or overdue in rent or mortgage payments, receiving a shut-off notice for utilities, or incurring unexpected increases in basic living expenses due to domestic violence, death of a family member, sudden responsibility for providing care for a family member or fire, flood or natural disaster. In addition, the appellant's tax penalty for 2017 could be waived 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 appellant did not argue that he sustained any type of hardship and appeared to object to the purchase of insurance on philosophical grounds, an invalid reason for waiver or reduction of the penalty. Based on his history of paying a penalty every year since 2007, it appears that he does not disagree with this conclusion.

Based on the totality of the evidence, it is concluded that the appellant could have afforded private health insurance and failed to establish that he experienced a financial hardship that would entitle him to a waiver of the penalty. Therefore, the appellant's request for a waiver from the penalty is **denied**. The determination that the appellant is not eligible for a waiver is with respect to 2017 only and is based upon the extent of information submitted in this appeal.

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 2017 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-80

Appeal Decision: Penalty Overturned in Full

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: August 8, 2018

Decision Date: September 5, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

Ex. 1—Statement of Grounds for Appeal—2017

Ex. 1A—United States Bankruptcy Court Order of Discharge dated October 13, 2017

Ex. 2—Appeal Case Information from Schedule HC ¹

Ex. 3—Notice of Hearing dated July 14, 2018

Ex. 4—Notice of Hearing dated August 3, 2018

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

Ex. 5—Employer Health Insurance Information Form for 2017

Ex. 6—United States Department of Health and Human Services Hardship Exemption dated May 3, 2018

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is 29-years-old, is single, and has a two-year old child. He resided in Franklin County, MA in 2017. In 2017, he had health insurance from January through March. (Testimony, Ex. 2)

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

2. The appellant was employed from January through March, 2017 during which time he had employer health insurance. He subsequently got a new job in April for the remainder of the year. The employer offered health insurance, but the appellant did not enroll because the cost was too high. (Testimony, Ex. 2)
3. The second employer offered health insurance which met Minimum Creditable Coverage (MCC) and minimum value standards. The appellant's share of the premium for the lowest cost plan would have been \$665.00/month, and he could have enrolled in coverage beginning on July 13, 2017.(Ex. 5)
4. After he began his second job, the appellant investigated health insurance options through the Health Connector and was advised that Open Enrollment had closed and he did not have a qualifying life event for a Special Enrollment Period. (Testimony)
5. The appellant did not investigate any private health insurance options for the remainder of the year because he was undergoing difficult financial circumstances and did not feel that he could afford the cost. (Testimony)
6. Prior to 2017, the appellant had been self-employed as an electrician. He split with his girlfriend in October, 2016, and became responsible for child support payments in January, 2017 for approximately \$200.00/month. The payments increased when he became employed. (Testimony)
7. The appellant filed for bankruptcy in early 2017. On October 31, 2017, the United States Bankruptcy Court issued an Order of Discharge pursuant to 11 U.S.C. section 727. (Ex. 1A)
8. The appellant has been enrolled in health insurance through the Health Connector since February, 2018, and pays a monthly premium of \$320.00. (Testimony)
9. The appellant submitted an application to the Health Insurance Marketplace for an exemption from the "shared responsibility payment " that he owed for the period of time he was not enrolled in health insurance. By letter dated May 3, 2018, he was advised that he qualified for a hardship exemption from August 2016 through January 2018. (Ex. 6)
10. The appellant reported an adjusted gross income of \$54,124.00 on his 2017 federal tax return, and reported that he was single with no dependents. (Ex. 2)
11. In 2017, the appellant lived in his grandfather's house and paid \$500.00/month for heat, electricity and cable/internet service. In addition he had regular monthly expenses of approximately \$1600.00 for an automobile loan (\$320.00), automobile insurance for two vehicles (\$120.00), gasoline (\$240.00), food (\$800.00), and repayment of a student loan (\$120.00). (Testimony)

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

ANALYSIS AND CONCLUSIONS OF LAW

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

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

The appellant submitted a statement of grounds for appeal (Ex. 1), claiming that the individual mandate did not apply to him during 2017 for “other” reasons such as being a non-resident of the state or not qualifying for government subsidized insurance. On his statement, he wrote “bankruptcy—order of discharge attached”. The appellant did not have insurance from April through December. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a tax penalty; for Tax Year 2017, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Since the appellant was uninsured for nine months, he was assessed and is appealing a penalty of six months (i.e. the months of uninsurance less the gap period of three months).

The appellant testified credibly that he was employed from January through March during which time he had employer health insurance. He testified that he got another job in April, but did not enroll in employer health insurance because he could not afford the cost. He testified that he investigated insurance options through the Health Connector and was advised that Open Enrollment had closed and he did not qualify for a Special Enrollment Period. He testified that he filed for bankruptcy early in 2017 and was granted an order of discharge in October. Finally, he testified that he has been enrolled in insurance through the Health Connector since February, 2018.

The evidence provided by the appellant established that his income for 2017, \$54,124.00, was greater than 300% of the federal poverty level, which for 2017 was \$35,640.00 for a single person. Pursuant to the Code of Massachusetts Regulations, 956 CMR 6.05(1), the Connector has established an affordability schedule that sets forth the percentage of an individual’s adjusted gross income which s/he can be expected to contribute toward the cost of private health insurance that meets minimum creditable coverage standards. Table 3 of the Affordability Schedule indicates that an individual filing separately with no dependents with a federal adjusted gross income of \$47,521.00 and higher is deemed to be able to afford a monthly premium of \$368.04 (8.16% of \$54,124.00). Table 4 of the Premium Schedule indicates that a 28-year-old individual (the appellant’s age in 2017) in Franklin County (where the appellant resided in 2017) could have purchased private health insurance for \$218.00 per month, less than the monthly amount deemed affordable from Table 3. Thus, according to the foregoing analysis, the appellant could have purchased affordable health insurance in 2017.

The next issue to consider is whether the appellant had access to affordable employer health insurance once he became eligible to enroll in July, 2017. The employer provided information which indicated that the cost of an individual plan was \$665.00 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 2017 is considered to be affordable if the employee’s contribution for an individual plan is 9.69 percent or less of the employee’s projected household modified adjusted income (MAGI). The coverage is considered to meet minimum value standards if it has an actuarial value of at least 60 percent.

In this case, the monthly cost for an individual plan through the appellant's employer was \$665.00. That cost is more than 9.69 percent of the appellant's projected household MAGI for 2017 (i.e.—9.69 percent of \$54,124.00 is \$5244.62 or \$437.05/month).² Hence, since the cost of employer insurance is more than \$437.05/month, he is not considered to have had access to qualifying health insurance. See 956 CMR 12.05 and 45 CFR section 155.305 (f)(1)(ii)(B).

Even though private health insurance may have been affordable to the appellant under the law, he may nevertheless not be subject to a penalty for failing to get health insurance for the months in question if he can show that he experienced a hardship during 2017. Examples of hardships include being homeless or overdue in rent or mortgage payments, receiving a shut-off notice for utilities, or incurring unexpected increases in basic living expenses due to domestic violence, death of a family member, sudden responsibility for providing care for a family member or fire, flood or natural disaster. In addition, the appellant's tax penalty for 2017 could be waived if he experienced financial circumstances such that the expense of purchasing health insurance would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08.

The evidence presented by the appellant in this case is insufficient to establish that he experienced a financial hardship as defined by law so as to waive his penalty for the months in question. The appellant testified that in 2017 he incurred basic monthly expenses of approximately \$2100.00. Those expenses were significantly less than his regular monthly pre-tax income of approximately \$4510.00, thereby making a private health insurance premium of \$218.00/month manageable, even with the additional child support payment of \$200.00/month factored in. While it is recognized that an approximate difference between income and all expenses of \$2410.00 per month is not a panacea, it does not appear on its face that the payment of \$218.00/month for health insurance would have caused an undue hardship.

Based on the foregoing, it is concluded that the appellant could have afforded private health insurance and failed to establish that he experienced a financial hardship that would entitle him to a waiver of the penalty. Notwithstanding this conclusion, the penalty will be waived for the following reasons. The appellant filed for bankruptcy in 2017 and was issued an order of discharge, indicating that he encountered difficult financial circumstances prior to his application. Second, he was granted a hardship exemption from the "shared responsibility payment" by the federal government. While the issuance of the exemption is not dispositive since the federal government uses different standards, it does establish some evidence of hardship which should be taken into consideration. Finally, the appellant testified that he has been enrolled in insurance through the Connector since February, 2018, thereby demonstrating that the mandate to obtain insurance has not been lost on him.

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

PENALTY ASSESSED

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

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-88

Appeal Decision: Penalty Overturned in Full

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: August 9, 2018

Decision Date: September 7, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone, on August 9, 2018. Also present with the Appellant was a witness, who was Appellant's family member. The procedures to be followed during the hearing were reviewed with Appellant and Witness. Appellant and Witness were sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified. At the end of the hearing, the record was left open until September 6, 2018 so that Appellant could submit more documents. Appellant submitted a document and it has been marked as Exhibit 5.

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

- Exhibit 1: Correspondence from the Health Connector
- Exhibit 2: Appeal Case Information from Schedule HC 2017
- Exhibit 3: Notice of Appeal, dated May 6, 2018
- Exhibit 4: Statement of Appellant in support of the Appeal
- Exhibit 5: Summary document regarding Appellant's health insurance coverage

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 30 years old in 2017. Appellant filed a Massachusetts 2017 tax return as single with no dependents claimed (Exhibit 2).
2. Appellant resided in Norfolk County, MA in 2017 (Exhibit 2).
3. Appellant had an Adjusted Gross Income for 2017 of \$30,535 (Exhibit 2).
4. Appellant was insured through employer sponsored health insurance during 2017 (Testimony of Appellant).

5. Appellant's employer was located out of state and had employees in several states (Exhibit 4 and Testimony of Appellant)
6. Appellant's employer offered its employees several different medical insurance plans (Exhibit 4 and Testimony of Appellant and Witness).
7. When Appellant signed up for the employer sponsored health insurance, Appellant was not notified that the plan Appellant chose did not meet Massachusetts minimum creditable coverage standards (Exhibit 4 and Testimony of Appellant and Witness).
8. Appellant learned that the employer sponsored health insurance did not meet the Massachusetts standards when Appellant filed a 2017 Massachusetts tax return in the spring of 2018 (Exhibit 4 and Testimony of Appellant and Witness).
9. Appellant contacted the employer as soon as Appellant learned that the insurance did not meet the Massachusetts standards (Exhibit 4 and Testimony of Appellant).
10. In the spring of 2017, Appellant's employer told Appellant that the plan did not meet Massachusetts standards and that it was the responsibility of the employee to determine if the plan met the standard for the state in which the employee lived (Exhibit 4 and Testimony of Appellant and Witness).
11. Appellant's employer told Appellant that the company offered other plans that did meet the Massachusetts standards. However, Appellant would not be permitted to enroll in another plan until open enrollment for 2019 (Exhibit 4 and Testimony of Appellant).
12. Appellant is planning to switch to a plan that meets Massachusetts standards as soon as permitted (Testimony of Appellant).
13. Appellant's employer sponsored health insurance coverage in 2017 offered a broad range of comprehensive medical benefits. The plan covered preventive care without a deductible. There were no caps on total benefits for a particular illness or for a single year. There was an individual deductible of \$2,500 per year. There was an out of pocket maximum of \$3,500 (Exhibits 4, 5 and Testimony of Appellant).
14. Appellant has been assessed a penalty for twelve months for 2017 (Exhibit 2).
15. Appellant filed an Appeal on May 6, 2018, appealing the assessment of the penalty. Appellant claimed that Appellant purchased employer sponsored health insurance that did not meet Massachusetts minimum coverage standards as Appellant was not aware that the plan did not meet the standards and that the insurance Appellant purchased was close to or substantially met the standards (Exhibits 3 and 4).

ANALYSIS AND CONCLUSIONS OF LAW

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

obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2016, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08 (1). 956 CMR 6.08(2)(d) provides that the Connector may also consider the extent to which insurance obtained deviated from or substantially met minimum creditable coverage standards when determining if a penalty should be waived.

During 2017, Appellant was covered by employer sponsored health insurance from Appellant's employer. The issue to be decided is whether the policy met the Massachusetts minimum creditable coverage standards and whether Appellant should be assessed a penalty for the months that Appellant was covered by the employer sponsored plan.

Appellant's employer was located out of state. Although Appellant was given several health plans to choose from, Appellant was not informed that only some of them met Massachusetts standards and that Appellant's plan did not meet the standards. Appellant's employer sponsored health insurance coverage in 2017 offered a broad range of comprehensive medical benefits. The plan covered preventive care without a deductible. There were no caps on total benefits for a particular illness or for a single year. There was an out of pocket maximum of \$3,500. There was an individual deductible of \$2,500 per year. The plan deviated from the Massachusetts standards since the deductible is required to be less than \$2,000. See Schedule HC Health Care, Exhibits 4, 5 and Testimony of Appellant and Witness, which I find to be credible.

I find that Appellant did have comprehensive health insurance through the Appellant's employer that substantially met minimum creditable coverage standards. See 956 CMR 6.08 (2)(d)

I find the penalty should be waived in its entirety for 2017.

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 2017 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-91

Appeal Decision : Penalty Overturned in Full

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: August 13, 2018

Decision Date: September 5, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

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

- Exhibit 1: Correspondence from the Health Connector
- Exhibit 2: Appeal Case Information from Schedule HC 2017
- Exhibit 3: Notice of Appeal, dated May 7, 2018
- Exhibit 4: Statement of Appellant in support of the Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant turned 26 years old in 2017. Appellant filed a part year Massachusetts 2017 tax return as single with no dependents claimed (Exhibit 2).
2. Appellant resided in Massachusetts from January through July 2017 (Exhibit 2).
3. Appellant was covered by a health insurance plan through Appellant's parents from January through July 2017 (Testimony of Appellant and Exhibit 2).
4. Appellant's parents lived outside of Massachusetts (Testimony of Appellant and Exhibit 4).
5. Appellant's parents' employer sponsored health insurance coverage in 2017 offered a broad range of comprehensive medical benefits. There was a combined out of pocket annual maximum of \$7,350 for an individual and \$14,700 per family (Exhibit 4 and Testimony of Appellant).

6. Appellant has been assessed a penalty for four months for 2017 (Exhibit 2).

7. Appellant filed an Appeal on May 7, 2018, appealing the assessment of the penalty. Appellant claimed that Appellant was covered by health insurance from Appellant's parent during the time that Appellant lived in Massachusetts (Exhibit 3).

ANALYSIS AND CONCLUSIONS OF LAW

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

During the time that Appellant lived in Massachusetts in 2017, Appellant was covered by employer sponsored health insurance through Appellant's parent's employer. The issue to be decided is whether the policy met the Massachusetts minimum creditable coverage standards and whether Appellant should be assessed a penalty for the months that Appellant was covered by Appellant's parent's plan.

Appellant's parent worked out of state and the parent's employer was located out of state. The employer sponsored health insurance coverage in 2017 offered a broad range of comprehensive medical benefits. There was a combined out of pocket annual maximum for of \$7,350 for an individual and \$14,700 per family. These out of pocket limits are slightly higher than the Massachusetts standards. See Schedule HC and Exhibit 4 and Testimony of Appellant, which I find to be credible.

I find that Appellant did have comprehensive health insurance through the Appellant's parent that substantially met minimum creditable coverage standards. See 956 CMR 6.08 (2)(d)

I find that the penalty should be waived in its entirety for 2017.

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 2017 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA16-763

Appeal Decision Appeal Approved.

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: August 8, 2018

Decision Date: September 6, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on August 8, 2018. The Appellant's spouse did not attend the hearing. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The record was left open until August 23, 2018 to allow the Appellant to submit additional information. The Appellant submitted additional information within the record open period.

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

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated July 12, 2018.
- Exhibit 2: Appeal Case Information from Schedule HC 2016.
- Exhibit 3: The Statement of Grounds for Appeal submitted by the Appellants on May 26, 2018.
- Exhibit 4: A copy of a National Grid shut off notice for the period of September 12, 2016- October 11, 2016.
- Exhibit 5: Health Connector Appeals Unit Record Open form dated August 8, 2018.
- Exhibit 6: Additional documentation submitted by the Appellant during the record open period.

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 (Exhibit 2).
2. The Appellant had health insurance for all twelve months of tax year 2016 and is not subject to a tax penalty (Exhibit 2; Appellant Testimony).
3. The Appellants lived in Plymouth County MA in tax year 2016 (Exhibit 2; Appellant Testimony).

4. According to the information on the Appellant's 2016 Schedule HC, the Appellant's spouse did not have health insurance for any months in tax year 2017. The Appellant spouse has been assessed a twelve-month tax penalty.
5. The Appellants filed an appeal in May 2018. The Appellant maintains that their spouse did have health insurance for some months in tax year 2016 but terminated the insurance because the family could not afford to pay the monthly premium (Exhibits 3, 4; Appellant Testimony).
6. The record was left open until August 23, 2018 to allow the Appellant to submit additional information. The Appellant submitted additional information in a timely manner (Exhibits 5, 6).
7. The Appellant submitted a copy of their spouse's 2016 Form MA 1095-A and a letter from the Health Connector dated January 20, 2017 advising the Appellant's spouse that they were receiving the form because they had been enrolled in health insurance coverage through the Health Connector in tax year 2016. The Appellant's spouse had coverage for the period of January 1, 2016- September 30, 2016 (Exhibit 6).

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellant and their spouse filed their tax year 2016 return as a married couple with two dependents. The Appellant had health insurance for all twelve months of tax year 2016 and is not subject to a tax penalty. Based on the information from the Appellant's 2016 Schedule HC, it appeared that the Appellant's spouse did not have health insurance for any months in tax year 2016. Consequently, a twelve-month penalty was assessed. The Appellant and their spouse appealed the determination. The Appellant reported that their spouse did have health insurance for some months of tax year 2016 but lost the coverage because the family could not afford to pay the monthly premium.

After the hearing concluded the record was left open to allow the Appellant to submit additional information verifying their spouse's health insurance coverage for tax year 2016. The Appellant submitted a copy of their spouse's Form MA-1095-A verifying that the Appellant's spouse was enrolled in health insurance coverage through the Health Connector for the nine-month period of January through September in tax year 2016. Since the Appellant spouse had insurance for nine months of tax year 2016 and there is a three-month grace period for tax payers who have insurance for some portion of the tax year as noted above, the Appellant spouse is not subject to a tax penalty for tax year 2016. It is unnecessary to review the Appellant's claim of financial hardship. 956 CMR 6.08. The Appellant spouse's twelve-month penalty is therefore waived.

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

ADDENDUM

If the Appellant has not done so, it is suggested that the Appellant file an amended tax return for tax year 2016 and include the documentation necessary to verify their spouse's health insurance coverage for the year.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-101

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: August 15, 2018

Decision Date: August 31, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on August 15, 2018.

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

- Exhibit 1: Notice of Hearing dated July 17, 2018
- Exhibit 2: Appeal Case Information from form Schedule HC
- Exhibit 3: Statement of Grounds for Appeal Dated May 8, 2018
- Exhibit 3: Written statement of appeal
- Exhibit 4: Open record document with health insurance information

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is thirty five years old and is single. She lives in Suffolk County, Massachusetts.
2. She works in the health insurance field. She had health insurance in 2017 from the time she was eligible in her new job starting in May 2017.
3. Appellant was covered for health insurance during 2017 except for four months and has health insurance in 2018. Appellant provided proof of health insurance, (1099HC and testified that she had health insurance during 2017, which I credit. (Exhibit 5 and Appellant testimony
4. Appellant now has health insurance that meets the minimum credible coverage standards of Massachusetts.
5. The appellant did submit a Statement of Grounds for Appeal-2017 “During 2017, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities” but should have submitted under the grounds for Appeal, “Other, that you had health insurance that did meet minimum creditable coverage standards.

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant did submit a Statement of Grounds for Appeal-2017 “During 2017, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities” but should have submitted under the grounds for Appeal, “Other, that you had health insurance that did meet minimum creditable coverage standards.

Appellant was insured for all of year of 2017, except for four months. Appellant provided proof from the 1099HC regarding her health insurance. 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.*

Looking at the totality of the circumstances, I conclude it is appropriate to waive the penalty 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 2017 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-102

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: August 15, 2018

Decision Date: August 31, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on August 15, 2018.

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

- Exhibit 1: Notice of Hearing dated July 17, 2018
- Exhibit 2: Appeal Case Information from form Schedule HC
- Exhibit 3: Statement of Grounds for Appeal dated May 11, 2018
- Exhibit 4: Written statement of Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is twenty nine years old and is married and his wife is thirty three years old. They live in Middlesex County, Massachusetts.
2. Appellant works in medical repair services.
3. Appellant was legally in this country but did not have a social security number or a work authorization. He was here on a tourist visa. As soon as he received a work authorization, he attained a work position and obtained health insurance through his wife.
4. Appellant has health insurance in 2018, through his wife's place of employment.
5. The Appellant's monthly expenses totaled \$3,960.00, consisting of rent \$1,350.00, light, \$1000.00, internet & cable \$180.00, cell phone \$150.00, car payment \$0.00 car insurance \$160.00, car gas \$160.00, food \$300.00, credit card \$150.00, toiletries \$150.00, clothes \$50.00, student loan \$800.00, immigration lawyer \$410.00.
6. The appellant did submit a Statement of Grounds for Appeal-2017 under the grounds for Appeal " During 2017, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities." Appellant should have also filed under, "Other. During 2017 other circumstances such as: applying the Affordability Tables in Schedule HC to you is inequitable (for example, because of family size); that you were unable to obtain government subsidized-insurance even though your income qualified you." I will hear the appeal under both grounds.
7. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2017. Table 1 sets forth the income eligibility standards for various family sizes at 150% of the federal poverty level and Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard for the government-subsidized health insurance program. See Mass. G.L. c. 118H, s.3(a)(1). Tables 5 and 6 set forth the tax penalties for 2017.
8. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant would not have been eligible for subsidized health insurance, since Appellant's income of \$79,621.00 was more than \$48,060.00. The monthly premium for health insurance available on the private market in Middlesex County for a 33 year old married person was \$498.00. The tables reflect that Appellant could afford \$541.42. This is less than what the appellant is deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions)

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant did submit a Statement of Grounds for Appeal-2017 under the grounds for Appeal “During 2017, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities.” Appellant should have also filed under, “Other. During 2017 other circumstances such as: applying the Affordability Tables in Schedule HC to you is inequitable (for example, because of family size); that you were unable to obtain government subsidized-insurance even though your income qualified you.” I will hear the appeal under both grounds.

The Health Care Reform Act of 2006 requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage “so long as it is deemed affordable” under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). However, individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”) are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 13-1, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2013-releases/tir-13-1.html>. For 2017, 150 percent of the FPL was \$24,030.00 for a married person. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf>; see also 830 Mass. Code Regs. 111M.2.1(5)(c) (2008). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months. *Id.*

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

Appellant reported a federal AGI of \$79,621.00 in 2017, 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 2017 Massachusetts Schedule HC, Appellant could afford to pay \$541.42 monthly for health insurance. See 2017 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to him from the Premium Tables, at a cost of \$498.00 monthly for coverage with zero dependents *Id.* at Table 4.

The Appellant was not eligible for Health Connector Plans based on failing to establish lawful presence. 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.

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 \$541.42 for health insurance coverage because of his income. Private insurance in the market place was \$498.00 per month, which is less than he could afford. In addition, he did not have a work authorization or social security number. On these facts, I find that Appellant has shown that he was precluded from purchasing affordable health insurance during 2017. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that he is exempt from a tax penalty for his non-compliance with the individual mandate.

Accordingly, Appellant’s appeal is **ALLOWED**, and the 2017 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 2017 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-106

Appeal Decision: Appeal Denied

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: August 21, 2018

Decision Date: September 11, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant and his mother appeared at the hearing which was held by telephone on August 21, 2018. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

Exhibit 1: Appeal dated May 14, 2018 with attachments;

Exhibit 2: Notice of Hearing dated July 17, 2018; and

Exhibit 3: Appeal Case Information print-out dated August 1, 2018 generated from Appellant's 2017 Massachusetts Schedule HC.

FINDINGS OF FACT

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

1. Appellant is a single person who was a resident of Massachusetts during 2017. Testimony; Exhibits 1 and 3.
2. Appellant lives alone in a house that he owns, and he is responsible for all expenses. Testimony; Exhibit 2 at 4.

3. Appellant is employed in construction with most of his work outside at various jobsites to which he travels at his own expense. Testimony. Consequently, he has high transportation and work clothing costs. *Id.*
4. Appellant fell behind on mortgage payments prior to 2017 but avoided foreclosure by negotiating a loan modification with the assistance of the Attorney General’s office. Testimony; Exhibit 2 at 4.
5. Appellant was offered health insurance through his employer during 2017 but declined to enroll because he felt that he could not afford the premium payments. Testimony; Exhibit 2 at 4.
6. Appellant filed a Massachusetts Resident Income Tax Return for 2017, reporting a Federal Adjusted Gross Income of \$50,986.00. Exhibit 3. The Schedule HC filed with the return reported no health insurance coverage for Appellants during 2017 that met minimum creditable coverage (“MCC”) requirements. *Id.*
7. Based on Appellant’s 2017 Schedule HC, the Department of Revenue assessed a 12-month tax penalty on Appellant. Exhibit 3.
8. Appellant appeals the tax penalty on the ground that the cost of health insurance coverage would have produced a serious deprivation of food, shelter, clothing or other necessities. Exhibit 1 at 2, 4.
9. Appellant’s monthly living expenses during 2017 were as follows:

Mortgage	\$1,743.21
Utilities	\$127.14
Cable / Internet	\$219.65
Home repairs and maintenance	\$142.00
Auto Loan Payment	\$640.78
Auto Insurance	\$81.30
Gasoline	\$240.00
Auto Maintenance and repairs	\$20.00
Dental Cleanings	\$20.00
Food	\$433.33
Clothing and tools	\$150.00
Mobile Phone	\$40.00
Misc.	\$50.00
 Total	 \$3,907.41

Testimony; Exhibit 1 at 6-11.

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

ANALYSIS AND CONCLUSIONS OF LAW

The Health Care Reform Act of 2006 (the “HCRA”) requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage “so long as it is deemed affordable” under the schedule established by the

board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b).

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

Since Appellant’s reported household income in 2017 (\$50,986.00) was more than 150 percent of the applicable FPL (\$17,820.00 for family of one), which makes him subject to the individual mandate tax penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to Appellant in 2017. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and, second, to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. *See* 2017 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a Federal AGI of \$50,986.00 in 2017, and Appellant’s filing status was single with no dependents. Exhibit 3. According to the Affordability Schedule established by the Connector’s board and included in the Instructions and Worksheets of the 2017 Massachusetts Schedule HC, Appellant could afford to pay 8.16 percent of his reported Federal AGI or **\$346.71** monthly ($\$50,986.00 \times 8.16\% = \$4,160.46 \div 12 = \$346.71$) for health insurance. *See* 2017 Schedule HC Instructions and Worksheets, *supra* at Table 3.

Appellant declined employer-sponsored health insurance coverage in 2017, and his 2017 income was above the cut-off for government-subsidized health insurance which was set at \$35,640.00 for a family of one in 2017. *See* 2017 Schedule HC Instructions and Worksheets, *supra* at Table 2. However, private health insurance would have cost \$302.00 monthly for individual coverage based on Appellant’s age range (35-39) and county of residence (Barnstable) which would have been affordable according to the Affordability Schedule. *Id.* at Table 4.

Since Appellant did not obtain affordable private health insurance, he is subject to the HCRA’s tax penalty unless he demonstrates a qualifying hardship. 956 Mass. Code Regs. 6.08. To qualify for a waiver or reduction of a tax penalty based on hardship, an Appellant “must establish that, based on all his circumstances, health insurance that provided minimum creditable coverage was not affordable to him because he experienced a hardship.” 956 Mass. Code Regs. 6.08(1). In this regard, Appellant alleges that the additional expense of health insurance coverage would result in a serious deprivation of food, shelter, clothing or other necessities. Exhibit 1 at 2, 5.

Appellant credibly testified that his basic monthly living expenses during 2017, most of which are documented by copies of billing statements, averaged approximately \$3,907.00. Based on a reported Federal AGI of \$50,986.00, Appellant’s gross monthly available income in 2017 was \$4,248.83, which is \$341.00 more than his monthly living expenses. While spending \$302.00 of this surplus for health insurance would clearly exhaust virtually all of

Appellant's remaining income and foreclose any opportunity for savings, travel or other forms of entertainment, I cannot find on this record that the cost of purchasing health insurance in 2017 would have resulted in a "serious deprivation of food, shelter, clothing or other necessities." See 956 Mass. Code Regs. 6.08(1)(e). To conclude otherwise on this record would impermissibly override the judgment of the Legislature that Massachusetts residents must have qualifying health insurance coverage if affordable or face the consequences of a tax penalty.

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

PENALTY ASSESSED

Number of 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.

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-114

Appeal Decision Appeal Approved.

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: August 22, 2018

Decision Date: September 5, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on August 22, 2018. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The record was left open until September 6, 2018 to allow the Appellant to submit additional information. The Appellant submitted additional information in a timely manner.

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

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated August 3, 2018.
- Exhibit 2: Appeal Case Information from Schedule HC 2017.
- Exhibit 3: The Statement of Grounds for Appeal submitted by the Appellant on May 20, 2018.
- Exhibit 4: The Appellant's written statement in support of this appeal with an attachment
- Exhibit 5: Health Connector Appeals Unit Record Open form dated August 22, 2018.
- Exhibit 6: Additional documentation submitted by the Appellant during the record open period.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant turned 36 years old in August 2017. The Appellant filed their Federal Income Tax return as a single individual (Exhibit 2).
2. The Appellant filed their tax return as a full year Massachusetts resident (Exhibit 2; Appellant Testimony).

3. According to the information on the Appellant's 2017 Schedule HC, the Appellant had health insurance for the months of January through July 2017. The Appellant did not have health insurance for the period of August through December in tax year 2017. The Appellant has been assessed a 2-month tax penalty (Exhibit 2).
4. The Appellant filed an appeal in May 2018 (Exhibits 3, 4; Appellant Testimony).
5. The Appellant testified that that they had employer sponsored health insurance while living in Massachusetts. The Appellant said that after their employment ended they moved to Florida where they were originally from. The Appellant said that they kept their health insurance for a few months, but the COBRA payment was too high. The Appellant said that they were a Florida resident for the period beginning May 2017. The Appellant said that when they completed their tax return they did report that they had moved out of state in tax year 2017 but apparently there was a mistake because the Schedule HC states that they were a full year resident (Exhibit 2; Appellant Testimony).
6. The record was left open until September 6, 2018 to allow the Appellant to submit additional information. The Appellant submitted additional information in a timely manner (Exhibits 5, 6).
7. The Appellant submitted a copy of their Apartment Lease Contract for their apartment in Florida. The contract was dated May 6, 2017 (Exhibit 6).
8. The Appellant was not a resident of Massachusetts for the period of May through December 2017 (Exhibits 4, 6; Appellant Testimony).

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellant filed their tax year 2017 return as a full-time resident of Massachusetts. Based on the information from the Appellant's 2017 Schedule HC, the Appellant had health insurance for the period of January through July in tax year 2017. The Appellant did not have insurance for the period of August through December and consequently, a two-month penalty was assessed. The Appellant submitted a statement of grounds for this appeal, claiming that they did have health insurance for the period of time that they were living in Massachusetts. At the Hearing, the Appellant explained that they had moved to Florida after losing their job in Massachusetts. The Appellant said that they believed that they had reported this information when they completed their 2017 tax forms but must have made a mistake. The Appellant submitted documentation verifying that for the period beginning May 2017 the Appellant has been a resident of the state of Florida. The Appellant had health insurance for the period of time they were a Massachusetts resident in tax year 2017. The Appellant's two-month penalty is therefore waived.

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

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

ADDENDUM

If the Appellant has not done so, it is suggested that the Appellant file an amended tax return for tax year 2017 and report their Part-Year residence status for tax year 2017.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-118

Appeal Decision: Appeal Approved in Part and Denied in Part

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: August 22, 2018

Decision Date: September 4, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on August 22, 2018. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated July 17, 2018.
- Exhibit 2: Appeal Case Information from Schedule HC 2017.
- Exhibit 3: Statement of Grounds for Appeal signed by the Appellant on May 20, 2018.
- Exhibit 4: Appellant's letter in support of this Appeal.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant turned 28 years old in August 2017. The Appellant filed their Federal Income Tax return as an individual with no dependents claimed (Exhibit 2).
2. The Appellant lived in Middlesex County, MA in 2017 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2017 was \$36,781 (Exhibit 2 and Appellant Testimony).
4. The Appellant did not have health insurance for any months of tax year 2017 (Exhibit 2 and Appellant Testimony).
5. The Appellant has been assessed a twelve-month tax penalty for 2017. The Appellant filed an appeal of the assessment in May 2018 (Exhibits 3, 4).

6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
7. In accordance with Table 3 of Schedule HC for 2017, the Appellant filing the Federal tax return as an individual, with no dependents claimed, with an annual adjusted gross income of \$36,781 could afford to pay \$227 per month for health insurance. In accordance with Table 4, the Appellant, age 28, living in Middlesex County, could have purchased private insurance for \$150 per month for a plan (Schedule HC for 2017). Private insurance was affordable for the Appellant.
8. The Appellant would not have been eligible for ConnectorCare coverage in 2017 because the Appellant's income was greater than 300% of the federal poverty level, which was \$35,640 in 2017. The Appellant testified that they did not have access to employer-sponsored insurance in 2017 (See Table 2 of Schedule HC-2017 and 956 CMR 12.04) (Appellant Testimony).
9. The Appellant testified that they had health insurance for several years prior to tax year 2017. The Appellant said that they went for medical treatment in January 2017 and later received a bill. The Appellant said that this is when they learned that their Neighborhood Health insurance plan had been cancelled at the end of December 2016. The Appellant said that they attempted to purchase private insurance, but it was too expensive. The Appellant also said that they had missed the enrollment period for Health Connector.
10. The Appellant lives in a shared housing arrangement. The Appellant's monthly living expenses include: rent-\$500; utilities-\$60; car loan-\$552; car insurance-\$217; food- \$130-\$400; and telephone \$154. The Appellant did not fall more than 30 days behind in their rent, did not receive any utility shut off notices, and did not experience any unexpected increases in expenses due to a family emergency or other natural or human caused event (Appellant Testimony).
11. The Appellant is currently uninsured (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 2017. The Appellant has been assessed a twelve-month penalty. The Appellant submitted a Statement of Grounds for Appeal stating that the penalty should not apply in this case due to financial hardship. To determine if the penalty should be waived in whole or in part, there must

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

In accordance with Table 3 of Schedule HC for 2017, the Appellant filing the Federal tax return with no dependents claimed with an adjusted gross income of \$36,781 could afford to pay \$227 per month for health insurance. According to Table 4, the Appellant, age 28, living in Middlesex County, could have purchased a private insurance plan for \$150 per month. See Schedule HC for 2017. Private insurance was affordable for the Appellant in tax year 2017.

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

The Appellant testified that they were not aware that their insurance was cancelled until they received a bill for medical services rendered in January 2017. Accepting the testimony in the light most favorable to the Appellant, the Appellant may be allowed a grace period to find insurance. The Appellant's testimony that private insurance was not affordable is not supported by the evidence in the administrative record. As noted above, the Appellant was employed full time earning \$36,781 in tax year 2017. The Appellant was living in a shared housing situation. The Appellant did not fall behind in their rent or utility bills and did not experience any significant unexpected increase in expenses due to a family emergency or other natural or human caused event. Given the Appellant's income and expenses and the fact that private insurance was available to the Appellant at a monthly cost of \$150, the Appellant did not demonstrate financial hardship pursuant to 956 CMR 6.08 (1). The Appellant's penalty is reduced from twelve months to nine months.

PENALTY ASSESSED

Number of Months Appealed: ___12___ Number of Months Assessed: ___9___

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-119

Appeal Decision Appeal Approved.

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: August 22, 2018

Decision Date: September 4, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on August 22, 2018. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant.

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

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated July 17, 2018.
- Exhibit 2: Appeal Case Information from Schedule HC 2017.
- Exhibit 3: The Statement of Grounds for Appeal submitted by the Appellant on May 21, 2018.
- Exhibit 4: The Appellant's written statement in support of this appeal with an attachment
- Exhibit 5: Health Connector Appeals Unit Record Open form dated August 22, 2018.
- Exhibit 6: Additional documentation submitted by the Appellant during the record open period.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant turned 27 years old in August 2017. The Appellant filed their Federal Income Tax return as a single individual (Exhibit 2).
2. The Appellant filed their tax return as a part time MA resident. The Appellant lived in Middlesex County, MA the period of January 1, 2017- July 25, 2017 (Exhibit 2; Appellant Testimony).
3. According to the information on the Appellant's 2017 Schedule HC, the Appellant did not have health insurance for any months in tax year 2017. The Appellant has been assessed a 3-month tax penalty.

4. The Appellant filed an appeal in May 2018 and maintains that they did have employer sponsored health insurance during the period of January 1, 2017- July 25, 2017 (Exhibits 3, 4; Appellant Testimony).
5. The Appellant testified that that they had Blue Cross Blue Shield insurance through their employer. The Appellant said that they worked for a Massachusetts company while living in the state and believe that their health plan met all state requirements (Appellant Testimony).
6. The record was left open until September 12, 2018 to allow the Appellant to submit additional information. The Appellant submitted additional information in a timely manner (Exhibits 5, 6).
7. The Appellant submitted a copy of their 2017 Form MA 1099 HC verifying that the Appellant had health insurance during the period of January 1, 2017 through July 31, 2017 (Exhibit 6A).
8. The Appellant submitted a copy of the Summary of Benefits and Coverage for the Appellant's Preferred Blue PPO health insurance plan as well as a Statement provided by the Company that this insurance meets Massachusetts Minimum Creditable Coverage Standards (Exhibit 6B).

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellant filed their tax year 2017 return as a part time resident of Massachusetts. The Appellant lived in Middlesex county for the period of January through July in tax year 2017. Based on the information from the Appellant's 2017 Schedule HC, it appeared that the Appellant did not have health insurance in tax year 2017. Consequently, a three-month penalty was assessed. The Appellant submitted a statement of grounds for this appeal, claiming that they did have health insurance for the period of time that they were living in Massachusetts. The Appellant's Form MA 1099-C verifies that the Appellant had employer sponsored health insurance for the period of January through July 2017. The Appellant's Blue Cross Blue Shield health insurance met Massachusetts minimum creditable coverage requirements. The Appellant's three-month penalty is therefore waived.

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

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

ADDENDUM

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

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-137

Appeal Decision: Appeal Denied

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: August 15, 2018

Decision Date: August 30, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on August 15, 2018. The Appellant offered testimony under oath or affirmation. At the end of the hearing, the record was closed.

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

- Exhibit 1: Appeal Case Information from 2017 Schedule HC
- Exhibit 2: 5/24/18 Appeal (7 pages)
- Exhibit 3: 7/17/18 Hearing Notice (3 pages)

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant appealed from the assessment of a one-month penalty on his 2017 state income tax return. (Exhibit 1)
2. The Appellant's filing status in 2016 was Single with no dependents. The Appellant's federal AGI in 2017 was \$30,012. The Appellant resided in Worcester County in 2017. The Appellant turned thirty years old in 2017. (Exhibit 1)
3. The Appellant had health insurance coverage during the first eight months of 2017. (Appellant's testimony)
4. On May 24, 2018, the Appellant appealed his one-month penalty, checking off on the appeal form that, during 2017, he received a shut-off notice; was shut off; or was refused delivery of essential utilities (gas, electric, heating oil, water, primary telephone). Along with his appeal, the Appellant submitted only a copy of a portion of a 9/22/17 oil delivery bill that is mostly illegible. (Exhibit 2)
5. The Appellant did not receive a shut-off notice and was not refused delivery of any essential utility, in 2017. (Appellant's testimony)

6. According to Table 2 of the Schedule HC 2017, the Appellant was eligible for government-subsidized insurance in 2017, since his AGI for 2017 was less than \$35,640 for a family of one.
7. According to Table 3, Affordability, of the Schedule HC 2017, the Appellant could have afforded to pay up to 5.0% of his income in 2017 for health insurance coverage. Based on his 2017 AGI and Single with no dependents tax filing status, the Appellant could have afforded to pay a monthly premium of up to \$125 for health insurance coverage in 2017.
8. According to Table 4, Premiums, of the Schedule HC 2017, the Appellant could have purchased health insurance in the private market in 2017 at a monthly premium cost of \$150, based on his age and county residence in 2017.
9. According to Table 5, Annual Income Standards, and Table 6, Penalties for 2017, based on his family size and income, the Appellant would pay a monthly penalty amount of \$62.00 for 2017.
10. The Appellant would rather pay the one-month penalty for 2017 than offer evidence at hearing that he could not have afforded to pay \$125 monthly for coverage in 2017. (Appellant’s testimony)

ANALYSIS AND CONCLUSIONS OF LAW

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

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

The Appellant offered no evidence to support the conclusion that he could not have afforded health insurance coverage for the last month of 2017. While the Appellant had indicated in his appeal that an essential utility service had been denied him during 2017 due to his failure to pay for the service, the Appellant presented no documentary evidence in support of his contention.

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

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

PENALTY ASSESSED

Number of Months Appealed: 1 Number of Months Assessed: 1

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-140

Appeal Decision: Appeal Denied

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: August 15, 2018

Decision Date: August 31, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on August 15, 2018. The Appellant offered testimony under oath or affirmation. At the end of the hearing, the record was closed.

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

- Exhibit 1: Appeal Case Information from 2017 Schedule HC
- Exhibit 2: 5/21/18 Appeal (7 pages)
- Exhibit 3: 7/17/18 Hearing Notice (3 pages)

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant appealed from the assessment of a twelve-month penalty on his 2017 state income tax return. (Exhibit 1)
2. The Appellant's filing status in 2016 was Single with no dependents. The Appellant's federal AGI in 2017 was \$23,917. The Appellant resided in Hampden County in 2017. The Appellant turned forty-eight years old in 2017. (Exhibit 1)
3. On May 9, 2018, the Appellant appealed his twelve-month penalty, checking off "Other" on the appeal form, as the basis for his appeal. (Exhibit 2)
4. The Appellant had no health insurance coverage in 2017. (Appellant's testimony)
5. The Appellant was employed in from January 2017 until September 12, 2017, when he lost his job. The Appellant's employer offered individual health insurance coverage for a monthly employee premium of \$260. The Appellant did not enroll in the coverage because he could not afford it. (Appellant's testimony)
6. The Appellant does not drive, does not have a car, and does not have access to a car. (Appellant's testimony)

7. The Appellant worked the third shift for his employer in 2017. Because the Appellant does not drive, he took a cab to and from work at a cost of \$15 each way and a total of \$560 monthly. This extraordinary expense was the reason why the Appellant checked “Other” on the appeal form as the reason for his appeal. (Appellant’s testimony)
8. The Appellant was unemployed during the remainder of 2017. The Appellant filed for unemployment benefits but was denied benefits. (Appellant’s testimony)
9. Currently, the Appellant is unemployed and has health insurance coverage through MassHealth. (Appellant’s testimony)
10. The Appellant’s monthly expenses for basic necessities in 2017 included: rent, \$620; phone, \$50; food, \$325; clothing, \$15; laundry, \$75; OTC medication, \$5; and, \$560, for transportation to and from work, for a total of \$1,650 monthly. (Appellant’s testimony)
11. The Appellant is a “nicotine addict” and spends \$35 to \$40 weekly on cigarettes. (Appellant’s testimony)
12. According to Table 2 of the Schedule HC 2017, the Appellant was eligible for government-subsidized insurance in 2017, since his AGI for 2017 was less than \$35,640 for a family one.
13. According to Table 3, Affordability, of the Schedule HC 2017, the Appellant could have afforded to pay up to 4.2% of his income in 2017 for health insurance coverage. Based on his AGI and Single with no dependents tax filing status, the Appellant could have afforded to pay a monthly premium of up to \$83 for health insurance coverage in 2017.
14. According to Table 4, Premiums, of the Schedule HC 2017, the Appellant could have purchased health insurance in the private market in 2017 at a monthly premium cost of \$313, based on his age and county residence in 2017.

ANALYSIS AND CONCLUSIONS OF LAW

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

In this case, there is insufficient evidence in the record to support the conclusion that the Appellant could not have afforded health insurance coverage in 2017, up until he lost his job and was denied unemployment benefits. While the Appellant’s employer during this first eight months of 2017 offered health insurance coverage, the Appellant did not have access to the coverage since the \$260 monthly premium far exceeded what he could have afforded to pay in 2017. As a result, however, the Appellant was eligible for government-subsidized coverage for a monthly premium of \$83 in 2017, had he applied for it. Although the Appellant may still have found this cost unaffordable, due to his \$35-\$40 weekly expense for cigarettes, smoking cigarettes is not considered a basic necessity under 956 CMR 6.08(e). Moreover, reducing his cigarette habit by half would have left the Appellant with sufficient funds to pay the \$83 monthly premium.

However, as the Appellant lost his job at the beginning of September 2017 and was denied unemployment benefits, I conclude that health insurance coverage was unaffordable for the Appellant during the remaining four months of the 2017, under 956 CMR 6.08(e).

As affordable health insurance coverage was available to the Appellant during the first eight months of 2017, I conclude that the Appellant failed to meet the requirements of the individual mandate in 2017 by not having coverage for those eight months, under MGL Chapter 11M, Section 2.

Accordingly, the Appellant’s twelve-month penalty for 2017 shall be reduced to an eight-month penalty.

PENALTY ASSESSED

Number of Months Appealed: 12 Number of Months Assessed: 8

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-141

Appeal Decision: Appeal Denied

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: August 15, 2018

Decision Date: August 31, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on August 15, 2018. The Appellant offered testimony under oath or affirmation. At the end of the hearing, the record was closed.

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

- Exhibit 1: Appeal Case Information from 2017 Schedule HC
- Exhibit 2: 5/25/18 Appeal (9 pages)
- Exhibit 3: 7/17/18 Hearing Notice (3 pages)

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant appealed from the assessment of a four-month penalty on her 2017 state income tax return. (Exhibit 1)
2. The Appellant's filing status in 2017 was Single with no dependents. The Appellant's federal AGI in 2017 was \$61,123. The Appellant resided in Bristol County in 2017. The Appellant turned forty-four years old in 2017. (Exhibit 1)
3. On May 29, 2018, the Appellant appealed her four-month penalty, checking off "the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities" and "Other" on the appeal form, as the basis for her appeal. (Exhibit 2)
4. The Appellant has health insurance now and has had the coverage since January 2018. (Appellant's testimony)
5. The Appellant had health insurance coverage through her employer during the first five months of 2017. The Appellant lost her job in the middle of May 2017, and her health insurance coverage terminated at

the end of May. The Appellant did not have health insurance coverage for the rest of the year. (Appellant's testimony)

6. After losing her job, the Appellant filed for unemployment benefits and was granted the maximum benefit of \$748. The Appellant received \$600 weekly after taxes. (Appellant's testimony)
7. At the unemployment office's recommendation, the Appellant applied to the Health Connector for health insurance. The Appellant was denied any financial assistance and was told that she would need to buy coverage on her own. The Appellant decided that she could afford insurance coverage without any financial assistance. (Appellant's testimony)
8. The Appellant was unemployed from mid-May through December 2017. The Appellant had to dip into her retirement savings in order to pay her bills. (Appellant's testimony)
9. According to Table 2 of the Schedule HC 2017, the Appellant was not eligible for government-subsidized insurance in 2017, since her AGI for 2017 was more than \$35,640 for a family one.
10. According to Table 3, Affordability, of the Schedule HC 2017, the Appellant could have afforded to pay up to 8.16% of her income in 2017 for health insurance coverage. Based on her AGI and Single with no dependents tax filing status, the Appellant could have afforded to pay a monthly premium of up to \$415 for health insurance coverage in 2017.
11. According to Table 4, Premiums, of the Schedule HC 2017, the Appellant could have purchased health insurance in the private market in 2017 at a monthly premium cost of \$274, based on her age and county residence in 2017.
12. The Appellant's basic monthly expenses in 2017 included: mortgage, \$1,000; condo fee, \$434; electric/heat, \$200; condo/car insurance, \$140; car payment, \$690; car gas, \$175; car maint/repair, \$100; food/groceries, \$435; clothing, \$208; student loan, \$332; and, credit card payment, \$228, for a total of \$3,942, monthly, or \$47,304 for the year. (Appellant's testimony)

ANALYSIS AND CONCLUSIONS OF LAW

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

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

The Appellant has presented sufficient evidence to support the conclusion that the Appellant could not have afforded health insurance coverage for the remainder of 2017, after losing her job and her employer-sponsored coverage in May 2017. I find the Appellant's testimony credible and note that some additional basic expenses, such as phone and cable/Internet access, were omitted from her listing of basic expenses and would have added at least \$100 more to her monthly costs. Although the Appellant was granted and received the maximum amount of unemployment benefits for the last seven months of 2017, that regular income was about one half of the regular income that she had been receiving during the first five months of the year. While the Appellant could adopt frugal habits for the remainder of 2017, after losing her job, there was no making up for her spending habits during the first five months of the year, when her financial outlook was good.

Therefore, I conclude that affordable health insurance was not available to the Appellant during the last seven months of 2017, under MGL Chapter 11M, Section 2, and 956 CMR 6.08(1)(e).

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

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 2017 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-142

Appeal Decision: Appeal Denied

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: August 15, 2018

Decision Date: August 31, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on August 15, 2018. The Appellant offered testimony under oath or affirmation. At the end of the hearing, the record was closed.

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

Exhibit 1: Appeal Case Information from 2017 Schedule HC

Exhibit 2: 5/8/18 Appeal (24 pages)

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

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant appealed from the assessment of a twelve-month penalty on his 2017 state income tax return. (Exhibit 1)
2. The Appellant's filing status in 2017 was Head of Household with one dependent. The Appellant's federal AGI in 2017 was \$100,389. The Appellant resided in Essex County in 2017. The Appellant turned fifty-eight years old in 2017. (Exhibit 1)
3. On May 8, 2018, the Appellant appealed his twelve-month penalty, checking off on the appeal form, "During 2017, you purchased health insurance that didn't meet minimum creditable coverage standards because that is what your employer offered, and you felt that your circumstances prevented you from buying other insurance that met the requirements," as the basis for his appeal. (Exhibit 2)
4. The Appellant worked for the same employer in 2016 and 2017. The Appellant's employer is an out-of-state employer with employees in many states. The Appellant's employer offers the same insurance coverage to all employees, no matter the state in which they reside. (Appellant's testimony; Exhibit 2)

5. The health insurance coverage offered by the Appellant's employer met the requirements of the Affordable Care Act. The coverage also met the requirements of Minimum Creditable Coverage, under Massachusetts law, with the exception of the deductible cap of \$2,750 exceeding the MCC cap of \$2,000. (Appellant's testimony; Exhibit 2)

ANALYSIS AND CONCLUSIONS OF LAW

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

As the Appellant's employer offered only a single "one size fits all" insurance coverage to all employees, no matter the state in which they resided, and the coverage met MCC standards except for exceeding the deductible cap by \$750, I conclude that the Appellant had health insurance coverage through his employer in all of 2017 that substantially met minimum creditable coverage standards, under MGL Chapter 11M, Section 2, and 956 CMR 6.08(2)(b) and (d).

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

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 2017 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-144

Appeal Decision: Appeal Granted

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: August 15, 2018

Decision Date: September 24, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on August 15, 2018. The Appellant and the Appellant's wife offered testimony under oath or affirmation. At the end of the hearing, the record was closed.

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

- Exhibit 1: Appeal Case Information from 2017 Schedule HC
- Exhibit 2: 5/21/18 Appeal (13 pages)
- Exhibit 3: [none; skipped in numbering exhibits by mistake]
- Exhibit 4: 8/20/15 TY2014 Final Appeal Decision (4 pages)
- Exhibit 5: 11/19/15 TY2015 Final Appeal Decision (5 pages)
- Exhibit 6: 7/17/18 Hearing Notice (3 pages)

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant appealed from the assessment of a five-month penalty on his 2017 state income tax return. (Exhibit 1)
2. The Appellant's filing status in 2017 was Married Filing Joint with no dependents. The Appellant's household federal AGI in 2017 was \$100,229. The Appellant resided in Worcester County in 2017. The Appellant turned thirty-two years old in 2017. (Exhibit 1)
3. On May 29, 2018, the Appellant appealed his five-month penalty, checking off that, in 2017, "the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities," as the basis for his appeal. (Exhibit 2)
4. The Appellant and his wife got married in September 2017. The Appellant's wife had health insurance coverage through her employer at the time, and she added her husband to her health insurance coverage

when they got married. His coverage was effective beginning in September 2017. (Appellant’s testimony; Exhibit 1)

5. The Appellant had no health insurance coverage during the first eight months of 2017. (Appellant’s testimony)
6. The Appellant was self-employed throughout 2017 as an Uber driver, earning income of about \$26,000 for the year. (Appellant’s testimony)
7. According to Table 2 of the Schedule HC 2017, the Appellant was not eligible for government-subsidized insurance in 2017, since his AGI for 2017 was more than \$48,060 for a family two.
8. According to Table 3, Affordability, of the Schedule HC 2017, the Appellant could have afforded to pay up to 8.16% of his income in 2017 for health insurance coverage. Based on his AGI and Married Filing Joint with no dependents tax filing status, the Appellant could have afforded to pay a monthly premium of up to \$681 for health insurance coverage in 2017.
9. According to Table 4, Premiums, of the Schedule HC 2017, the Appellant could have purchased health insurance in the private market in 2017 at a monthly premium cost of \$249, based on his age and county residence in 2017.
10. The Appellant reported \$35,000 in business expenses in his 2017 tax return. (Exhibit 2; Appellant’s testimony)
11. The Appellant’s basic monthly expenses from January to August 2017 included: rent, \$1,200; car payment, \$260; car insurance, \$200; car gas, \$555; car maintenance/repair, \$500; phone, \$125; food, \$433; clothing, \$80; cable, \$75; for a total of \$3,428, monthly, or \$27,424 for the first eight months of 2017. (Appellant’s testimony)

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellant has presented sufficient evidence to support the conclusion that the Appellant could not have afforded health insurance coverage during the first eight months of 2017. While the Appellant had coverage during the last four months of 2017, this was not due to any change in his income during the year but, rather, because he got married and was able to get covered under his spouse’s employer-provided coverage immediately. During the first eight months of 2017, the Appellant’s income from working as a passenger-driver averaged less than \$2,000 monthly, and this amount did not cover the Appellant’s basic monthly expenses for that period of time.

Therefore, I conclude that affordable health insurance was not available to the Appellant during the first eight months of 2017, under MGL Chapter 11M, Section 2, and 956 CMR 6.08(1)(e).

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

PENALTY ASSESSED

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

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

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-161

Appeal Decision: Appeal Approved

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: August 23, 2018

Decision Date: September 17, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

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

- Exhibit 1: Notice of Hearing sent to Appellant dated July 17, 2018
- Exhibit 2: Appeal Case Information Sheet from Schedule HC 2017
- Exhibit 3: Statement of Grounds for Appeal 2017 signed by Appellant on May 23, 2018
- Exhibit 4: Statement in Support of Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 23 years old in 2017 and filed a 2017 Massachusetts tax return as single, with no dependents claimed (Exhibit 2).
2. Appellant lived in Worcester County, MA in 2017 (Exhibit 2).
3. Appellant's Adjusted Gross Income for 2017 was \$28,571 (Exhibit 2).
4. During 2017, Appellant worked and employer sponsored health insurance may have been available. However, Appellant did not apply and did not know the cost (Testimony of Appellant).
5. Appellant did not apply for government subsidized health insurance during 2017 (Testimony of Appellant).
6. Appellant struggled to pay bills for necessities in 2017 (Exhibit 4 and Testimony of Appellant).

7. In early September 2017 there was a fire in Appellant's apartment. Appellant lost all of Appellant's possessions (Exhibit 4 and Testimony of Appellant).
8. As a result of the fire, Appellant had many expenses to replace personal possessions (Testimony of Appellant).
9. As a result of the fire, Appellant had to look for a new apartment. The new apartment cost more than the apartment that had burned (Testimony of Appellant).
10. Appellant was assessed a penalty for twelve months for 2017 (Exhibit 2).
11. Appellant filed an appeal on May 23, 2018, claiming that Appellant had incurred a fire which had caused substantial damage (Exhibit 3).
12. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
13. According to Table 2 of Schedule HC for 2017, Appellant, earning less than \$35,640, would have met the income eligibility guidelines for government subsidized insurance.

ANALYSIS AND CONCLUSIONS OF LAW

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

G.L.c. 111M, § 2, also called the "individual mandate," requires every adult resident of Massachusetts to obtain insurance coverage "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for "each of the months" that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2017, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

Appellant has been assessed a tax penalty for twelve months. 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 not have been affordable See 956 CMR 6 (1).

Employer sponsored health insurance may have been available to Appellant, but Appellant did not apply for the insurance and did not know the cost. Appellant, earning less than \$35,640 would have met the income eligibility requirements for government subsidized insurance, but may have been disqualified due to the availability of employer sponsored insurance. Appellant did not apply for government sponsored insurance. See Schedule HC

for 2017 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.

In 2017, Appellant struggled to pay the bills for basic living expenses. During 2017, there was a fire at Appellant's apartment. Appellant lost all of Appellant's personal possessions. Appellant then had to find new housing, which cost more than the old housing. See Exhibit 4 and Testimony of Appellant, which I find to be credible and 956 CMR 6.08 (1)(d)(4).

I find that the penalty assessed against Appellant for 2017 should be waived in its entirety.

PENALTY ASSESSED

Number of Months Appealed: 12

Number of Months Assessed: 0

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

ADDENDUM

Appellant should note that this decision is based upon the facts as I have found them for 2017. Appellant should note that a similar decision may not be reached if Appellant fails to obtain health insurance in the future.

Appellant is encouraged to find out the cost and apply for available employer sponsored health insurance. Although the availability of employer sponsored insurance may cause Appellant to be ineligible for government subsidized insurance, Appellant could contact the Massachusetts Health Connector at 1-877 623-6765 to determine eligibility.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-163

Appeal Decision: Appeal Approved
Hearing Issue: Appeal of the 2017 Tax Year Penalty
Hearing Date: August 23, 2018
Decision Date: September 18, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on August 23, 2018. The procedures to be followed during the hearing were reviewed with Appellant. 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 Appellants dated July 17, 2018
- Exhibit 2: Appeal Case Information Sheet from Schedule HC 2017
- Exhibit 3: Statement of Grounds for Appeal 2017 signed by Appellant on May 24, 2018
- Exhibit 4: Statement in Support of Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 23 years old in 2017 and filed a 2017 Massachusetts tax return as single, with no dependents claimed (Exhibit 2).
2. Appellant lived in Middlesex County, MA in 2017 (Exhibit 2).
3. Appellant's Adjusted Gross Income for 2017 was \$18,280 (Exhibit 2).
4. Appellant had believed that Appellant was covered by a parent's health insurance, but Appellant learned that there was no coverage (Testimony of Appellant)
5. From January through March 2017, Appellant worked at a temporary job and employer sponsored insurance was not available to Appellant (Testimony of Appellant).

6. In March, 2017, Appellant began a new job. Employer sponsored health insurance was available after a waiting period, but Appellant did not apply (Testimony of Appellant).

7. Appellant did not apply for government subsidized insurance in 2017 (Testimony of Appellant).

8. At the time of the hearing, Appellant still was uninsured. Appellant was looking into government subsidized health insurance (Testimony of Appellant).

9. Appellant was assessed a penalty for twelve months for 2017 (Exhibit 2).

10. Appellant filed an appeal in May, 2018, claiming that the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities (Exhibit 3).

11. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.

12. According to Table 3 of Schedule HC for 2017 a person filing as single, with no dependents claimed and with a Federal Adjusted Gross Income of \$18,280 could afford to pay \$44 per month for health insurance. According to Table 4, Appellant, age 23 and living in Middlesex County, could have purchased private insurance for \$150 per month. Private insurance was not affordable for Appellant in 2017.

13. According to Table 2 of Schedule HC for 2017, Appellant, earning less than \$35,640 would have met the income eligibility guidelines for government subsidized insurance.

14. Appellant had the following monthly expenses for basic necessities during 2017: rent \$633; utilities \$200; food \$433; supplies \$60; clothing \$120; public transportation \$95. The monthly expenses for basic necessities totaled \$1,543 (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

Appellant has been assessed a tax penalty for twelve months. To determine if the penalty should be waived in whole or in part, we must consider whether affordable insurance was available to Appellant before we consider

whether Appellant suffered a financial hardship such that the purchase of insurance which met minimum creditable coverage standards would have caused Appellant to experience a serious deprivation of basic necessities. See 956 CMR 6.

In 2017, Appellant thought that Appellant was covered by a parent's health insurance, but found out that there was no coverage. From January through March, 2017, Appellant worked a part-time job and employer sponsored health insurance was not available. In March 2017, Appellant began a new job where employer sponsored health insurance was available after a waiting period. Appellant did not apply for the employer sponsored insurance. According to Table 3 of Schedule HC for 2017, Appellant, who filed taxes as a single person with no dependents could afford to pay \$44 per month for health insurance. Appellant met the income eligibility guidelines for government subsidized health insurance, but eligibility would depend on the amount of cost of any employer sponsored health insurance. Appellant did not apply for government subsidized insurance in 2017. See Schedule HC for Healthcare, Tables 2, 3 and 4, Exhibits 2, 3 and 4, and Testimony of Appellant, which I find to be credible. Since Appellant potentially had access to affordable insurance, we need to consider whether Appellant experienced a financial hardship as defined by 956 CMR 6.08.

During 2017, Appellant had monthly expenses for basic necessities in the amount of \$1,543 per month. Since Appellant's monthly income was \$1,523, I find that for 2017, the purchase of health insurance would have caused Appellant a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.081 (e). HOWEVER, Appellant is advised that this decision is based upon the facts as I have found them in 2017 and Appellant should not assume that a similar decision will be reached if Appellant fails to have health insurance in future years.

I find that the penalty assessed against Appellant for 2017 should be waived in its entirety.

PENALTY ASSESSED

Number of Months Appealed: 12

Number of Months Assessed: 0

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

ADDENDUM

Appellant is encouraged to contact the Health Connector at 1-877 623-6765 to get information about government subsidized health insurance. Appellant should have up to date income information as well as up to date information about employer sponsored health insurance. Failure to obtain health insurance could result in a penalty in future years.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-164

Appeal Decision: Denied
Hearing Issue: Appeal of the 2017 Tax Year Penalty
Hearing Date: August 23, 2018
Decision Date: September 20, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

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

- Exhibit 1: Notice of Hearing sent to Appellants dated July 17, 2018
- Exhibit 2: Appeal Case Information Sheet from Schedule HC 2017
- Exhibit 3: Statement of Grounds for Appeal 2017 signed by Appellant on May 3, 2018
- Exhibit 4: Appeal decision for 2014

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant and Appellant Spouse were 68 and 57 years old in 2017. They filed a 2017 Massachusetts tax return as married, filing jointly with no dependents claimed (Exhibit 2).
2. Appellants lived in Barnstable County, MA in 2017 (Exhibit 2).
3. Appellants' Adjusted Gross Income for 2017 was \$26,404 (Exhibit 2).
4. Appellant was disabled and did not work in 2017 (Testimony of Appellant).
5. Appellant Spouse worked part-time and employer sponsored health insurance was not available (Testimony of Appellant).

6. Appellant has health insurance but Appellant's coverage is not available to Appellant Spouse (Testimony of Appellant).
7. Appellant Spouse has not had health insurance for many years (Testimony of Appellant).
8. Appellant Spouse did not apply for government subsidized insurance in 2017 (Testimony of Appellant).
9. Appellant contacted the Health Connector one time in 2018 to ask about health insurance, but did not pursue it further (Testimony of Appellant).
10. Appellants were assessed a penalty for twelve months for 2017 (Exhibit 2).
11. Appellants filed an appeal in May, 2018, claiming that the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities (Exhibit 3).
12. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
13. According to Table 3 of Schedule HC for 2017 a married couple filing jointly, with no dependents claimed and with a Federal Adjusted Gross Income of \$26,404 could afford to pay \$94 per month for health insurance. According to Table 4, Appellant Spouse, aged 57 living in Barnstable County, could have purchased private insurance for \$441 per month. Private insurance was not affordable for Appellant Spouse in 2017.
14. According to Table 2 of Schedule HC for 2017, Appellant Spouse, earning less than \$48,060 would have met the income eligibility guidelines for government subsidized insurance.
15. During the Appeals hearing for 2014, held in January, 2016, Appellant testified that Appellant Spouse had been accepted for government subsidized insurance for 2016 (Exhibit 4).
16. Appellant Spouse did not enroll in government subsidized health insurance in 2016 (Exhibit 2 and Testimony of Appellant).
17. Appellants were not homeless during 2017. Appellants did not fall behind in rent payments nor receive any shut-off notices (Testimony of Appellant).
18. Appellants 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. Appellants had the following monthly expenses for basic necessities during 2017: rent \$1,000; utilities \$218; telephone \$82; food \$500; supplies \$20; car insurance \$55; gasoline \$200; medical expenses \$50. The monthly expenses for basic necessities totaled \$2,125 (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

Appellants have 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 Spouse before we consider whether Appellants suffered a financial hardship such that the purchase of insurance which met minimum creditable coverage standards would have caused Appellants to experience a serious deprivation of basic necessities. See 956 CMR 6.

Appellant Spouse worked on a part-time basis and employer sponsored health insurance was not available. According to Table 3 of Schedule HC for 2017 a married couple filing jointly, with no dependents claimed and with a Federal Adjusted Gross Income of \$26,404 could afford to pay \$94 per month for health insurance. Appellants, earning less than \$48,060 would have met the income eligibility guidelines for government subsidized insurance but Appellant Spouse did not apply for government subsidized insurance for 2017. See Schedule HC for Healthcare, Tables 2, 3 and 4, Exhibits 2, 3 and 4, and Testimony of Appellant, which I find to be credible. Since Appellant Spouse potentially had access to affordable insurance, we need to consider whether Appellants experienced a financial hardship as defined by 956 CMR 6.08.

Based on the evidence, Appellants do not appear to have experienced a hardship which prevented Appellant Spouse from purchasing health insurance in 2017.

The Appeal is denied.

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 2017 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

ADDENDUM

Appellant S pouse is encouraged to contact the Health Connector at 1-877 623-6765 to submit an application for government subsidized health insurance. You can also apply online at www.mahealthconnector.org.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-169

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: August 14, 2018

Decision Date: September 17, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on August 14, 2018.

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

- Exhibit 1: Notice of Hearing (7-20-18) (3 pages);
- Exhibit 2: Notice of Hearing (8-3-18) (2 pages);
- Exhibit 3: Information from Schedule HC TY 2017 (1 page); and
- Exhibit 4: Statement of Grounds for Appeal (with documents) (5-21-18) (8 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, age 40 during 2017, was from Middlesex County.
2. Appellant did have health insurance during 2017 through her husband in New York.

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 based upon being covered by her husband's insurance in New York. Based on this information, the penalty is waived.

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 2017.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-170

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: August 14, 2018

Decision Date: September 17, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on August 14, 2018.

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

- Exhibit 1: Notice of Hearing (7-20-18) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2017 (1 page); and
- Exhibit 3: Statement of Grounds for Appeal (5-3-18) (4 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, age 28 during 2017, was from Norfolk County.
2. Appellant did not have health insurance during January through June of 2017.
3. Health insurance was not offered through his employer, and Appellant felt he could not afford the health insurance through the Health Connector.
4. Appellant could afford health insurance based upon the tables in Schedule HC.
5. Appellant's expenses for food, shelter, clothing and transportation, used most of the income.

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply based upon not being able to afford health insurance. Appellant could afford health insurance based on the tables in Schedule HC. His expenses for food, shelter, clothing, and transportation used most of his income. Based on this information, the penalty is waived.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-172

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: August 14, 2018

Decision Date: September 17, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

One of the Appellants appeared at the hearing, which was held by telephone, on August 14, 2018.

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

- Exhibit 1: Notice of Hearing (7-20-18) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2017 (1 page); and
- Exhibit 3: Statement of Grounds for Appeal (with letter and documents) (5-23-18) (8 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellants, ages 24 and 25 during 2017, were from Norfolk County. Appellants did not have legal status to apply for health insurance, and were here on student visas and had applied for asylum.
2. Appellants obtained authorization to work in October and November, respectively, and could not apply for 2017 for health insurance.
3. Appellants did not have health insurance during 2017.
4. Appellants could not afford health insurance based upon the tables in Schedule HC.
5. Appellants' expenses for food, shelter, clothing and transportation, used most of the income.

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellants submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply based upon not being able to afford health insurance, and being unable to qualify for subsidized health insurance based on not being lawfully present. Appellants could not afford health insurance based on the tables in Schedule HC. Appellants’ expenses for food, shelter, clothing, and transportation used all of their income. Based on this information, the penalty is waived.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-173

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: August 14, 2018

Decision Date: September 20, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on August 14, 2018.

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

- Exhibit 1: Notice of Hearing (7-20-18) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2017 (1 page); and
- Exhibit 3: Statement of Grounds for Appeal (with documents) (5-24-18) (8 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, age 25 during 2017, lived in Massachusetts from January through October 2017. Appellant had access to health insurance through her employer but it was not affordable.
2. Appellant moved to New Hampshire in November 2017.
3. Appellant did not have health insurance during 2017.
4. Appellant could not afford health insurance based upon the tables in Schedule HC.
5. Appellant's expenses for food, shelter, clothing and transportation, used all of the income.

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply based upon not being able to afford health insurance, and that paying for health insurance would cause a serious deprivation of food, shelter, clothing and transportation. Appellant could not afford health insurance based on the tables in Schedule HC. Appellant’s expenses for food, shelter, clothing, and transportation used all of the income. Based on this information, the penalty is waived.

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 2017.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-174

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: August 14, 2018

Decision Date: September 20, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on August 14, 2018.

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

- Exhibit 1: Notice of Hearing (7-20-18) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2017 (1 page); and
- Exhibit 3: Statement of Grounds for Appeal (with letter and documents) (5-5-18) (9 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, age 33 during 2017, lived in Massachusetts from July 28, 2017 through December 31, 2017. Appellant moved to the United States from the Netherlands on a fiancé visa.
2. Appellant had international health insurance through OOM Global Care until she became eligible to apply for coverage through the Health Connector, which she did as of October 2017.
3. Appellant's spouse did not appeal the penalty as applied to him and this decision does not affect any penalty for him.
4. Appellant and Appellant's spouse both have health insurance as of January 2018 through Appellant's 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 based upon not being present in Massachusetts for part of the year and having health insurance for the remainder of the year once present in Massachusetts. Appellant’s spouse did not appeal the penalty as applied to him.

PENALTY ASSESSED

Number of Months Appealed: 12/6 Number of Months Assessed: 12/0

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-175

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: August 14, 2018

Decision Date: September 20, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on August 14, 2018.

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

- Exhibit 1: Notice of Hearing (7-20-18) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2017 (1 page); and
- Exhibit 3: Statement of Grounds for Appeal (with letter and documents) (5-25-18) (6 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, age 28 during 2017, was from Bristol County.
2. Appellant did not have health insurance during 2017.
3. Appellant's employer reported more income for Appellant than he actually earned, and had a tax seizure directly from his paycheck as a result.
4. Appellant could not afford health insurance based on the tables in Schedule HC.
5. Appellant's expenses for food, shelter, clothing and transportation used most of the income.

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply based upon hardship that paying for health insurance would have caused a serious deprivation of food, shelter, clothing and transportation. Appellant could not afford health insurance based on the tables in Schedule HC. Appellant’s expenses for food, shelter, clothing and transportation used most of the income. Paying for health insurance would have caused a serious deprivation of food, shelter, clothing and transportation.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-176

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: August 14, 2018

Decision Date: September 20, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

One of the Appellants appeared at the hearing, which was held by telephone, on August 14, 2018.

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

- Exhibit 1: Notice of Hearing (7-20-18) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2017 (1 page); and
- Exhibit 3: Statement of Grounds for Appeal (with documents) (5 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellants, ages 31 and 38 during 2017, lived in Middlesex County, Massachusetts.
2. One of Appellants did not have health insurance during 2017.
3. Appellants could not afford health insurance based on the tables in Schedule HC.
4. Appellants' expenses for food, shelter, clothing and transportation used most of the income.
5. Appellants received shut off notices for some of the months of 2017.

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 based upon having received shut off notices and based upon the factor that paying for health insurance would have caused a serious deprivation of necessities. Appellants could not afford health insurance based on the tables in Schedule HC. Appellants did receive shut off notices for some of the months of 2017. In addition, Appellants’ expenses for food, shelter, clothing and transportation used most of the income. Paying for health insurance would have caused a serious deprivation of food, shelter, clothing and transportation.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-235

Appeal Decision: Appeal Denied.

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: September 19, 2018

Decision Date: September 25, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on September 19, 2018. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated August 24, 2018.
- Exhibit 2: Appeal Case Information from Schedule HC 2017.
- Exhibit 3: Statement of Grounds for Appeal signed by the Appellant on May 24, 2018 with attachments.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant turned 55 years old in December 2017. The Appellant filed their Federal Income Tax return as an individual with no dependents claimed (Exhibit 2).
2. The Appellant lived in Worcester County, MA in 2017 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2017 was \$85,195 (Exhibit 2 and Appellant Testimony).
4. The Appellant had health insurance for the months of January through May but did not have health insurance for the months of June through December in tax year 2017 (Exhibit 2 and Appellant Testimony).
5. The Appellant has been assessed a four-month tax penalty for 2017. The Appellant filed an appeal of the assessment in May 2018 (Exhibits 2, 3).

6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
7. In accordance with Table 3 of Schedule HC for 2017, the Appellant filing the Federal tax return as an individual, with no dependents claimed, with an annual adjusted gross income of \$85,195 could afford to pay \$579 per month for health insurance. In accordance with Table 4, the Appellant, age 55, living in Worcester County, could have purchased private insurance for \$374 per month for a plan (Schedule HC for 2017). Private insurance was affordable for the Appellant.
8. The Appellant would not have been eligible for ConnectorCare coverage in 2017 because the Appellant's income was greater than 300% of the federal poverty level, which was \$35,640 in 2017. The Appellant testified that they did not have access to employer-sponsored insurance in 2017 (See Table 2 of Schedule HC-2017 and 956 CMR 12.04) (Appellant Testimony).
9. On the Statement of Grounds for Appeal the Appellant wrote that they believed that they had health insurance for all months of 2017 because the Appellant received a letter from the Office of Medicaid regarding their fixed enrollment period for Celticare Health Plan of Massachusetts, Inc. (Exhibit 3 and Appellant Testimony).
10. The Appellant testified that they had been unemployed in tax year 2016 and had been determined eligible for MassHealth. The Appellant said that they attempted to report a change in income in tax year 2017 but found the web site very confusing. The Appellant said that they received the letter regarding the selection period for their Celticare Health Plan and assumed they were all set. The Appellant was asked if they received a termination notice from MassHealth given the Appellant's annual income of \$85,195 and the Appellant was not able to remember. The Appellant then stated that they tried to go on the website to obtain health insurance but found it difficult. The Appellant said that making the transition from MassHealth was not easy. The Appellant was asked about making monthly premium payments for insurance and the Appellant said they thought they would get a bill at the end of the year. The Appellant said that they did not use the insurance when they had it and did not really spend much time thinking about it (Exhibit 3 and Appellant Testimony).
11. I did not find the Appellant to be a credible witness. The Appellant alleged on their appeal request that they believed that they had MassHealth for all months of tax year 2017. The Appellant knew or should have known they were no longer insured as a MassHealth recipient due to their adjusted gross income of \$85,195. When asked about the change in MassHealth eligibility due to the Appellant's significant change in income, the Appellant said that they tried to obtain insurance through the Health Connector web site but thought it was too confusing. The Appellant mentioned that the transition from MassHealth was not easy. This testimony indicates that the Appellant was aware that their MassHealth eligibility had ended (Appellant Testimony).
12. The Appellant is currently married and enrolled in their spouse's employer-sponsored health insurance plan (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 MassHealth for the period of January through May but was uninsured for the period of June through December in tax year 2017. The Appellant has been assessed a four-month penalty. The Appellant submitted a Statement of Grounds for Appeal citing circumstances other than financial hardship for not having health insurance. The Appellant alleges that they believed that they were insured under a MassHealth insurance plan. The Appellant submitted a letter they received regarding the Plan Selection Period for their Celticare Health Plan. The selection period began May 1, 2018. This does not demonstrate continued eligibility for MassHealth. The Appellant had applied for MassHealth during a period of unemployment. In tax year 2017 the Appellant’s adjusted gross income was \$85,195. The Appellant was unclear if they received a termination notice, but it is unreasonable for the Appellant to believe that they continued to be eligible for MassHealth with the substantial change in income. The Appellant also testified that they did in fact access the Health Connector website to make as they stated the transition from MassHealth to private insurance. This testimony indicates an awareness that the Appellant’s MassHealth eligibility ended. The Appellant could have telephoned customer service for assistance if they had difficulty navigating the web site.

The Appellant was employed full time and earned \$85,195 in tax year 2017. The Appellant’s testimony that they believed they had Mass Health insurance for all twelve months of tax year 2017 was inconsistent with other statements made during the hearing and therefore is not credible. The Appellant did not allege or demonstrate financial hardship pursuant to 956 CMR 6.08 (1). The Appellant’s four-month penalty is upheld.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-242

Appeal Decision: Appeal Approved.

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: September 21, 2018

Decision Date: September 27, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

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

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant turned 24 years old in October 2017. The Appellant filed their Federal Income Tax return as an individual with no dependents claimed (Exhibit 2).
2. The Appellant lived in Suffolk County, MA in 2017 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2017 was \$23,611 (Exhibit 2 and Appellant Testimony).
4. The Appellant had employer sponsored health insurance from September through December 2017. The Appellant did not have health insurance for the period of January through August 2017 (Exhibit 2 and Appellant Testimony).
5. The Appellant has been assessed a five-month tax penalty for 2017. The Appellant filed an appeal of the assessment in May 2018 (Exhibits 2, 3, 4).

6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2017. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2017.
7. In accordance with Table 3 of Schedule HC for 2017, the Appellant filing the Federal tax return as an individual, with no dependents claimed, with an annual adjusted gross income of \$23,611 could afford to pay \$57 per month for health insurance. In accordance with Table 4, the Appellant, age 24, living in Suffolk County, could have purchased private insurance for \$150 per month for a plan (Schedule HC for 2017). Private insurance was not affordable for the appellant in 2017.
8. The Appellant would have been eligible for ConnectorCare coverage in 2017 because the Appellant's income was less than 300% of the federal poverty level, which was \$35,640 in 2017. The Appellant had no access to affordable insurance through employment for the months of January through December 2017 (See Table 2 of Schedule HC-2017 and 956 CMR 12.04) (Appellant Testimony).
9. The Appellant testified that they are not a US citizen. The Appellant explained that they are an international student and had been told that they could not apply for government subsidized health insurance due to their immigration status. The Appellant said that they have a work authorization and worked part time during the period of January through August but only earned a total of \$7,500 during this period of time. The Appellant submitted copies of their tax year W-2 forms to support their credible testimony (Exhibit 4 and Appellant Testimony).
10. The Appellant's monthly living expenses for tax year 2017 included: rent-\$700; food -\$350; transportation-\$100; and utilities \$100. The Appellant also had school expenses and helped pay medical bills for their mother who became ill while visiting the Appellant and required emergency room treatment. The Appellant said that they did fall behind in their rent payments a few times, but their landlord worked with them to catch up (Appellant testimony).
11. The Appellant started a new job in September 2017 and has had employer sponsored health insurance from that time to the present (Exhibit 2 and Appellant Testimony).

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellant had no health insurance for the first eight months of tax year 2017. The Appellant has been assessed a five-month penalty. The Appellant submitted a statement of grounds for this appeal, claiming that the

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

In accordance with Table 3 of Schedule HC for 2017, the Appellant filing the Federal tax return with no dependents claimed with an adjusted gross income of \$23,611 could afford to pay \$57 per month for health insurance. According to Table 4, the Appellant, age 24, living in Suffolk County, could have purchased a private insurance plan for \$150 per month. See Schedule HC for 2017. Private insurance was not affordable for the Appellant in tax year 2017.

The Appellant had no access to affordable employer-sponsored health insurance for the first eight months of 2017. The Appellant would have been eligible for ConnectorCare coverage based upon the Appellant's income which was less than \$35,640. See Table 2 of Schedule HC 2017 and 956 CMR 12.04 for eligibility criteria. The Appellant explained that they had been told that as an international student they were not eligible for a government subsidized insurance program and did not apply because they were afraid to do something illegal. As explained at the Hearing, the Appellant was lawfully present in Massachusetts and could apply for ConnectorCare. 45 CFR § 155.305(a). Since affordable insurance was available to the Appellant in 2017, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1).

The Appellant was employed part time for the first eight months of tax year 2017 earning a total of \$7,500. The Appellant's monthly living expenses were substantial, and the Appellant testified credibly that they struggled to meet these expenses with their limited income. The cost of purchasing health insurance would have caused the Appellant to experience a serious financial hardship. See 956 CMR 6.08(1)(e). The Appellant's penalty for all five months is therefore waived.

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

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-245

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: September 18, 2018

Decision Date: September 19, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

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

Exhibit 1: Notice of Hearing dated August 29, 2018

Exhibit 2: Appeal Case Information from form Schedule HC

Exhibit 3: Statement of Grounds for Appeal dated May 16, 2018

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is thirty four years old and is married with three dependents. They live in Worcester County, Massachusetts.

2. Appellant works in maintenance services.
3. Appellant was working for a temporary service company in 2017. Appellant was not offered health insurance from his company in 2017.
4. Appellant has health insurance in 2018 but his wife does not have health insurance. Appellant's wife is applying for health insurance for 2019. One of Appellant's children is deaf and disabled
5. The Appellant's monthly expenses totaled \$3,784.00, consisting of rent \$1,560.00, heat and electricity \$280.00, internet & cable \$0.00, cell phone \$37.00, car payment \$400.00 car insurance \$72.00, car gas \$260.00, food \$200.00, credit card \$100.00, clothes \$35.00, entertainment \$25.00, toiletries \$25.00, child support \$470.00, delinquent bills \$160.00, pets & child medicals \$160.00.
6. The appellant did submit a Statement of Grounds for Appeal-2017 under the grounds for Appeal, " During 2017, 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 2017. Table 1 sets forth the income eligibility standards for various family sizes at 150% of the federal poverty level and Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard for the government-subsidized health insurance program. See Mass. G.L. c. 118H, s.3(a)(1). Tables 5 and 6 set forth the tax penalties for 2017.
8. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant may have been eligible for subsidized health insurance, since Appellant's income of \$54,359.00 was less than \$85,320.00. The monthly premium for health insurance available on the private market in Worcester County for a 34 year old married person was \$637.00. The tables reflect that Appellant could afford \$267.26. This is more than what the appellant is deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions)

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant did submit a Statement of Grounds for Appeal-2017 under the grounds for Appeal, “ During 2017, 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 2017, 150 percent of the FPL was \$30,240.00 for a married person with three dependents. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf>; see also 830 Mass. Code Regs. 111M.2.1(5)(c) (2008). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months. *Id.*

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

Appellant reported a federal AGI of \$54,359.00 in 2017, and Appellant’s filing status was single. EX 2. According to the Affordability Schedule established by the Connector’s board and included in the Instructions and Worksheets of the 2017 Massachusetts Schedule HC, Appellant could afford to pay \$267.26 monthly for health insurance. See 2017 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to him from the Premium Tables, at a cost of \$637.00 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 \$267.26 for health insurance coverage because of her income. Private insurance in the market place was \$637.00 per month. On these facts, I find that Appellant has shown that he was precluded from purchasing affordable health insurance during 2017. 956 Mass. Code Regs.

6.08(3) (2008). Accordingly, I conclude that he is exempt from a tax penalty for his non-compliance with the individual mandate.

Accordingly, Appellant's appeal is **ALLOWED**, and the 2017 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 2017 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-246

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: September 18, 2018

Decision Date: September 19, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

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

Exhibit 1: Notice of Hearing dated August 29, 2018

Exhibit 2: Appeal Case Information from form Schedule HC

Exhibit 3: Statement of Grounds for Appeal dated May 17, 2018

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is thirty seven years old and is single. He lives in Plymouth County, Massachusetts.

2. Appellant works in the plumbing industry.
3. Appellant lives with his disabled from spinal surgery mother and cares for her. Appellant earned more money last year than he had previously, when he qualified for MassHealth.
4. Appellant does have health insurance in 2018.
5. The Appellant's monthly expenses totaled \$1,270.00, consisting of rent \$800.00, light & heat \$0.00, internet & cable \$0.00, cell phone \$80.00, food \$150.00, credit card \$200.00, clothes \$0.00, toiletries \$15.00, transportation \$25.00 .
6. The appellant did submit a Statement of Grounds for Appeal-2017 under the grounds for Appeal, " During 2017, 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 2017. Table 1 sets forth the income eligibility standards for various family sizes at 150% of the federal poverty level and Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard for the government-subsidized health insurance program. See Mass. G.L. c. 118H, s.3(a)(1). Tables 5 and 6 set forth the tax penalties for 2017.
8. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant may have been eligible for subsidized health insurance, since Appellant's income of \$29,764.00 was less than \$35,640.00. The monthly premium for health insurance available on the private market in Plymouth County for a 36 year old single person was \$302.00. The tables reflect that Appellant could afford \$124.01. This is more than what the appellant is deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions).

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant did submit a Statement of Grounds for Appeal-2017 under the grounds for Appeal, " During 2017, 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 2017, 150 percent of the FPL was \$17,820.00 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 2017 income was more than 150 percent of the FPL, making him potentially subject to an individual mandate penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to him in 2017. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and second to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2017 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$29,764.00 in 2017, and Appellant’s filing status was single. EX 2. According to the Affordability Schedule established by the Connector’s board and included in the Instructions and Worksheets of the 2017 Massachusetts Schedule HC, Appellant could afford to pay \$124.01 monthly for health insurance. See 2017 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to him from the Premium Tables, at a cost of \$302.00 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 \$124.01 for health insurance coverage because of his income. Private insurance in the market place was \$302.00 per month, which is more than he could afford.

On these facts, I find that Appellant has shown that he was precluded from purchasing affordable health insurance during 2017. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that he is exempt from a tax penalty for his non-compliance with the individual mandate.

Accordingly, Appellant's appeal is **ALLOWED**, and the 2017 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 2017 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA15-1110

Appeal Decision: Appeal Denied

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date: July 12, 2018

Decision Date: September 28, 2018

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on July 12, 2018. The Appellant offered testimony under oath or affirmation. At the end of the hearing, the record was left open until August 13, 2018, for the Appellant to submit additional evidence. The Appellant did not submit any additional evidence, and the record was closed on August 13, 2018.

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

- Exhibit 1: Appeal Case Information from 2015 Schedule HC
- Exhibit 2: 11/7/18 Appeal (5 pages)
- Exhibit 3: 6/12/18 Hearing Notice (4 pages)

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant appealed from the assessment of a five-month penalty on her 2015 state income tax return. (Exhibit 1)
2. The Appellant's filing status in 2015 was Single with no dependents. The Appellant's household federal AGI in 2015 was \$29,616. The Appellant resided in Middlesex County in 2015. The Appellant turned twenty-one years old in March 2015. (Exhibit 1)
3. On November 7, 2017, the Appellant appealed her five-month penalty, checking off that, in 2015, "the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities," as the basis for her appeal. (Exhibit 2)
4. The Appellant did not have health insurance coverage during the first eight months of 2015. (Appellant's testimony)

5. During the summer of 2015, the Appellant got sick and needed surgery. As result, the Appellant applied to the Health Connector for insurance coverage. The Appellant had health insurance coverage through the Health Connector during the last four months of 2015, at a cost of \$89 monthly. (Appellant’s testimony)
6. According to Table 2 of the Schedule HC 2015, the Appellant was eligible for government-subsidized insurance in 2015, since her AGI for 2015 was less than \$35,010 for a family of one.
7. According to Table 3, Affordability, of the Schedule HC 2015, the Appellant could have afforded to pay up to 4.85% of her income in 2015 for health insurance coverage. This calculates to a monthly premium of up to \$119.
8. The Appellant could have afforded to pay a monthly premium of \$119 in 2015 for health insurance coverage. (Appellant’s testimony)

ANALYSIS AND CONCLUSIONS OF LAW

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

In this case, the Appellant had health insurance coverage through the Health Connector during the last four months of 2015 for an \$89 monthly premium. The Appellant admitted at hearing that she could have afforded up to \$119 monthly for coverage during the first eight months of 2015. The Appellant’s testimony that she applied to the Health Connector for coverage much earlier in 2015 and was denied coverage is not credible, as the Appellant provided no denial letter or other documentation supporting her testimony.

Therefore, I conclude that affordable health insurance was available to the Appellant during the first eight months of 2015, under MGL Chapter 11M, Section 2, and 956 CMR 6.08(1)(e).

Accordingly, the Appellant’s five-month penalty shall not be reduced or waived in full for 2015.

PENALTY ASSESSED

Number of Months Appealed: 5 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 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.

OR

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

Hearing Officer

Cc: Connector Appeals Unit