

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: 16-788

Appeal Decision: Appeal Approved

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: August 13, 2019

Decision Date: September 4, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

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

- Exhibit 1: Notice of Hearing sent to Appellant dated July 2, 2019
- Exhibit 2: Appeal Case Information Sheet from Schedule HC 2016
- Exhibit 3: Statement of Grounds for Appeal 2016 signed by Appellant on March 12, 2019
- Exhibit 4: Statement in Support of Appeal
- Exhibit 5: Appeal Decision for 2017

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 42 years old in 2016. Appellant filed a 2016 Massachusetts tax return as single, with no dependents claimed (Exhibit 2).
2. Appellant lived in Middlesex County, MA in 2016 (Exhibit 2).
3. Appellant's Adjusted Gross Income for 2016 was \$38,276 (Exhibit 2).
4. Appellant's job in 2016 did not offer employer sponsored health insurance (Testimony of Appellant).
5. Appellant looked at the Health Connector for health insurance, but Appellant did not sign up due to the expense (Testimony of Appellant).

6. Appellant worked at a job where the hours were sporadic and seasonal (Testimony of Appellant).
7. Appellant struggled to pay for basic expenses when Appellant was not working or working only a few hours per week (Testimony of Appellant).
8. Appellant incurred debt to family and friends in order to pay for basic expenses during times when Appellant was not working (Testimony of Appellant).
9. Appellant incurred debt to family in order to pay for medical and dental expenses (Testimony of Appellant).
10. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.
11. According to Table 3 of Schedule HC for 2016 a person filing as single with no dependents with an adjusted gross income of \$38,276 could afford to pay \$236 per month for private insurance. According to Table 4, Appellant, aged 42 and living in Middlesex County could have purchased private insurance for \$237 per month.
12. Private insurance was not considered affordable for Appellant in 2016.
13. According to Table 2 of Schedule HC for 2016, Appellant, earning more than \$35,310, would not have met the income eligibility guidelines for government subsidized insurance.
14. Appellant was assessed a penalty for twelve months for 2016 (Exhibit 2).
15. Appellant filed an appeal on February 25, 2019, claiming that the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities (Exhibit 3).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

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

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

During 2016, Appellant did not have access to employer sponsored health insurance. Private health insurance was not considered affordable for Appellant. Appellant was not income eligible for government subsidized health insurance. See Schedule HC for Healthcare, Tables 2, 3, and 4 and Testimony of Appellant, which I find to be credible.

I find that affordable health insurance was not available to Appellant in 2016. I find that the penalty should be waived in full.

PENALTY ASSESSED

Number of Months Appealed: 12

Number of Months Assessed: 0

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

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA18-261

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

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: September 16, 2019

Decision Date: September 25, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2018;
3. Appellant's Letter in Support of Appeal (1 page, dated 3/16/19);
4. Appellant's 2018 IRS Form W-2 (Employer No. 2) (1 page);
5. Appellant's 2018 IRS Form W-2 (Employer No. 1) (1 page);
6. Appellant's 2018 IRS Form 1095-C (Employer No. 2) (1 page);
7. Employer's Summary of Medical and Prescription Drug Benefits and Premiums (1 page)
8. Appellant's Recent Earnings Statements (3 pages, dated 2/8/19, 2/22/19 and 3/8/19);
9. Health Connector's Notice of Hearing (3 pages, dated 6/3/19); and
10. Health Connector's Second Notice of Hearing (3 pages, dated 8/15/19).

In the Appellant's letter (Exhibit 3) she referred to her daughter's participation in the hearing. The daughter did not, however, appear for the appeal hearing, and the hearing proceed with the Appellant's consent.

FINDINGS OF FACT

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

1. The Appellant appealed from the Department of Revenue's assessment of a 12 month penalty for 2018. The basis for the penalty was that the Appellant was not insured at any time in 2018. Exhibits 1 and 2. Based on Exhibit 1 and the Appellant's hearing testimony, I find that the penalty assessment is accurate. See also Exhibit 6 (no coverage checked).
2. The Appellant filed a Massachusetts personal income tax return for 2018 as a single person with no dependents. The Appellant's federal adjusted gross income (AGI) for 2018 was \$30,033. Exhibit 1.
3. The Appellant was 58 years old at the beginning of 2018 and resided in [name of city or town omitted] in Plymouth County, Massachusetts. Exhibit 1.
4. The Appellant's AGI was more than 150% of the federal poverty level. On this basis I conclude that the Appellant was not automatically exempt from the assessment of a tax penalty in 2018. DOR Table 1.
5. The Appellant's 2018 AGI (\$30,033) was less than 300% of the federal poverty level (\$36,180 for a one person household). DOR Table 2. On this basis I infer that the Appellant would satisfy the financial eligibility requirements for government-subsidized health insurance.
6. Based on DOR Table 3 the Appellant could afford to pay 4.20% of her income -- or \$105 per month -- for health insurance coverage in 2018. (The calculation is 4.20 % multiplied by \$30,033 AGI = \$1,261.38 per year divided by 12 months = \$105.11 per month.)
7. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage at her age and location for \$403 per month in 2018.
8. In 2018 the Appellant worked for Employer No. 1 for January and February. In March she changed jobs to Employer No. 2, where she worked as a private school bus driver. Although the Appellant's hourly wages increased from \$11 per hour to \$19.22 per hour the Appellant was laid off during periods when school was not in session. Testimony and Exhibit 3. See also Exhibit 8 (\$19.22 wage rate in early 2019).
9. In the summer of 2018 the Appellant collected unemployment insurance benefits while she was laid off as a school bus driver. Testimony.
10. The Appellant fell more than one month behind in her monthly rent payments while she was laid off in the summer of 2018. She caught up in her rent in September and October after she was recalled to work and was not evicted for nonpayment. Testimony.

11. The Appellant was offered health insurance coverage by Employer No. 2, but she did not enroll in the employer's health plan due to its cost. Testimony and Exhibits 1, 3, and 6. See also Exhibit 8 (no payroll deduction for health insurance coverage in early 2019). I find that Employer No. 2 offered the Appellant health insurance coverage for the months of May and June for a \$178.45 per month employee-paid premium and again for the months of October, November and December for a \$183.82 per month employee-paid premium (total = 5 months of coverage offered). I base this finding on Exhibit 6 (2018 IRS Form 1095-C at line 15). See also Exhibit 7 (employee-paid \$82.36 deduction bi-weekly, or \$164.72 every four weeks).
12. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2018 Massachusetts income tax return.
13. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2018. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2018. (The DOR instructions are published online at <http://www.mass.gov/dor/2018ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2018.)

ANALYSIS AND CONCLUSIONS OF LAW

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

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

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

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

The evidence that the Appellant presented in this appeal shows that she was not able to afford health insurance in 2018.

Under the objective standards set for in DOR Tables 3 and 4 the Appellant could afford to pay \$105 per month for health insurance based on her income, while individual coverage would cost \$423 at her age and location in Massachusetts. See Findings of Fact, Nos. 6 and 7, above. More to the point, the Appellant also could not afford to pay the monthly premium that an employee had to pay under the health plan offered by Employer No. 2, which was substantially greater than the \$105 per month that the Appellant could afford to pay. See Findings of Fact, No. 11, above (approximately \$165 per month or more) Accordingly, it is appropriate to waive the entire penalty assessed by the DOR for 2018 because the Appellant could not afford to pay for health insurance while she worked for Employer No. 1, while she was in a waiting period for the coverage offered by Employer No. 2 to begin in May, while she was laid off for July, August, and September, or for the remainder of 2018. See Mass. Gen. Laws c. 111M, sec. 2 (a), above.

In addition, I note that the Appellant fell behind in her rent payments due to the summer lay off in her school bus driver job. Accordingly, she is also entitled to relief under the Health Connector’s financial hardship regulation. See, e.g., 956 Code Mass. Regs. 6.08 (1) (a).

For the foregoing reasons, I waive the entire 12 month penalty assessed for 2018. The Appellant should not assume that tax penalties will similarly be waived for future years and should take appropriate steps concerning her health insurance situation. See my RECOMMENDATION below.

PENALTY ASSESSED

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

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

RECOMMENDATION. By the time that you receive this Decision upholding your 2018 penalty appeal it will be time to address your health insurance coverage for 2020. The Health Connector’s “open enrollment” period for 2020 coverage will begin on November 1, 2019. I suggest that you file an application in November, leaving you adequate time to provide additional information if requested. That way you will know if you are eligible for a subsidy to help you pay for health insurance next year. Even if you are not eligible for government-subsidized coverage you be able to compare health insurance plans available through the Health Connector and compare them to the health plans offered by your employer for 2020.

You can submit an application online at www.mahealthconnector.org or you can call Customer Service at 1-877-623-6765. Most local hospitals and community health plans will also help you with an application. The Health Connector’s website will also list sources for help.

You can also obtain assistance outside the government through Health Care For All, a private, non-profit organization. You can call the free consumer help line at 1-800-272-4232 or use the website at www.hcfama.org.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-312

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: August 1, 2019

Decision Date: September 6, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone, on August 1, 2019.

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

Exhibit 1: Notice of Hearing (6-19-19) (3 pages);

Exhibit 2: Information from Schedule HC TY 2018 (1 page);

Exhibit 3: Statement of Grounds for Appeal (3-25-19) (with letter and documents) (9 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, age 26 during 2018, from Norfolk County, filed single on the tax return with a family size of 1 (Exhibit 2).
2. Appellant had health insurance for April and May, and from July through December of 2018 but did not have health insurance for the remaining months of 2018 (Appellant's testimony, Exhibit 2).
3. Appellant's Federal Adjusted Gross Income for 2018 was \$34,350 (Exhibit 2).
4. Appellant thought he had health insurance for January through March through the employer, but when Appellant inquired, it was only dental. Appellant then enrolled in health insurance through

the Health Connector, but was late on a payment and therefore missed a month of insurance, but was back on insurance for July through December (Appellant's testimony, Exhibit 3).

5. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
6. Appellant could not afford health insurance based on the tables in Schedule HC. According to Table 4, the health insurance would cost \$249 for an individual. According to Table 3, Appellant was deemed to afford \$143.
7. Private insurance was not affordable for the Appellant in 2018 (Schedule HC for 2018).
8. Appellant indicated that he believed he had health insurance for January through March, and that he had health insurance for April and May, and for July through December. Appellant provided a copies of the 1099-HC's confirming that he had the insurance in the months he stated (Testimony of Appellant, Exhibit 3).
9. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2018 (Testimony of Appellant).
10. Appellant did not fall more than thirty days behind in rent payments in 2018. He did not receive any shut-off notices for basic utilities (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

Appellant had health insurance for April and May, and for July through December of 2018, but did not have health insurance for the remaining months of 2018. He has been assessed a tax penalty for four months. He appealed the assessment. See Exhibits 2 and 3. It would appear that the penalty should have been only for one month, as Appellant was without insurance for only four months, and, with a three-month grace period, that would result in only one-month penalty. To determine if the penalty should be waived in whole or in part, we must consider whether affordable insurance which met

minimum creditable coverage standards was available to the appellant through employment, through the private market, or through a government-sponsored program. If affordable insurance was available, we must determine if such insurance was, in fact, not affordable to the appellant because she experienced a financial hardship as defined in 956 CMR 6.08.

Private insurance was not affordable for the appellant during 2018. According to Tables 3 and 4 of the HC Schedule for 2018, Appellant, with an adjusted gross income of \$34,350 was deemed not to have been able to afford health insurance on the private market. According to Table 3, appellant could have afforded to pay \$143 per month; according to Table 4, Appellant, who was 26 years old in 2018, lived in Norfolk County and filed the 2018 Massachusetts taxes as single, would have had to pay \$249 per month for insurance on the private market. See CMR 6.05 (1)(2), Schedule HC Tables 3 and 4, and Exhibit 2.

Appellant had access to employer-sponsored health insurance but due to confusion on his part, he had cancelled the insurance through the employer. Appellant had insurance for April and May and for July through December of 2018 through the Health Connector, but did not have health insurance for the other four months of 2018. Therefore, it is necessary to determine for those months when Appellant did not have health insurance, whether one of the hardship categories would apply to allow Appellant a waiver of the penalty for those months when he did not have health insurance.

With regard to the hardship waiver of the penalty, Appellant claims that the “other” category applies in that the penalty was assessed due to an error in completing the tax return insofar as July through December were not checked as him having health insurance when he did have it (Appellant Testimony). With regard to the remaining month of penalty, Appellant claims that his lack of health insurance was due to a misunderstanding he had about whether he was covered. Given all of the circumstances of this case, the penalty is waived.

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

PENALTY ASSESSED

Number of Months Appealed: 4 Number of Months Assessed: 0

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-313

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: August 1, 2019

Decision Date: September 9, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone, on August 1, 2019.

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

- Exhibit 1: Notice of Hearing (6-19-19) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2018 (1 page);
- Exhibit 3: Statement of Grounds for Appeal (3-23-19) (with letter and documents) (13 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, age 33 during 2018, from Norfolk County, filed single on the tax return with a family size of 1 (Exhibit 2).
2. Appellant did not have health insurance for 2018 (Appellant's testimony, Exhibit 2).
3. Appellant's Federal Adjusted Gross Income for 2018 was \$32,571 (Exhibit 2).
4. Appellant received shut off notices every other month during 2018, and also almost had her car repossessed. She was working part-time during 2017 and some of 2018 while she attended school and that created financial hardship for her (Appellant's testimony, Exhibit 3).
5. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4

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

6. Appellant could not afford health insurance based on the tables in Schedule HC. According to Table 4, the health insurance would cost \$282 for an individual. According to Table 3, Appellant was deemed to afford \$135.
7. Private insurance was not affordable for the Appellant in 2018 (Schedule HC for 2018).
8. Appellant now has health insurance through the employer (Appellant Testimony).
9. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2018 (Testimony of Appellant).
10. Appellant did receive several shut-off notices for basic utilities (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

Appellant did not have health insurance for 2018. She has been assessed a tax penalty for twelve months. She appealed the assessment. See Exhibits 2 and 3. To determine if the penalty should be waived in whole or in part, we must consider whether affordable insurance which met minimum creditable coverage standards was available to the appellant through employment, through the private market, or through a government-sponsored program. If affordable insurance was available, we must determine if such insurance was, in fact, not affordable to the appellant because she experienced a financial hardship as defined in 956 CMR 6.08.

Private insurance was not affordable for the appellant during 2018. According to Tables 3 and 4 of the HC Schedule for 2018, Appellant, with an adjusted gross income of \$32,571 was deemed not to have been able to afford health insurance on the private market. According to Table 3, appellant could have afforded to pay \$135 per month; according to Table 4, Appellant, who was 33 years old in 2018, lived in Norfolk County and filed the 2018 Massachusetts taxes as single, would have had to pay \$282 per month for insurance on the private market. See CMR 6.05 (1)(2), Schedule HC Tables 3 and 4, and Exhibit 2.

Appellant had access to employer-sponsored health insurance but did not feel she could afford it. Therefore, it is necessary to determine whether one of the hardship categories would apply to allow Appellant a waiver of the penalty.

With regard to the hardship waiver of the penalty, Appellant claims that she received several shut-off notices, and that paying for health insurance would have caused a serious deprivation of food, shelter, clothing, and other necessities (Appellant Testimony, Exhibit 3). With regard to the serious deprivation category, Appellant's expenses for food, shelter, clothing and other necessities used all of the income. In addition, she received shut-off notices for several months. Further, Appellant now has health insurance through the employer. Given all of the circumstances of this case, the penalty is waived.

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

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-315

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: August 1, 2019

Decision Date: September 9, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone, on August 1, 2019.

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

- Exhibit 1: Notice of Hearing (6-19-19) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2018 (1 page);
- Exhibit 3: Statement of Grounds for Appeal (3-13-19) (4 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, age 43 during 2018, from Barnstable County, filed single on the tax return with a family size of 1 (Exhibit 2).
2. Appellant did not have health insurance for 2018 (Appellant's testimony, Exhibit 2).
3. Appellant's Federal Adjusted Gross Income for 2018 was \$50,904 (Exhibit 2).
4. Appellant had seasonal employment in the winter, and also paid child support.
5. Appellant was hospitalized for two weeks during 2018, and has significant debt (\$20,000) for out of pocket medical bills. Appellant does not claim the child as a tax dependent although he pays child support.

6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
7. Appellant could afford health insurance based on the tables in Schedule HC. According to Table 4, the health insurance would cost \$310 for an individual. According to Table 3, Appellant was deemed to afford \$341. However, if Appellant claimed the child as a dependent and filed as head of household, he would be deemed to afford \$316, and as head of household, the cost would be \$777.
8. Private insurance was affordable for the Appellant in 2018 (Schedule HC for 2018), but if the dependent is taken into account, private insurance was not affordable for Appellant in 2018.
9. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2018 (Testimony of Appellant).
10. Appellant did not receive several shut-off notices for basic utilities (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

Appellant did not have health insurance for 2018. He has been assessed a tax penalty for twelve months. He appealed the assessment. See Exhibits 2 and 3. To determine if the penalty should be waived in whole or in part, we must consider whether affordable insurance which met minimum creditable coverage standards was available to the appellant through employment, through the private market, or through a government-sponsored program. If affordable insurance was available, we must determine if such insurance was, in fact, not affordable to the appellant because he experienced a financial hardship as defined in 956 CMR 6.08.

Private insurance was affordable for the appellant during 2018. According to Tables 3 and 4 of the HC Schedule for 2018, Appellant, with an adjusted gross income of \$50,904 was deemed to have been able

to afford health insurance on the private market. According to Table 3, appellant could have afforded to pay \$341 per month; according to Table 4, Appellant, who was 43 years old in 2018, lived in Barnstable County and filed the 2018 Massachusetts taxes as single, would have had to pay \$310 per month for insurance on the private market. See CMR 6.05 (1)(2), Schedule HC Tables 3 and 4, and Exhibit 2. However, Appellant paid child support, and did not claim the child as a dependent. If Appellant claimed the child as a dependent, he would be deemed not to be able to afford health insurance. In that case, he would have been deemed to afford \$316 and it would have cost \$777 for head of household. Put another way, if the child support were deducted from his income, he would be deemed to afford \$296 per month and the cost would have been \$310. In either instance, Appellant could not afford health insurance in that instance.

Appellant had no access to employer-sponsored health insurance. Further, Appellant would not have qualified for health insurance under the ConnectorCare program. Given that the Appellant's income without the exception noted above would have allowed him to afford health insurance on the private market, it is necessary to determine whether one of the hardship categories would apply to allow Appellant a waiver of the penalty.

With regard to the hardship waiver of the penalty, Appellant claims that the paying for health insurance would have caused a serious deprivation of food, shelter, clothing, and other necessities (Appellant Testimony, Exhibit 3). With regard to the serious deprivation category, Appellant's expenses for food, shelter, clothing and other necessities used a substantial portion of the income. In addition, Appellant has significant debt for out of pocket health costs. It was impressed upon Appellant that having health insurance would have obviated the need for that debt, and that Appellant should immediately obtain health insurance. However, it is determined that imposing the penalty in these circumstances might further impede the Appellant's ability to obtain health insurance. It was stressed that if a waiver is allowed for this year, it would not necessarily apply to future years. Given all of the circumstances of this case, the penalty is waived.

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

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-316

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: August 1, 2019

Decision Date: September 9, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone, on August 1, 2019.

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

- Exhibit 1: Notice of Hearing (6-19-19) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2018 (1 page);
- Exhibit 3: Statement of Grounds for Appeal (3-25-19) (with documents) (8 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, age 34 during 2018, from Barnstable County, filed single on the tax return with a family size of 1 (Exhibit 2).
2. Appellant had health insurance for all of 2018 but did not receive the 1099-HC from MassHealth (Appellant's testimony, Exhibits 2, 3).
3. Appellant's Federal Adjusted Gross Income for 2018 was \$22,864 (Exhibit 2).
4. Appellant provided copies of the 1095-B showing health insurance coverage for January through August 2018, and the 1099-HC showing health insurance coverage for October through December of 2018. (Appellant's testimony, Exhibit 3).

5. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
6. Appellant could not afford health insurance based on the tables in Schedule HC. According to Table 4, the health insurance would cost \$282 for an individual. According to Table 3, Appellant was deemed to afford \$55.
7. Private insurance was not affordable for the Appellant in 2018 (Schedule HC for 2018).
8. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2018 (Testimony of Appellant).
9. Appellant did not fall more than thirty days behind in rent payments in 2018. She did not receive any shut-off notices for basic utilities (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

Appellant had health insurance for all of 2018 (not clear about September). She has been assessed a tax penalty for six months. She appealed the assessment. See Exhibits 2 and 3. It would appear that there should not have been a penalty in that Appellant was at most without insurance for one month which was within the three-month grace period.

Private insurance was not affordable for the appellant during 2018. According to Tables 3 and 4 of the HC Schedule for 2018, Appellant, with an adjusted gross income of \$22,864 was deemed not to have been able to afford health insurance on the private market. According to Table 3, appellant could have afforded to pay \$55 per month; according to Table 4, Appellant, who was 34 years old in 2018, lived in Barnstable County and filed the 2018 Massachusetts taxes as single, would have had to pay \$282 per month for insurance on the private market. See CMR 6.05 (1)(2), Schedule HC Tables 3 and 4, and Exhibit 2.

Appellant had health insurance for all but one month during 2018. Therefore, a penalty should not have been imposed.

Given all of the circumstances of this case, the penalty is waived.

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

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-317

Appeal Decision Appeal Denied

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: August 1, 2019

Decision Date: September 9, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone, on August 1, 2019.

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

- Exhibit 1: Notice of Hearing (6-19-19) (3 pages);
- Exhibit 2: Information from Schedule HC TY 2018 (1 page);
- Exhibit 3: Statement of Grounds for Appeal (3-22-19) (with letter) (4 pages).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, age 45 during 2018, from Plymouth County, filed single on the tax return with a family size of 1 (Exhibit 2).
2. Appellant had health insurance through the employer for January through May of 2018, but did not have health insurance for the remaining months of 2018 (Exhibit 2).
3. Appellant's Federal Adjusted Gross Income for 2018 was \$127,518.00 (Exhibit 2).
4. Appellant had health insurance available through the employer until she was laid off in May 2018, and she received a severance package at that time. (Appellant's testimony, Exhibit 3).
5. Appellant's father was hospitalized twice and Appellant cared for him which delayed the job search for a new job.

6. Appellant attempted to obtain health insurance through Mass Health but did not qualify due to the severance payments. Appellant looked into paying for health insurance through the Health Connector but was concerned about paying for it due to her unemployment.
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
8. Appellant could afford health insurance based on the tables in Schedule HC. According to Table 4, the health insurance would cost \$354 for an individual. According to Table 3, Appellant was deemed to afford \$855.
9. Private insurance was affordable for the Appellant in 2018 (Schedule HC for 2018).
10. Appellant's expenses for food, shelter, clothing and other necessities (and also including helping her father with \$200 per month) were approximately \$3,060.00 per month (\$36,720.00 per year). Appellant claimed that the a waiver was justified based on the "other" category for the reasons stated in paragraphs 5 and 6 above (Testimony of Appellant, Exhibit 3).
11. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2018 (Testimony of Appellant).
12. Appellant did not fall more than thirty days behind in rent payments in 2018. She did not receive any shut-off notices for basic utilities. (Testimony of Appellant).
13. Appellant now has health insurance through the Health Connector as of January 2019.

ANALYSIS AND CONCLUSIONS OF LAW

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

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

Appellant did have health insurance for January through May of 2018, but did not have health insurance for June through December of 2018. She has been assessed a tax penalty for four months. She appealed the assessment. See Exhibits 2 and 3. To determine if the penalty should be waived in whole or in part, we must consider whether affordable insurance which met minimum creditable coverage

standards was available to the appellant through employment, through the private market, or through a government-sponsored program. If affordable insurance was available, we must determine if such insurance was, in fact, not affordable to the appellant because she experienced a financial hardship as defined in 956 CMR 6.08.

Private insurance was affordable for the appellant during 2018. According to Tables 3 and 4 of the HC Schedule for 2018, Appellant, with an adjusted gross income of \$127,518.00 was deemed to have been able to afford health insurance on the private market. According to Table 3, appellant could have afforded to pay \$855 per month; according to Table 4, Appellant, who was 45 years old in 2018, lived in Plymouth County and filed her 2018 Massachusetts taxes as single, would have had to pay \$354 per month for insurance on the private market. See CMR 6.05 (1)(2), Schedule HC Tables 3 and 4, and Exhibit 2.

Appellant had access to employer-sponsored health insurance for the months that she had it in 2018. In addition, Appellant is deemed to afford health insurance on the private market. Therefore, it is necessary to determine, whether one of the hardship categories would apply to allow Appellant a waiver of the penalty for some or all of the months.

With regard to the hardship waiver of the penalty, Appellant's expenses for food, shelter, clothing, and other necessities (as well as helping her father) did not use most or all of the income during 2018. Appellant's expenses for those necessities used less than one-fourth of the Adjusted Gross Income. Therefore, Appellant has not demonstrated that paying for health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities. In addition, the "other" category does not justify a waiver in this instance. Based on this information, the penalty is not waived.

It is noted that Appellant does have health insurance as of January 2019.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-319

Appeal Decision: Appeal Granted

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: August 1, 2019

Decision Date: September 13, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant/husband appeared at the hearing, which was held by telephone, on August 1, 2019. The Appellant offered testimony under oath or affirmation. At the end of the hearing, the record was left open until September 2, 2019, for the Appellant to submit additional evidence. The Appellant did not submit additional evidence, and the record was closed on September 2, 2019.

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

- Exhibit 1: Appeal Case Information from 2018 Schedule HC (1 page)
- Exhibit 2: 3/10/19 Appeal (7 pages)
- Exhibit 3: 7/2/19 Hearing Notice (9 pages)

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellants appealed from the assessment of a twelve-month penalty for the Appellant/husband and a twelve-month penalty for his spouse on their 2018 joint income tax return, checking off "During 2018, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities," as the grounds for their appeal. (Exhibit 1)
2. The Appellants' filing status for 2018 was Married Filing Joint with one dependent. The Appellants resided in Bristol County in 2018. The Appellants' federal AGI in 2018 was \$49,252. The Appellants turned forty-four and forty years old in 2018. (Exhibit 1)
3. The Appellants have a 15-year old daughter. The Appellants have a second daughter who was in college in 2018. (Appellant's testimony)

4. The Appellants did not have health insurance coverage in 2018. The Appellants had coverage in 2017 through the Appellant/husband's employer. But their coverage had ended during the year, when he lost his job. (Appellant's testimony)
5. The Appellant/husband was employed part time, 20 to 32 hours a week during 2018. His employer did not offer health insurance coverage. (Appellant's testimony)
6. The Appellant sought and expected to find full-time employment throughout 2018 but was unsuccessful in his efforts. (Appellant's testimony)
7. The Appellants currently have health insurance coverage. (Appellant's testimony)
8. The Appellant/wife applied to the Health Connector for coverage in 2018, but they felt that they could not afford the coverage for which they qualified. (Appellant's testimony)
9. According to Table 2 of the Schedule HC 2018, the Appellants were eligible for government-subsidized insurance in 2018, since their AGI for 2018 was less than \$61,260 for a family of three.
10. According to Table 3, Affordability, of the Schedule HC 2018, based on their Married Filing Jointly with one dependent tax filing status and 2018 AGI, the Appellants could have afforded to pay up to 4.95 percent of income for health insurance in 2018, which calculates to a monthly premium of up to \$203.
11. The Appellants could not have afforded to pay \$203 for health insurance coverage in 2018. (Appellant's testimony)
12. According to Table 4, Premiums, of the Schedule HC 2018, the Appellants could have purchased individual health insurance coverage in the private market in 2018 at a monthly cost of \$777, based on their ages and county of residence in 2018.
13. The Appellants' monthly expenses for basic necessities in 2018 included: \$2,900, rent; \$400, electric; \$200, gas; \$80, water; \$224, cable/Internet; \$280, cell phones; \$100, household supplies; \$950/food; \$173, public transport; \$200, clothing; and, \$140, life insurance, for total of \$5,647 in monthly expenses. (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.

While government-subsidized health insurance coverage was available to the Appellants in 2018 for a monthly premium of as little as \$203, I find credible the Appellant's testimony that he made a good faith effort to obtain full-time employment and new employer-sponsored insurance in 2018 and that, in the meantime, the Appellants could not afford health insurance coverage for \$203 monthly. The Appellants' income during 2018 far exceeded their expenses for basic necessities during that time. Therefore, I conclude that the Appellants experienced a hardship in 2018 such that health insurance coverage was not affordable for them, under 956 CMR 6.08(1)(e).

Accordingly, the Appellants' two twelve-month penalties for 2018 shall be waived in full.

PENALTY ASSESSED

Number of Months Appealed: 24 Number of Months Assessed: 0

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-324

Appeal Decision: Appeal Approved in Part, Denied in Part

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: August 1, 2019

Decision Date: September 13, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on August 1, 2019. The Appellant offered testimony under oath or affirmation. At the end of the hearing, the record was left open until August 15, 2018, for the Appellant to submit additional documentary evidence, showing that she had applied for health insurance coverage through the Health Connector or MassHealth in 2018. The Appellant did not submit any additional evidence, and the record was closed on August 15, 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 2018 Schedule HC (1 page)
- Exhibit 2: 3/18/19 Appeal (5 pages)
- Exhibit 3: 6/19/19 Hearing Notice (3 pages)

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant appealed from the assessment of a twelve-month penalty on her 2018 income tax return. (Exhibit 1)
2. The Appellant's filing status in 2018 was Single with no dependents. The Appellant's federal AGI in 2018 was \$27,742. The Appellant resided in Middlesex County in 2018. The Appellant turned thirty-three years old in 2018. (Exhibit 1)
3. In her appeal, the Appellant did not indicate any grounds for her appeal. (Exhibit 2)
4. The Appellant lost her job and her health insurance coverage at the end of 2017, when her employer asked her for proof of residency and she was unable to provide it. (Appellant's testimony)
5. The Appellant was unemployed during the first three months of 2018. She worked part time from April to July 2018, and has worked full time since July 2018. (Appellant's testimony)

6. The Appellant did not have health insurance at any time during 2018. (Appellant’s testimony)
7. The Appellant has health insurance coverage currently and has had the coverage since the spring of 2019. (Appellant’s testimony)
8. According to Table 2 of the Schedule HC 2018, the Appellant was eligible for government-subsidized insurance in 2018, since her AGI for 2018 was less than \$36,180 for a family of one.
9. According to Table 3, Affordability, of the Schedule HC 2018, based on her 2018 AGI and Single tax filing status, the Appellant could have afforded to pay up to 4.2 percent of income for health insurance, which calculates to a monthly premium of up to \$97, for health insurance coverage in 2018.
10. The Appellant could have afforded to pay \$97 monthly for health insurance coverage in 2018. (Appellant’s testimony)

ANALYSIS AND CONCLUSIONS OF LAW

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

As the Appellant had health insurance coverage through her employer until the end of 2017, the Appellant had a three-month grace period, until April 1, 2018, to obtain new coverage. However, as she was unemployed for the first three months and was able to find only part-time employment from April to July 2018, the Appellant was not in a financial position to afford health insurance coverage at any price until she started full time employment at the end of July 2018. If the Appellant had sought coverage in August 2018, she would have found government-subsidized health insurance coverage available to her for a monthly premium of \$97. The Appellant admitted at the hearing that she could have afforded coverage at this cost after July 2018. I do not find credible the Appellant’s testimony that she submitted an application by fax to MassHealth and the Health Connector in 2018, since she could not recall when she had done so and did not respond to an open-record request for her to provide a copy of the faxed application.

Therefore, I conclude that the Appellant has established that health insurance that provided minimum creditable coverage was not affordable to her prior to August 2018 because she experienced a financial hardship, under 956 CMR 6.08(1)(e). However, the Appellant has failed to establish that such coverage was unaffordable for her after August 2018, under 956 CMR 6.08(1)(e).

Accordingly, the Appellant’s twelve-month penalty for 2018 shall be reduced to a five-month penalty.

PENALTY ASSESSED

Number of Months Appealed: 12 Number of Months Assessed: 5

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18346

Appeal Decision: The penalty is overturned in full

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: August 2, 2019

Decision Date: September 4, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on August 2, 2019. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

Exhibit 1: Appeal Case Information from Schedule HC 2018

Exhibit 2: Statement of Grounds for Appeal 2018 signed and dated by Appellant on March 14, 2019 with letter in support attached

Exhibit 3: Notice of Hearing sent to Appellant dated June 19, 2019 for August 2 2019 hearing

Exhibit 4: Appellant's 2018 Federal form 1095-C

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2018 Massachusetts tax return as a single individual with no dependents claimed, was 56 years old in 2018 (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Norfolk County in 2018. He have moved to the Commonwealth in October, 2017 from another state (Exhibit 1, Testimony of Appellant).
3. Appellant had a Federal adjusted gross income for 2018 of \$44,247. Appellant took a ten percent pay cut when he moved to the Commonwealth (Exhibit 1 and Testimony of Appellant).
4. The appellant had the same full-time job all of 2018. He was offered health insurance through his employment . The monthly premium for the appellant was \$203 until November, 2018 when the cost dropped to \$68. The appellant did not take the coverage when he started work in November, 2017, which was also when the open enrollment period for 2018 coverage (Testimony of Appellant).

5. Appellant was uninsured all of 2018 (Testimony of Appellant, Exhibit 1).
6. The appellant has been assessed a tax penalty for all of 2018. The appellant has appealed the assessment (Exhibits 1, 2).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
8. According to Table 3 of Schedule HC for 2018, the appellant with no dependents claimed with an adjusted gross income of \$44,247 could afford to pay \$280 per month for health insurance. According to Table 4, Appellant, 56 years old and living in Norfolk County, could have purchased insurance for \$423 per month for a plan for an individual. Insurance on the individual market was unaffordable for him (Schedule HC for 2018, Tables 3 and 4, Exhibit 1).
9. According to Table 2 of Schedule HC for 2018, Appellant earning more than \$36,180 per year, would have been ineligible for the ConnectorCare program based upon income (Table 2 of Schedule HC-2018, and Exhibit 1).
10. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2018 (Testimony of Appellant).
11. Appellant did not fall more than thirty days behind in rent payments in 2018 (Testimony of Appellant).
12. Appellant did not receive any shut-off notices for basic utilities in 2018 (Testimony of Appellant).
13. Appellant had the following monthly expenses for basic necessities in 2018: rent-\$1,200; heat and electricity-\$100; internet and telephone-\$160; food, household supplies, and personal care items-\$850; clothing-\$85; gas-\$150; car insurance-\$70. In addition, the appellant had to pay off a \$5,000 bank loan (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

45 CFR 155.410 and 420 provide for open enrollment periods during which individuals may enroll in health care plans and for special open enrollment periods when individuals may enroll outside of the open enrollment period if

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

The appellant had no health insurance in 2018. He has been assessed a twelve-month tax penalty. However, the appellant moved to Massachusetts in October, 2017. He is entitled to a three-month grace period after moving to the Commonwealth. His penalty for January should, therefore, be waived. We need to determine if the rest of the penalty should be waived or not. The appellant has appealed the assessment. See Exhibits 1, 2 and the testimony of the appellant which I find to be credible.

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

According to Table 3 of Schedule HC for 2018, the appellant with no dependents claimed with an adjusted gross income of \$44,247 could afford to pay \$280 per month for health insurance. According to Table 4, Appellant, 56 years old and living in Norfolk County, could have purchased insurance for \$3423 per month for a plan for an individual. Insurance on the individual market was unaffordable for him (Schedule HC for 2018, Tables 3 and 4, Exhibit 1).

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

Appellant had affordable health insurance which met the Commonwealth's standards through employment in 2018. He had the same job all year. He was offered health insurance as a benefit which would have cost the appellant \$203 a month. Appellant was deemed able to afford \$280 a month for coverage. See the testimony of the appellant which I find to be credible and Exhibit 4; Table 3 of Schedule HC 2018.

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

Appellant had the following monthly expenses for basic necessities in 2018: rent-\$1,200; heat and electricity-\$100; internet and telephone-\$160; food, household supplies, and personal care items-\$850; clothing-\$85; gas-\$150; car insurance-\$70. In addition, the appellant had to pay off a \$5,000 bank loan. See the testimony of Appellant which I find to be credible. If we consider that Appellant had to pay off the bank loan, he only had about \$3,200 a month before taxes to cover his other basic expenses. These came to about \$2,600 a month. State taxes alone would have come to about \$200. If we add in the cost of health insurance, \$203, and other taxes, Appellant would have had no disposable income left over and would not be able to cover some of his bills for basic necessities.

Based upon the facts summarized above, I determine that the appellant experienced a financial hardship in 2018 such that the cost of health insurance would have been unaffordable for him. See 956 CMR 6.08(3) which allows

the consideration of financial issues raised by the appellant when determining whether a financial hardship existed. See also 956 CMR 6.08(1)(e) which provides that if the cost of health insurance would caused the appellant to experience a serious deprivation of basic necessities, a financial hardship exists for the appellant.

Appellant's penalty is waived in its entirety.

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

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18353

Appeal Decision : Penalty waived in full

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: August 8, 2019

Decision Date: September 25, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on August 8, 2019. 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 29, 2019 to give the appellant time to submit additional evidence. A document was received by the hearing officer on August 22, 2019 from the appellant. This document has been marked as an exhibit and admitted in evidence. The record of this hearing is now closed.

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

Exhibit 1: Appeal Case Information from Schedule HC 2018

Exhibit 2: Statement of Grounds for Appeal 2018 signed and dated by Appellant on March 22, 2019 with letter of support attached

Exhibit 3: Notice of Hearing sent to Appellant dated July 1, 2019 for hearing on August 8, 2019

Exhibit 4: Appellant's Form MA 1099-HC for 2018

Exhibit 5: Appellant's Form MA1095-C, 2018

Exhibit 6: Summary of Benefits and Coverage for Appellant's parents' health plan, 2018

FINDINGS OF FACT:

The record shows, and I so find:

1. The appellant was 26 years old in 2018. She filed a 2018 Massachusetts tax return as a single individual with no dependents claimed (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Suffolk County, MA in 2018 (Exhibit 1).
3. Appellant had a Federal Adjusted Gross Income of \$26,546 in 2018. She was a graduate student from January through May when she graduated. She had no income during these months. After she graduated, she got a job and earned all of her reported income from June through December (Testimony of Appellant, Exhibit 1).

4. In 2018, Appellant had health insurance under her parents' out-of-state plan from January through June when she turned 26 years old (Testimony of Appellant, Exhibit 5).

5. Appellant obtained her own coverage from June through December which met the Commonwealth's minimum creditable coverage standards (Testimony of Appellant, Exhibit 4)

6. The health insurance coverage Appellant had from January through June substantially met the Massachusetts minimum creditable coverage standards. The plan had very broad coverage 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, family planning services, substance abuse care, maternity care, home health care, and other services such as rehabilitation services. The annual deductible was \$2,000 for an individual and \$4,000 for family. The out-of-pocket limit for the plan was \$5,500 for an individual and \$11,000 for a family. There was no lifetime coverage limit (Testimony of Appellant, Exhibit 6).

7. The appellant had insurance has been assessed a penalty for two months., January and February. Appellant has appealed this assessment. (Exhibits 1 and 2, Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

Appellant had health insurance under her parents' out-of-state plan from January through June when she turned 26 years old. She was a student through May, 2018. After she graduated, she obtained employment and in-state insurance which met the Commonwealth's minimum creditable standards. Appellant has been assessed a penalty for January and February only since she is entitled to a three-month grace period prior to obtaining coverage. The appellant has appealed the penalty. See Exhibits 1, 2, 4, and 5. 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 from January through June substantially met the Commonwealth's minimum creditable coverage standards as set out in 956 CMR 5.00 et. seq.

The health insurance coverage Appellant had from January through June substantially met the Massachusetts minimum creditable coverage standards. The plan had very broad coverage 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, family planning services, substance abuse care, maternity care, home health care, and other services such as rehabilitation services. The annual deductible was \$2,000 for an individual and \$4,000 for family. The out-of-pocket limit for the plan was \$5,500 for an individual and \$11,000 for a family. There was no lifetime coverage limit. See Exhibit 6.

I determine that the health insurance coverage that Appellant had from January through June substantially met the Commonwealth's minimum creditable coverage standards. The coverage was comprehensive. 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: 2 Number of Months Assessed: 0

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18357

Appeal Decision: The penalty is overturned in full

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: August 8, 2019

Decision Date: September 19, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on August 8, 2019. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

Exhibit 1: Appeal Case Information from Schedule HC 2018

Exhibit 2: Statement of Grounds for Appeal 2018 signed and dated by Appellant on March 24, 2019 with letter in support attached

Exhibit 3: Notice of Hearing sent to Appellant dated July 1, 2019 for August 8, 2019 hearing

Exhibit 4: Letter to Appellant dated June 12, 2018, offer of employment

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2018 Massachusetts tax return as a single individual with no dependents claimed, was 28 years old in 2018 (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Middlesex County in 2018 (Exhibit 1, Testimony of Appellant).
3. Appellant had a Federal adjusted gross income for 2018 of \$44,283 (Exhibit 1 and Testimony of Appellant).
4. The appellant had a full-time job in a retail shop from some time in 2018 until the end of June, 2018. He earned \$15.00 an hour, or about \$2,500 a month. He was offered health insurance through his employment. He did not opt for the coverage in 2017 when he started work or in 2018. Appellant does not remember the cost of the coverage (Testimony of Appellant).
5. On July 1, 2018, Appellant took a new job. He was paid \$24 an hour and received some overtime and commissions. He earned at the rate of \$50,000 a year, or about \$4,100 a month. He was offered health insurance at

this job, and he took the coverage. The effective start date of his coverage was October 1, 2018. Appellant still had this coverage as of the date of this hearing (Testimony of Appellant, Exhibit 1).

6. Appellant was uninsured from January through September, 2018 (Testimony of Appellant, Exhibit 1).

7. The appellant has been assessed a tax penalty for six month, from January through June, 2018. The appellant has appealed the assessment (Exhibits 1, 2).

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

9. According to Table 3 of Schedule HC for 2018, the appellant with no dependents claimed with an adjusted gross income of \$44,283 could afford to pay \$280 per month for health insurance. According to Table 4, Appellant, 28 years old and living in Middlesex County, could have purchased insurance for \$249 per month for a plan for an individual. Insurance on the individual market was affordable for him (Schedule HC for 2018, Tables 3 and 4, Exhibit 1).

10. According to Table 2 of Schedule HC for 2018, Appellant earning more than \$36,180 per year, would have been ineligible for the ConnectorCare program based upon income (Table 2 of Schedule HC-2018, and Exhibit 1).

11. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2018 (Testimony of Appellant).

12. Appellant did not fall more than thirty days behind in rent payments in 2018 (Testimony of Appellant).

13. Appellant received a termination notice for his internet service in 2018 (Testimony of Appellant).

14. Appellant had the following monthly expenses for basic necessities in 2018: rent-\$1,200; heat and electricity-\$100; internet and telephone-\$110; food, household supplies, and personal care items-\$1,200; clothing-\$100; transportation-\$300. In addition, the appellant paid between \$700 and \$800 a month for old credit card debt and gave his sister \$1,500 during the year in financial support (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

45 CFR 155.410 and 420 provide for open enrollment periods during which individuals may enroll in health care plans and for special open enrollment periods when individuals may enroll outside of the open enrollment period if they have a qualifying life event. Examples of a qualifying event include the loss of health insurance from a job, moving to the Commonwealth, moving outside of a health insurer's service area, loss of MassHealth, getting married, a change in household dependents, among other things. If an individual has a qualifying event, the individual may apply for coverage through the Connector within 60 days of the event, even outside of an open enrollment period. There is an exceptional circumstances exception. Examples of exceptional circumstances are given in the Centers for Medicare and Medicaid Services and for Consumer Information and Insurance Oversight Affordable Exchanges Guidance dated March 26, 2014. Examples listed are a natural disaster, or medical emergency.

The appellant had no health insurance from January through September in 2018. He has been assessed a six-month tax penalty (January through June) since he is entitled to a three-month grace period prior to his obtaining coverage on October 1, 2018. We need to determine if the penalty should be waived or not. The appellant has appealed the assessment. See Exhibits 1, 2 and the testimony of the appellant which I find to be credible.

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

According to Table 3 of Schedule HC for 2018, the appellant with no dependents claimed with an adjusted gross income of \$44,283 could afford to pay \$280 per month for health insurance. According to Table 4, Appellant, 28 years old and living in Middlesex County, could have purchased insurance for \$249 per month for a plan for an individual. Insurance on the individual market was affordable for him. See Schedule HC for 2018, Tables 3 and 4, Exhibit 1.

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

Appellant was also offered health insurance through the job he had from January through June. There is no evidence in the record, however, about this affordability of this coverage. See the testimony of the appellant which I find to be credible.

Regardless of the affordability of the coverage Appellant was offered through employment, Appellant had access to affordable coverage through the individual market. See above. Because of this, we next need to determine if he had a financial hardship such that the cost of purchasing health insurance would have caused him to experience a serious deprivation of basic necessities or some other financial hardship as defined in 956 CMR 6.08 (a), (b), (d), and or (e), and 6.08(3).

Appellant had the following monthly expenses for basic necessities in 2018: rent-\$1,200; heat and electricity-\$100; internet and telephone-\$110; food, household supplies, and personal care items-\$1,200; clothing-\$100; transportation-\$300. In addition, the appellant paid between \$700 and \$800 a month for old credit card debt and gave his sister \$1,500 during the year in financial support. See the testimony of Appellant which I find credible.

During the months for which the appellant has been assessed a penalty, he was earning \$15.00 an hour for a forty hour work week, or approximately \$2,500 a month gross. His expenses for basic necessities, even if we disregard his credit card debt, came to approximately \$3,000 a month. After paying for basic necessities, Appellant had no disposable income. In fact, he ran a deficit each month.

Based upon the facts summarized above, I determine that the appellant experienced a financial hardship in 2018 such that the cost of health insurance would have been unaffordable for him. See 956 CMR 6.08(1)(e) which provides that if the cost of health insurance would cause the appellant to experience a serious deprivation of basic necessities, a financial hardship exists for the appellant. In addition, Appellant received a termination notice for his internet service. Receiving a termination notice for a basic utility also constitutes a financial hardship. See 956 CMR 6.08(1)(b).

Appellant's penalty is waived in its entirety.

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

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18359

Appeal Decision: The penalty is overturned in full.

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: August 8, 2019

Decision Date: September 4, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on August 8, 2019. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

Exhibit 1: Appeal Case Information from Schedule HC 2018

Exhibit 2: Statement of Grounds for Appeal 2018 unsigned and undated with letter in support attached

Exhibit 3: Notice of Hearing sent to Appellant dated July 1, 2019 for August 8, 2019 hearing

Exhibit 4: Appellant's 2018 Schedule 4 from Federal tax return

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2018 Massachusetts tax return as a single person with no dependents claimed, was 27 years old in 2018 (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Hampden County in 2018 (Exhibit 1, Testimony of Appellant).
3. Appellant had a Federal adjusted gross income for 2018 of \$27,783 (Exhibits 1, and Testimony of Appellant).
4. Appellant was employed all year at the same job. She earned \$14.36 an hour during the day and \$12.00 an hour at night. She worked between 32 and 40 hours a week. Her income varied each month. She was not offered health insurance by her employer (Testimony of Appellant).
5. Appellant had no health insurance in 2018 (Testimony of Appellant, Exhibit 1).
6. The appellant has been assessed a tax penalty for all of 2018. Appellant has appealed the assessment (Exhibits 1 and 2).

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

8. According to Table 3 of Schedule HC for 2018, the appellant who filed her Massachusetts taxes as an individual with no dependents claimed with a Federal adjusted gross income of \$27,783 could afford to pay \$97 per month for health insurance. According to Table 4, Appellant, 27 years old and living in Hampden County, could have purchased insurance for \$249 per month for a plan for an individual. Insurance on the individual market was not affordable to the appellant (Schedule HC for 2018, Tables 3 and 4, Exhibit 1).

9. According to Table 2 of Schedule HC for 2018, Appellant earning less than \$36,180 per year, would have been eligible for the ConnectorCare program based upon income. She would also be eligible because she had no access to employer-sponsored coverage (Table 2 of Schedule HC-2018, Exhibit 1, 956CMR12.00et seq.).

10. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2018 (Testimony of Appellant).

11. Appellant did not fall more than thirty days behind in rent payments in 2018 (Testimony of Appellant).

12. Appellant did not receive any shut-off notices in 2018 (Testimony of Appellant).

13. Appellant's father passed away during 2018. Appellant contributed about \$300 for the funeral (Testimony of Appellant).

14. Appellant had the following monthly expenses for basic necessities in 2018: rent, including heat and electricity-\$500; phone-\$40; food and personal items-\$600; car insurance-\$80; gas-\$240; car payment-\$100; clothes-\$15; old credit card debt-\$139;. student loan payments-\$415. Appellant had \$700 in car repairs, and \$525 in dental expenses during the year (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

The appellant was assessed for a penalty for all of 2018. The appellant has appealed the assessment. Exhibits 1, 2.

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

According to Table 3 of Schedule HC for 2018, the appellant who filed her Massachusetts taxes as an individual with no dependents claimed with a Federal adjusted gross income of \$27,783 could afford to pay \$97 per month for health insurance. According to Table 4, Appellant, 27 years old and living in Hampden County, could have purchased insurance for \$249 per month for a plan for an individual. Insurance on the individual market would not have been affordable to the appellant. See Schedule HC for 2018, Tables 3 and 4, Exhibit 1.

Appellant was employed all year at the same job. She was not offered health insurance by her employer. See the testimony of the appellant which I find to be credible.

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

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

Appellant had the following monthly expenses for basic necessities in 2018: rent, including heat and electricity-\$500; phone-\$40; food and personal items-\$600; car insurance-\$80; gas-\$240; car payment-\$100; clothes-\$15; old credit card debt-\$139; student loan payments-\$415. Appellant had \$700 in car repairs, and \$525 in dental expenses during the year. See the testimony of Appellant which I find to be credible.

Based upon Appellant's adjusted gross income, she had income of about \$2,300 before taxes a month. Her monthly expenses, including car repairs dental expenses, and the contribution to her father's funeral, amounted to approximately \$2,250. Based upon these facts, I determine that the cost of purchasing health insurance would have caused the appellant to experience a serious deprivation of basic necessities. Pursuant to 956 CMR 6.08 (1)(e), and 6.08(3), the appellant had a serious financial hardship such that the cost of purchasing health insurance was not affordable for the appellant. After paying her expenses for basic necessities, and taking into account state and federal taxes, Appellant had no disposable income.

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

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

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

CC. Connector Appeals Unit

Hearing Officer

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18360

Appeal Decision: The penalty is overturned in full

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: August 8, 2019

Decision Date: September 25, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on August 8, 2019. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

Exhibit 1: Appeal Case Information from Schedule HC 2018

Exhibit 2: Statement of Grounds for Appeal 2018 signed and dated by Appellant on March 27, 2019 with letter in support attached

Exhibit 3: Notice of Hearing sent to Appellant dated July 1, 2019 for August 8, 2019 hearing

Exhibit 4: Appellant's 2018 request for Waiver to Purchase Health Insurance, signed by Appellant on May 31, 2018

Exhibit 5: June 14, 2018 letter to Appellant from Massachusetts Office of Patient Protection

Exhibit 6: Appellant's out-of-state electric bill dated September, 2018

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2018 Massachusetts tax return as a single individual with no dependents claimed, was 26 years old in 2018 (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Norfolk County in 2018 until some time in August when she moved out of the Commonwealth (Exhibits 1, 6, Testimony of Appellant).
3. Appellant had a Federal adjusted gross income for 2018 of \$47,847 (Exhibit 1 and Testimony of Appellant).
4. The appellant had a full-time job in 2018. In January, February, and part of March, she was paid at a rate of \$40,000 a year. In March, she received a significant raise (Testimony of Appellant).

5. Appellant had health insurance in 2017. In September, 2017, she moved. She did not get her bills for her premium payments, missed payments and had her coverage terminated. She did not find out that her coverage was terminated until early 2018 when she tried to see a doctor. After she realized she no longer had coverage, she called the Connector and was told she had to reapply (Testimony of Appellant, Exhibits 2, 5).
6. When Appellant tried to reapply, she had many technical problems finishing her application. She discovered that she had multiple accounts and, eventually, that her date of birth was incorrect in the Connector system. By the time, all of these issues were resolved, the open enrollment period was over and Appellant was told she could no longer apply. She was also told that she could apply for a waiver through the Office of Patient Protection. She did apply on May 31, 2018 and was granted a waiver. on June 14, 2018. She obtained coverage under her parent's plan for July and August, 2018 (Testimony of Appellant, Exhibits 1, 2, 4, and 5).
7. Appellant was uninsured from January through June, and September through December, 2018 (Testimony of Appellant, Exhibit 1).
8. The appellant has been assessed a tax penalty for four month, from January through March, and December, 2018. The appellant has appealed the assessment (Exhibits 1, 2).
9. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
10. According to Table 3 of Schedule HC for 2018, the appellant with no dependents claimed with an adjusted gross income of \$47,847 could afford to pay \$303 per month for health insurance. According to Table 4, Appellant, 26 years old and living in Norfolk County, could have purchased insurance for \$249 per month for a plan for an individual. Insurance on the individual market was affordable for her (Schedule HC for 2018, Tables 3 and 4, Exhibit 1).
11. According to Table 2 of Schedule HC for 2018, Appellant earning more than \$36,180 per year, would have been ineligible for the ConnectorCare program based upon income (Table 2 of Schedule HC-2018, and Exhibit 1).
12. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2018 (Testimony of Appellant).
13. Appellant did not fall more than thirty days behind in rent payments in 2018 (Testimony of Appellant).
14. Appellant did not receive any shut-off notices for basic utility services in 2018 (Testimony of Appellant).
15. Appellant had the following monthly expenses for basic necessities in 2018: rent-\$1,700 including heat and electricity; internet and telephone-\$75; food, household supplies, and personal care items-\$600; clothing-\$50; transportation-\$120; student loan payment-\$138 (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

45 CFR 155.410 and 420 provide for open enrollment periods during which individuals may enroll in health care plans and for special open enrollment periods when individuals may enroll outside of the open enrollment period if they have a qualifying life event. Examples of a qualifying event include the loss of health insurance from a job, moving to the Commonwealth, moving outside of a health insurer’s service area, loss of MassHealth, getting married, a change in household dependents, among other things. If an individual has a qualifying event, the individual may apply for coverage through the Connector within 60 days of the event, even outside of an open enrollment period. There is an exceptional circumstances exception. Examples of exceptional circumstances are given in the Centers for Medicare and Medicaid Services and for Consumer Information and Insurance Oversight Affordable Exchanges Guidance dated March 26, 2014. Examples listed are a natural disaster, or medical emergency.

In this matter, the appellant had no health insurance from January through June and from September through December. She has been assessed a four-month tax penalty (January through March and December) since she is entitled to three-month grace periods before and after obtaining coverage in July, 2018. Appellant moved from the Commonwealth some time in August. She lived out-of-state the rest of 2018. We need to determine if the penalty should be waived or not. The appellant has appealed the assessment. See Exhibits 1, 2 and the testimony of the appellant which I find to be credible.

Appellant’s penalty for December is waived. Pursuant to Massachusetts General Laws, Chapter 111M, Section 2, the penalty may be only to residents of Massachusetts. In December, Appellant resided out of the Commonwealth. See Exhibit 6 and the testimony of the appellant which I find to be credible.

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

According to Table 3 of Schedule HC for 2018, the appellant with no dependents claimed with an adjusted gross income of \$47,847 could afford to pay \$303 per month for health insurance. According to Table 4, Appellant, 26 years old and living in Norfolk County, could have purchased insurance for \$249 per month for a plan for an individual. Insurance on the individual market was affordable for her. See Schedule HC for 2018, Tables 3 and 4, Exhibit 1. In this case, Appellant thought she had coverage through the Connector. She had health insurance in 2017. In September, 2017, she moved. She did not get her bills for her premium payments, missed payments and had her coverage terminated. She did not find out that her coverage was terminated until early 2018 when she tried to see a doctor. After she realized she no longer had coverage, she called the Connector and was told she had to reapply.

When Appellant tried to reapply, she had many technical problems her application. She discovered that she had multiple accounts and, eventually, that her date of birth was incorrect in the Connector system. By the time, all of

these issues were resolved, the open enrollment period was over and Appellant was told she could no longer apply. She was also told that she could apply for a waiver through the Office of Patient Protection. She did apply and was granted a waiver. She was then able to obtain coverage through her parent's plan for July and August, 2018. See the testimony of Appellant which I find to be credible, and Exhibits 2, 4, and 5.

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

Based upon the facts summarized above, I determine that Appellant's penalty for January through March should be waived. Appellant, as soon as she realized as had no coverage made serious attempts to obtain coverage, including applying for a waiver through the Office of Patient Protection which allowed her to obtain insurance outside of the open enrollment period. She obtained coverage for July and August, 2018 when she then left the Commonwealth. See the testimony of the appellant which I find to be credible and Exhibits 4, 5, and 6.

I also note that the cost of coverage through the individual market, approximately \$250 a month, would not have been affordable for the appellant pursuant to 956 CMR 6.08(1)(e). This regulation provides that if the cost of purchasing health insurance would have caused her to experience a serious deprivation of basic necessities, the appellant had a financial hardship, making the cost of coverage unaffordable. During January through March, Appellant earned at the rate of \$40,000 a year, or about \$3,500 before taxes a month. Her expenses amounted \$2,800 a month. With the addition of \$250 for the cost of insurance and taxes, Appellant would have been left with no disposable income and probably ran a deficit. See Exhibit 1 and the testimony of the appellant which I find to be credible.

Appellant's penalty is waived in its entirety.

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

PENALTY ASSESSED

Number of Months Appealed: 4 Number of Months Assessed: 0

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: 18-364

Appeal Decision: Appeal Approved

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: August 13, 2019

Decision Date: September 3, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone, on August 13, 2019. The procedures to be followed during the hearing were reviewed with Appellant. 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 2, 2019
- Exhibit 2: Appeal Case Information Sheet from Schedule HC 2018
- Exhibit 3: Statement of Grounds for Appeal 2018 signed by Appellant on March 12, 2019
- Exhibit 4: Statement in Support of Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 44 years old in 2018. Appellant filed a 2018 Massachusetts tax return as single, with no dependents claimed (Exhibit 2).
2. Appellant lived in Middlesex County, MA in 2018 (Exhibit 2).
3. Appellant's Adjusted Gross Income for 2018 was \$39,906 (Exhibit 2).
4. Appellant's job did not offer employer sponsored health insurance (Testimony of Appellant).
5. Appellant looked at the Health Connector for health insurance, but Appellant did not sign up due to the expense (Testimony of Appellant).
6. Appellant worked at a job where the hours were sporadic and seasonal (Testimony of Appellant).

7. Appellant struggled to pay for basic expenses when Appellant was not working or working only a few hours per week (Testimony of Appellant).
8. Appellant has incurred debt to family and friends in order to pay for basic expenses during times when Appellant was not working (Testimony of Appellant).
9. Appellant has incurred debt to family in order to pay for medical and dental expenses (Testimony of Appellant).
10. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
11. According to Table 3 of Schedule HC for 2018 a person filing as single with no dependents with an adjusted gross income of \$39,906 could afford to pay \$248 per month for private insurance. According to Table 4, Appellant, aged 44 and living in Middlesex County could have purchased private insurance for \$310 per month.
12. Private insurance was not considered affordable for Appellant in 2018.
13. According to Table 2 of Schedule HC for 2018, Appellant, earning more than \$36,180, would not have met the income eligibility guidelines for government subsidized insurance.
14. Appellant was assessed a penalty for twelve months for 2018 (Exhibit 2).
15. Appellant filed an appeal on February 25, 2019, claiming that the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities (Exhibit 3).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

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

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

During 2018, Appellant did not have access to employer sponsored health insurance. Private health insurance was not considered affordable for Appellant. Appellant was not income eligible for government subsidized health insurance. See Schedule HC for Healthcare, Tables 2, 3, and 4 and Testimony of Appellant, which I find to be credible.

I find that affordable health insurance was not available to Appellant in 2018. I find that the penalty should be waived in full.

PENALTY ASSESSED

Number of Months Appealed: 12

Number of Months Assessed: 0

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-367

Appeal Decision: Appeal Approved
Hearing Issue: Appeal of the 2018 Tax Year Penalty
Hearing Date: August 13, 2019
Decision Date: September 3, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

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

- Exhibit 1: Notice of Hearing sent to Appellants dated July 2, 2019
- Exhibit 2: Appeal Case Information Sheet from Schedule HC 2018
- Exhibit 3: Statement of Grounds for Appeal 2018 signed by Appellants on March 15, 2019
- Exhibit 4: Statement in Support of Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 35 and Appellant Spouse was 27 years old in 2018. They filed a 2018 Massachusetts tax return as married filing jointly, with one dependent claimed (Exhibit 2).
2. Appellants lived in Bristol County, MA in 2018 (Exhibit 2).
3. Appellants' Adjusted Gross Income for 2018 was \$135,893 (Exhibit 2).
4. Appellant Spouse moved to Massachusetts in March 2018 (Testimony of Appellant Spouse).
5. Appellants were married in March 2018 (Testimony of Appellant Spouse).
6. Appellant was covered by employer sponsored health insurance for the entire year (Exhibit 2 and Testimony of Appellant).

7. Appellant's job offered coverage for spouses, but Appellant could not sign up Appellant Spouse until certain documents were provided for Appellant Spouse (Testimony of Appellant).
8. Appellant Spouse obtained the proper documents and Appellant Spouse was added to the employer sponsored health insurance in June 2018 (Exhibit 2 and Testimony of Appellant Spouse).
9. Appellant Spouse was assessed a penalty for two months for 2018. Appellant was not assessed a penalty (Exhibit 2).
10. Appellants filed an appeal on May 15, 2019 claiming that Appellant Spouse could not be added to employer sponsored health insurance until Appellant Spouse provided certain documents (Exhibits 3 and 4).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

Appellant Spouse moved to Massachusetts and married Appellant in March 2018. Appellant Spouse was covered by Appellant's employer sponsored health insurance beginning on June 2018. Appellant Spouse's obligation to be covered by health insurance did not begin until March 2018. Appellant Spouse was without health insurance for three months, with is within the grace period for obtaining health insurance. See Exhibits 2, 3 and 4 and Testimony of Appellant and Appellant Spouse, which I find to be credible.

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

PENALTY ASSESSED

Number of Months Appealed: 0/2

Number of Months Assessed: 0/0

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-369

Appeal Decision Appeal Denied

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: August 14, 2019

Decision Date: September 12, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on August 14, 2019.

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 2, 2019
- Exhibit 2: Appeal Case Information from form Schedule HC
- Exhibit 3: Statement of Grounds for Appeal, date March 11, 2019
- Exhibit 4: Written Statement of Appeal dated March 11, 2019

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is sixty-two years old and is single. She lives in Hamden County, Massachusetts.
2. Appellant works in the medical field.
3. Appellant had health insurance in 2018 for five months.
4. She does have health insurance in 2019.
5. Appellant works part-time and became unemployed in 2018. She could no longer afford health insurance due to her expenses. In addition, Appellant is diabetic, has high blood pressure and high cholesterol. Appellant did not experience homelessness, or a shut-off notice.
6. The Appellant's monthly expenses totaled \$2,032.00, consisting of rent \$750.00, cell phone \$225.00, car insurance \$219.00, car gas \$100.00, food \$400.00, credit card \$202.00, clothing \$100.00, toiletries \$36.00, IRS \$120.00.
7. The Appellant did submit a Statement of Grounds for Appeal-2018 under the grounds for Appeal, "During 2018, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities"
8. 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 2018. 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 2018.
9. 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 \$29,594.00 was less than \$36,180.00. The monthly premium for health insurance available on the private market in Hamden County for a 62 year old single person was \$423.00. The tables reflect that Appellant could afford \$103.57. 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-2018 under the grounds for Appeal, “During 2018, 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 2018, 150 percent of the FPL was \$18,090.00 for a single person with one dependent. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%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 2018 income was more than 150 percent of the FPL, making her potentially subject to an individual mandate penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to her in 2018. 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 2018 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$29,594.00 in 2018, 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 2018 Massachusetts Schedule HC, Appellant could afford to pay 103.57 monthly for health insurance. See 2018 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to her from the Premium Tables, at a cost of \$423.00 monthly for coverage. *Id.* at Table 4.

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

Appellant is deemed to afford \$103.57 for health insurance coverage because of her income. Private insurance in the market place was \$423.00 per month, which is more than she could afford. In addition, Appellant was laid off from work for part of the year. Appellant also had to pay for her own medication. On these facts, I find that Appellant has shown that she was precluded from purchasing affordable health insurance during 2018. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that she is Exempt from a tax penalty for her non-compliance with the individual mandate.

Accordingly, Appellant's appeal is **ALLOWED**, and the 2018 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 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-371

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: August 14, 2019

Decision Date: September 25, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on August 14, 2019. The record was kept open for the Appellant to provide proof of coverage in the State of New York.

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 2, 2019
- Exhibit 2: Appeal Case Information from form Schedule HC
- Exhibit 3: Statement of Grounds for Appeal, dated April 4, 2019
- Exhibit 4: Open record documents indicating Medicare coverage in the State of New York

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is twenty-six years old and is single. She lives in Middlesex County.
2. Appellant works in the Health care industry.
3. Appellant did have health insurance in 2018, except for February 2018. Appellant moved from New York to Massachusetts in August 2018, as shown in Exhibits three and four and Appellant's testimony. These documents indicate her residence in New York. She does have health insurance in 2019.
4. Appellant provided several proofs of her residence in New York.
5. The Appellant did submit a Statement of Grounds for Appeal-2018 under the grounds for Appeal, "Other. During 2018 you didn't reside in Massachusetts during your period of uninsurance".
6. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2018. 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 2018.

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellant did submit a Statement of Grounds for Appeal-2018 under the grounds for Appeal, "Other. During 2018 you didn't reside in Massachusetts during your period of uninsurance".

The Health Care Reform Act of 2006 requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage "so long as it is deemed affordable" under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). However, individuals with incomes up to 150 percent of the Federal Poverty

Level (“FPL”) are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 13-1, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2013-releases/tir-13-1.html>. For 2018, 150 percent of the FPL was \$24,030.00 for a single person with one dependent. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%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.*

Appellant provided proof that she did not reside in Massachusetts during her period of uninsurance in Massachusetts.

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).

Accordingly, I conclude that she is exempt from a tax penalty for her non-compliance with the individual mandate.

Accordingly, Appellant’s appeal is **ALLOWED**, and the 2018 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 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-377

Appeal Decision: Appeal Granted

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: August 15, 2019

Decision Date: September 18, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on August 15, 2019. The Appellant offered testimony under oath or affirmation. At the end of the hearing, the record was left open for the Appellant and the Health Connector to submit additional evidence. On August 19, 2019, the additional evidence was received, and the record was closed.

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

- Exhibit 1: Appeal Case Information from 2018 Schedule HC (1 page)
- Exhibit 2: 4/4/19 Appeal (7 pages)
- Exhibit 3: 7/2/19 Hearing Notice (3 pages)
- Exhibit 4: 2/6/18 MassHealth Notice of not qualifying for MassHealth benefits (2 pages)
- Exhibit 5: 2/6/19 Health Connector Notice of Eligibility Approval for ConnectorCare (3 pages)
- Exhibit 6: Undated Welcome Letter from BMC HealthNet Plan Community Alliance (1 page)
- Exhibit 7: Contact/Activity History from Salesforce (1 page)

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant appealed from the assessment of a six-month penalty on his 2018 income tax return, checking off "Other" on the appeal form as the grounds for his appeal. (Exhibit 1)
2. The Appellant's filing status for 2018 was Single with no dependents. The Appellant's federal AGI in 2018 was \$28,165. The Appellant resided in Bristol County in 2018. The Appellant turned forty-eight years old in 2018. (Exhibit 1)
3. The Appellant was insured throughout 2017 through the Health Connector. (Appellant's testimony)

4. In November 2017, at the start of open enrollment for 2018 coverage, the Appellant applied online to the Health Connector for coverage in 2018. (Appellant's testimony)
5. The Appellant had health insurance coverage during the first three months of 2018. (Exhibit 1; Appellant's testimony)
6. By letter dated February 6, 2018, MassHealth notified the Appellant that he did not qualify for MassHealth benefits. (Exhibit 4; Appellant's testimony)
7. By letter dated February 6, 2018, the Health Connector thanked the Appellant for submitting the proof needed and notified the Appellant that he qualified for ConnectorCare Plan Type 2B and for a special enrollment period until April 2, 2018, to enroll in a new plan. The letter stated that he needed to choose a plan and pay his first premium by February 23, 2018, to get coverage starting on March 1, 2018. (Exhibit 5; Appellant's testimony)
8. In response to the Health Connector's 2/6/18 letter, the Appellant enrolled in BMC HealthNet Plan Community Alliance, the same plan that he had in 2017. (Appellant's testimony)
9. By undated letter, the BMC HealthNet Plan Community Alliance welcomed the Appellant as a member with coverage effective 3/1/18 and enclosed his member ID card. The card did not have an expiration date on it. The letter also stated that the Appellant needed to show his MassHealth card in addition to his member card when seeking medical services. (Exhibit 6; Appellant's testimony)
10. In May 2018, the Appellant went for a doctor's appointment and showed his insurance card. Later that day, his doctor's office called him and said that his insurance card was not valid and that he did not have health insurance coverage. After doing some checking, the Appellant learned that his card had expired on March 31, 2018. (Appellant's testimony)
11. After learning that his coverage had expired, the Appellant called the Health Connector and explained what had happened. He was told that his special enrollment period had expired and that he would have to wait until the next open enrollment period to apply for coverage. (Appellant's testimony)
12. According to Table 2 of the 2018 Schedule HC, the Appellant was eligible for government-subsidized insurance in 2018, since his AGI for 2018 was less than \$36,180 for a family of one.
13. According to Table 3, Affordability, of the Schedule HC 2018, based on his 2018 AGI and Single tax filing status, the Appellant could have afforded to pay up to 4.2% percent of his income for health insurance in 2018, which calculates to a monthly premium of up to \$98 for coverage.
14. According to Table 4, Premiums, the Appellant could have purchased health insurance coverage in the private market in 2018 for \$354/monthly, based on his age and county of residence in 2018.

ANALYSIS AND CONCLUSIONS OF LAW

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

In this case, as the Appellant had health insurance coverage during the first three months of 2018, he had a three-month grace period, through June 2018, to obtain new coverage. I find credible the Appellant's testimony that he believed he had obtained health insurance for the rest of the year, when he enrolled in his former health plan, effective March 1, 2018, in response to the Health Connector's 2/6/18 eligibility approval letter. While this may have been wishful thinking on the part of the Appellant, it is understandable that he would have liked to keep a plan with which he was happy. Moreover, there was nothing in his plan's welcome letter or on his member card indicating that his coverage would terminate at the end of March. When the Appellant finally learned in May that his coverage had terminated, his special enrollment period had expired. At that point, the Appellant's only option was private insurance. However, at a monthly premium of \$354, private coverage was more than triple what the Appellant could afford to pay.

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

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

PENALTY ASSESSED

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

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-378

Appeal Decision: Appeal Granted

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: August 15, 2019

Decision Date: September 16, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on August 15, 2019. The Appellant offered testimony under oath or affirmation. At the end of the hearing, the record was closed.

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

Exhibit 1: Appeal Case Information from 2018 Schedule HC (1 page)

Exhibit 2: 4/2/19 Appeal (9 pages)

Exhibit 3: 7/2/19 Hearing Notice (3 pages)

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant appealed from the assessment of a four-month penalty on his 2018 income tax return, checking off "Other" on appeal form as the grounds for his appeal. (Exhibit 1)
2. The Appellant's filing status for 2018 was Single with no dependents. The Appellant's federal AGI in 2018 was \$50,558. The Appellant resided in Suffolk County in 2018. The Appellant turned thirty-eight years old in 2018. (Exhibit 1)
3. The Appellant had been employed for many years on a short-term, intermittent basis, working on projects until completion for different employers. As a result, his income had varied significantly from month-to-month and year-to-year. (Appellant's testimony)
4. The Appellant had health insurance through MassHealth during the first two months of 2018. His MassHealth coverage was terminated at the end of February 2018, after he had filed his 2017 tax return. MassHealth informed him that his tax return showed that his income was too high to qualify for MassHealth. (Appellant's testimony)

5. The Appellant was not working on a project at the time he learned that he had lost his insurance coverage, and he was not sure at that time what his income would be in 2018. He protested to MassHealth about their decision to end his coverage. MassHealth denied his appeal, stating that he had to submit proof of income. (Appellant’s testimony)
6. In the spring of 2018, the Appellant was struggling with getting enough intermittent work/projects to pay his bills. (Appellant’s testimony)
7. In July 2018, the Appellant got a job offer of full-time employment starting in late July with employer-sponsored health insurance coverage after a three-month waiting period. The Appellant accepted the position and enrolled in coverage, starting October 1, 2018. (Appellant’s testimony)
8. According to Table 2 of the 2018 Schedule HC, the Appellant was not eligible for government-subsidized insurance in 2018, since his AGI for 2018 was more than \$36,180 for a family of one.
9. According to Table 3, Affordability, of the Schedule HC 2018, based on his 2018 AGI and Single tax filing status, the Appellant could have afforded to pay up to 8.05 percent of his income for health insurance in 2018, which calculates to a monthly premium of up to \$339 for coverage.
10. According to Table 4, Premiums, the Appellant could have purchased health insurance coverage in the private market in 2018 for \$290/monthly, based on his age and county of residence in 2018.

ANALYSIS AND CONCLUSIONS OF LAW

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

I find credible the Appellant’s testimony that, due to the nature of his intermittent employment, he could not afford health insurance coverage after MassHealth terminated his coverage at the end of March 2018. While his intermittent employment in 2017 had been better than expected, apparently, resulting in his income no longer qualifying him for MassHealth in 2018, his intermittent employment in the first several months of 2018 was scarce. Although he was unsuccessful in convincing MassHealth of the change in his income during the first months of 2018, the Appellant took steps to find regular employment with steady income and employer-sponsored health insurance coverage and succeeded. However, during April, May, June and July 2018, when the Appellant was seeking this new employment, the Appellant could not have afforded health insurance coverage for \$339/ month or even \$290/month. It was only when the Appellant started in his new job in late July that he could afford to pay for the coverage offered by his new employer. The Appellant enrolled in this coverage as soon as he could.

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

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

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-379

Appeal Decision: Appeal Granted

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: August 15, 2019

Decision Date: September 20, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant/husband represented the Appellant/wife at the hearing, which was held by telephone, on August 15, 2019. The Appellant/husband offered testimony under oath or affirmation. At the end of the hearing, the record was left open for the Appellants to submit additional evidence. On August 23, 2019, the Appellants submitted additional evidence, and the record was closed.

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

- Exhibit 1: Appeal Case Information from 2018 Schedule HC (1 page)
- Exhibit 2: 4/5/19 Appeal (9 pages)
- Exhibit 3: 7/2/19 Hearing Notice (3 pages)
- Exhibit 4: USA Visa, issued 4/27/18 and expiring 9/22/18
- Exhibit 5: 7/16/18 Social Security Card
- Exhibit 6: Permanent Resident Card, resident since 7/4/18, expiring 7/4/28

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellants appealed from the assessment of a twelve-month penalty against the Appellant/wife on their 2018 income tax return. (Exhibit 1)
2. The Appellants' filing status for 2018 was Married Filing Jointly with two dependents. The Appellants' federal AGI in 2018 was \$39,151. The Appellant/husband resided in Barnstable County in 2018. The Appellant/wife started residing in Massachusetts in July 2018. (Exhibit 1; Exhibit 6)
3. The Appellant lived in Guatemala from January through June of 2018. (Exhibit 2)

4. The Appellant tried to obtain health insurance coverage soon after arriving in Massachusetts. She was told that she could not obtain coverage until she obtained a Social Security Number. (Testimony of Appellant's husband)
5. The Appellant applied for her SSN card immediately. The card was issued to her on July 16, 2018. The Appellant did not receive the card until after July 16, 2018. (Exhibit 5; Testimony of Appellant's husband)
6. The Appellant obtained health insurance coverage beginning in September 2018 and continuing for the rest of the year. (Exhibit 1; Testimony of Appellant's husband)

ANALYSIS AND CONCLUSIONS OF LAW

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

As the Appellant did not start residing in Massachusetts until July 2018, she was not required to have insurance up until that time, and she had a three-month grace period through October 2018 to obtain health insurance coverage. The Appellant sought coverage as soon as she could, following her move to the USA, and was able to get coverage in September 2018 that continued for the remainder of 2018.

Therefore, I conclude that the Appellant had health insurance coverage in 2018 that met the requirements of the individual mandate, under M.G.L c. 111M, Section 2.

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

PENALTY ASSESSED

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

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: 18-394

Appeal Decision: Appeal Approved

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: August 8, 2019

Decision Date: September 16, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone, on August 8, 2019. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified. At the end of the hearing the record was left open until August 22, 2019 so that Appellant could submit further documents regarding employer sponsored health insurance. Appellant did not submit any further documents and the record is now closed.

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

- Exhibit 1: Notice of Hearing sent to Appellant dated July 5, 2019
- Exhibit 2: Appeal Case Information Sheet from Schedule HC 2018
- Exhibit 3: Statement of Grounds for Appeal 2018 signed by Appellant on April 4, 2019
- Exhibit 4: Statement in Support of Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 30 years old in 2018. Appellant filed a 2018 Massachusetts tax return as single, with no dependents claimed (Exhibit 2).
2. Appellant lived in Worcester County, MA in 2018 (Exhibit 2).
3. Appellant's Adjusted Gross Income for 2018 was \$22,956 (Exhibit 2).
4. Appellant's job offered employer sponsored health insurance but Appellant did not provide any evidence of the details or the cost (Testimony of Appellant).

5. Appellant did not apply for the employer sponsored health insurance (Testimony of Appellant).
6. Appellant applied for MassHealth, but was denied (Testimony of Appellant).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
8. According to Table 3 of Schedule HC for 2018 a person filing as single with no dependents with an adjusted gross income of \$22,956 could afford to pay \$55 per month for private insurance. According to Table 4, Appellant, aged 30 and living in Worcester County could have purchased private insurance for \$249 per month.
9. Private insurance was not considered affordable for Appellant in 2018.
10. According to Table 2 of Schedule HC for 2018, Appellant, earning less than \$36,180, would have met the income eligibility guidelines for government subsidized insurance.
11. Appellant may have been blocked from purchasing government subsidized insurance if the cost of the employer sponsored health insurance was less than 9.56% of Appellant's Modified Adjusted Gross Income See Schedule HC for 2018.
12. Appellant struggled to pay for necessary expenses and Appellant lived with a family member to lessen the expenses (Testimony of Appellant).
13. Appellant had the following monthly expenses for basic necessities during 2018: rent \$500; food \$500; telephone \$115; clothing \$30; car payment \$300; car insurance \$123; gasoline \$108. The monthly expenses for basic necessities totaled \$1,676 (Testimony of Appellant).
14. Appellant was assessed a penalty for twelve months for 2018 (Exhibit 2).
15. Appellant filed an appeal on April 4, 2019, claiming that the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities (Exhibit 3).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

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

During 2018, Appellant had access to employer sponsored health insurance. Since Appellant did not provide information about the cost or details of the employer's insurance, a determination cannot be made as to whether the employer sponsored insurance was considered affordable for Appellant. Appellant was income eligible for government subsidized health insurance. However, if the employer sponsored insurance was less than 9.56 % of Appellant's Modified Adjusted Gross income, the employer sponsored insurance would have blocked Appellant's access to Advance Premium Tax Credits and government subsidized health insurance. Since Appellant did not provide information about the employer's health insurance, it is unknown if the employer sponsored health insurance would have blocked Appellant's purchase of government subsidized health insurance. See 956 CMR 6.00, 45CFR 155.305 (f)(1)(ii)(B), 26CFR 1-36B-2(c)(3)(v), Schedule HC for Healthcare and Testimony of Appellant, which I find to be credible.

Therefore, I cannot make a determination about whether affordable health insurance was available to Appellant in 2018. However given Appellant's income and expenses, I will find a hardship and waive the penalty for 2018.

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

PENALTY ASSESSED

Number of Months Appealed: 12

Number of Months Assessed: 0

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

ADDENDUM

Appellant is encouraged to immediately contact the Massachusetts Health Connector at 1 877 623-6765 to get information about subsidized health insurance. Appellant also should contact Appellant's

employer to get information about the available employer sponsored health insurance. If Appellant does not take these steps, Appellant may be penalized for not having health insurance in the future.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: 18-397

Appeal Decision: Appeal Approved

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: August 8, 2019

Decision Date: September 12, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone, on August 8, 2019. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified. At the end of the hearing the record was left open so that Appellant could submit further documents regarding employer sponsored health insurance. Appellant submitted a document on September 5, 2019. The document has been marked as Exhibit 4 and the record is now closed.

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

- Exhibit 1: Notice of Hearing sent to Appellant dated July 5, 2019
- Exhibit 2: Appeal Case Information Sheet from Schedule HC 2018
- Exhibit 3: Statement of Grounds for Appeal 2018 signed by Appellant on March 25, 2019
- Exhibit 4: Document regarding employer sponsored health insurance

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 27 years old in 2018. Appellant filed a 2018 Massachusetts tax return as Head of Household with two dependents claimed (Exhibit 2).
2. Appellant lived in Hampden County, MA in 2018 (Exhibit 2).
3. Appellant's Adjusted Gross Income for 2018 was \$55,787 (Exhibit 2).
4. Appellant's job offered employer sponsored health insurance (Testimony of Appellant).

5. Appellant did not sign up for the employer sponsored health insurance due to the cost (Testimony of Appellant).
6. Appellant's employer sponsored health insurance for 2018 would have cost \$264 per month. The health insurance met the Massachusetts creditable coverage standards (Exhibit 4)
7. Appellant applied for government sponsored health insurance but was denied (Testimony of Appellant).
8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
9. According to Table 3 of Schedule HC for 2018 a person filing as Head of Household with two dependents with an adjusted gross income of \$55,787 could afford to pay \$277 per month for private insurance. According to Table 4, Appellant, aged 27 and living in Hampden County could have purchased private insurance for \$249 per month.
10. Employer sponsored health insurance and private insurance were considered affordable for Appellant in 2018 (Schedule HC Health Care Tables 3 and 4).
11. Appellant was anticipating that Appellant would sign up for health insurance in 2019 (Testimony of Appellant).
12. Appellant had the following monthly expenses for basic necessities during 2018: rent \$1,165; utilities \$140; food \$578; supplies \$210; clothing \$100; car insurance \$200; gasoline \$260; student loans \$150; daycare \$1,906. The monthly expenses for basic necessities totaled \$4,709 (Testimony of Appellant).
13. Appellant was assessed a penalty for twelve months for 2018 (Exhibit 2).
14. Appellant filed an appeal on March 25, 2019, claiming that the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities (Exhibit 3).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

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

During 2018, Appellant had access to employer sponsored health insurance. The employer sponsored health insurance would have cost Appellant \$264 per month. Private insurance would have cost \$249 per month. According to Table 3 of Schedule HC for Healthcare, Appellant was considered able to afford to pay \$277 per month. Since Appellant potentially had access to affordable insurance, we need to consider whether Appellant experienced a financial hardship as defined by 956 CMR 6.08.

Appellant's monthly expenses were \$4,709. Appellant's income for 2018 was \$55,767 or \$4,647 per month. Purchasing health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities. See Testimony of Appellant, which I find to be credible and 956 CMR 6.08 (1) (e).

I find that the penalty should be waived in full.

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

PENALTY ASSESSED

Number of Months Appealed: 12

Number of Months Assessed: 0

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18407

Appeal Decision: The penalty is overturned in full.

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: August 13, 2019

Decision Date: September 30, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

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

Exhibit 1: Appeal Case Information from Schedule HC 2018

Exhibit 2: Statement of Grounds for Appeal 2018 signed and dated by Appellant on March 24, 2019 with a letter in support attached

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

Exhibit 4: Certificate of Release, Massachusetts Department of Correction, March 1, 2019

Exhibit 5: Connector Final Appeal Decision, Tax Year 2017 dated April 18, 2019

FINDINGS OF FACT

The record shows, and I so find:

1. Appellants, who filed a 2018 Massachusetts tax return jointly with no dependents claimed, were 38 and 30 years old in 2018 (Exhibit 1, Testimony of Appellant).
2. One of the appellants lived in Hampshire County in 2018. The other was incarcerated in a Massachusetts prison (Exhibits 1, and 5; Testimony of Appellant).
3. Appellants' Federal Adjusted Gross Income for 2018 was \$31,875 (Exhibit 1, Testimony of Appellant).
4. One of the appellants had health insurance which met the Commonwealth's minimum creditable coverage standards through her job. The other received health care provided by the Commonwealth while incarcerated (Testimony of Appellant, Exhibit 1).

5. The appellant who was incarcerated all of 2018 was released on March 1, 2019 (Testimony of Appellant, Exhibits 4 and 5).

6. One of the appellants has been assessed a penalty for all of 2018. The appellant has appealed this assessment (Exhibits 1, 2).

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

9. According to Table 3 of Schedule HC for 2018, the appellants with no dependents claimed with an adjusted gross income of \$31,875 could afford to pay \$115 per month for health insurance. According to Table 4, Appellants, age 38 and 30 and living in Hampshire County, could have purchased insurance for \$519 per month for a plan for a couple. Individual coverage would have cost \$260. Individual coverage was not affordable for the appellants in 2018 (Schedule HC for 2018).

10. According to Table 2 of Schedule HC for 2018, Appellants earning less than \$48,720 would have been eligible for the ConnectorCare program based upon income, but the appellant who needed coverage was incarcerated and, therefore, ineligible for the coverage (Exhibit 1, Table 2 of Schedule HC-2018; 45CFR 155.305(a)(2)).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived, either in whole or in part. One appellant has been assessed a tax penalty for all of 2018. Appellant has appealed the penalty. See Exhibits 1 and 2.

G.L. c. 111M, § 2, also called the “individual mandate,” requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable” under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for “each of the months” that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2010, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector’s regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08. Pursuant to 45 CFR 155.305 (a)(2), to be eligible for health insurance coverage through the Patient Protection and Affordable Care Act, an individual must not be incarcerated (other than incarceration pending the disposition of charges).

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

Because the appellant was incarcerated, he was ineligible for any coverage through the Connector, including ConnectorCare coverage. Coverage on the individual market would also have been unaffordable. According to Table 3 of Schedule HC for 2018, the appellants with no dependents claimed with an adjusted gross income of \$31,875 could afford to pay \$115 per month for health insurance. According to Table 4, Appellants, age 38 and 30 and living in Hampshire County, could have purchased insurance for \$519 per month. Even if we look at the monthly cost of insurance for the appellant who had no coverage, \$260, individual coverage was not affordable for

the appellant in 2018. Since Appellant was incarcerated, he was unemployed and had no access to coverage through employment. See Exhibits 4 and 5, the testimony of the appellant which I find credible, and Schedule HC for 2018.

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

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

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Hearing Officer

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18412

Appeal Decision: The penalty is overturned in full.

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: August 13, 2019

Decision Date: September 30, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

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

Exhibit 1: Appeal Case Information from Schedule HC 2018

Exhibit 2: Statement of Grounds for Appeal 2018 signed and dated March 15, 2019 with letter in support attached

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

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2018 Massachusetts tax return as a single person with no dependents claimed, was 60 years old in 2018 (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Barnstable County in 2018 (Exhibit 1, Testimony of Appellant).
3. Appellant had a Federal adjusted gross income for 2018 of \$20,549. In previous years, Appellant earned considerably more, over \$50,000. Her income dropped considerably in 2018. She worked as an independent contractor for the same company all year (Exhibits 1, 2, and Testimony of Appellant).
4. Appellant had health insurance through the Connector all of 2017. When she tried to keep the insurance, the Connector looked at her 2017 income and gave her quote for coverage that she felt she could not afford given the decrease in her earnings (Testimony of Appellant, Exhibit 2 attachment).
5. Appellant had no health insurance in 2018. The company she worked for did not offer health insurance as a benefit. Appellant obtained coverage as of January 1, 2019 (Testimony of Appellant, Exhibits 1, 2).

6. The appellant has been assessed a tax penalty for all of 2018. Appellant has appealed the assessment (Exhibits 1 and 2).

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

8. According to Table 3 of Schedule HC for 2018, the appellant who filed her Massachusetts taxes as an individual with no dependents claimed with a Federal adjusted gross income of \$20,549 could afford to pay \$49 per month for health insurance. According to Table 4, Appellant, 60 years old and living in Barnstable County, could have purchased insurance for \$423 per month for a plan for an individual. Insurance on the individual market was not affordable to the appellant (Schedule HC for 2018, Tables 3 and 4, Exhibit 1).

9. According to Table 2 of Schedule HC for 2018, Appellant earning less than \$36,180 per year, would have been eligible for the ConnectorCare program based upon income. She would also be eligible because she had no access to employer-sponsored coverage (Table 2 of Schedule HC-2018, Exhibit 1, 956CMR12.00et seq.).

10. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2018 (Testimony of Appellant).

11. Appellant did not fall more than thirty days behind in mortgage payments in 2018. Appellant owned her home, but had no mortgage payment (Testimony of Appellant).

12. Appellant did not receive any shut-off notices in 2018 (Testimony of Appellant).

13. Appellant had the following monthly expenses for basic necessities in 2018: mortgage-\$0.00; property taxes-\$266; homeowner's insurance-\$133; water and sewer-\$100; heat-\$75 on average; electricity-\$125 on average; phone and internet-about \$200; food and personal items-\$600; car insurance-\$70; gas-\$200; clothes-about \$350; student loan payments-\$386. Appellant spent \$1,500 for dental care and prescriptions during the year (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

health insurance which meets minimum essential coverage as defined in the Patient Protection and Affordable Care Act.

The appellant was assessed for a penalty for all of 2018. The appellant has appealed the assessment. Exhibits 1, 2. Appellant had health insurance through the Connector in December, 2017. Her penalty for January through March, 2018 is waived since she is entitled to a three-month grace period after she lost coverage. See cite above. To determine if the rest of the penalty should be waived in whole or in part, we must consider whether affordable insurance which met minimum creditable coverage standards was available to the appellant through employment, through the individual market, or through a government-sponsored program during the months the appellant was uninsured. If affordable insurance was available, we must determine if such insurance was, in fact, not affordable to the appellant because Appellant experienced a financial hardship as defined in 956 CMR 6.08.

According to Table 3 of Schedule HC for 2018, the appellant who filed her Massachusetts taxes as an individual with no dependents claimed with a Federal adjusted gross income of \$20,549 could afford to pay \$49 per month for health insurance. According to Table 4, Appellant, 60 years old and living in Barnstable County, could have purchased insurance for \$423 per month for a plan for an individual. Insurance on the individual market would not have been affordable to the appellant. See Schedule HC for 2018, Tables 3 and 4, Exhibit 1.

Appellant was employed as an independent contractor all year at the same job. She was not offered health insurance by her employer. See the testimony of the appellant which I find to be credible.

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

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

Appellant had the following monthly expenses for basic necessities in 2018: mortgage-\$0.00; property taxes-\$266; homeowner's insurance-\$133; water and sewer-\$100; heat-\$75 on average; electricity-\$125 on average; phone and internet-about \$200; food and personal items-\$600; car insurance-\$70; gas-\$200; clothes-about \$350; student loan payments-\$386. Appellant spent \$1,500 for dental care and prescriptions during the year. See the testimony of the appellant which I find credible.

Based upon Appellant's adjusted gross income, she had income of about \$1,700 before taxes a month. Her monthly expenses amounted to approximately \$2,450. Based upon theses facts, I determine that the cost of purchasing health insurance would have caused the appellant to experience a serious deprivation of basic necessities. Pursuant to 956 CMR 6.08 (1)(e),and 6.08(3), the appellant had a serious financial hardship such that the cost of purchasing health insurance was not affordable for the appellant. After paying her expenses for basic necessities, Appellant had no disposable income.

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

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

PENALTY ASSESSED

Number of Months Appealed: ___12___ Number of Months Assessed: ___0___

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

CC. Connector Appeals Unit

Hearing Officer

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18414

Appeal Decision: The penalty is overturned in full.

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: August 13, 2019

Decision Date: September 30, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

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

- Exhibit 1: Appeal Case Information from Schedule HC 2018
- Exhibit 2: Statement of Grounds for Appeal 2018 signed and dated April 7, 2019
- Exhibit 3: Notice of Hearing sent to Appellant dated July 8, 2019 for August 13, 2019 hearing
- Exhibit 4: 2018 Schedule HC, 3rd page, from Appellant's Massachusetts tax return
- Exhibit 5: 2017 Schedule HC, 1st page, from Appellant's Massachusetts tax return
- Exhibit 6: 2016 Schedule HC, 1st page, from Appellant's Massachusetts tax return
- Exhibit 7: Appellant's 2017 tax return summary
- Exhibit 8: 2014 Tax Year Final Appeal Decision, dated April 29, 2015

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2018 Massachusetts tax return as a single person with no dependents claimed, was 49 years old in 2018 (Exhibit 1, Testimony of Appellant).
2. Appellant lived in Hampshire County in 2018 (Exhibit 1, Testimony of Appellant).
3. Appellant had a Federal adjusted gross income for 2018 of \$22,406 (Exhibits 1, and Testimony of Appellant).
4. Appellant had the same job all of 2018. He earned \$11.00 an hour. He was not offered health insurance as an employment benefit (Testimony of Appellant).
4. Appellant had health insurance through the Connector all of 2017 (Testimony of Appellant).

5. Appellant had no health insurance in 2018. Appellant obtained coverage as of April 1, 2019 (Testimony of Appellant, Exhibit 1).
6. The appellant has been assessed a tax penalty for all of 2018. Appellant has appealed the assessment (Exhibits 1 and 2).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
8. According to Table 3 of Schedule HC for 2018, the appellant who filed his Massachusetts taxes as an individual with no dependents claimed with a Federal adjusted gross income of \$22,406 could afford to pay \$54 per month for health insurance. According to Table 4, Appellant, 49 years old and living in Hampshire County, could have purchased insurance for \$317 per month for a plan for an individual. Insurance on the individual market was not affordable to the appellant (Schedule HC for 2018, Tables 3 and 4, Exhibit 1).
9. According to Table 2 of Schedule HC for 2018, Appellant earning less than \$36,180 per year, would have been eligible for the ConnectorCare program based upon income. He would also be eligible because he had no access to employer-sponsored coverage (Table 2 of Schedule HC-2018, Exhibit 1, 956 CMR 12.00et seq.).
10. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2018 (Testimony of Appellant).
11. Appellant did not fall more than thirty days behind in rent payments in 2018 (Testimony of Appellant).
12. Appellant did not receive any shut-off notices in 2018 (Testimony of Appellant).
13. Appellant had the following monthly expenses for basic necessities in 2018: rent including heat-\$555; electricity-\$55 on average; phone-\$40; food and personal items-\$365; car insurance-\$60; gas-\$160; clothes-about \$75. Appellant gave his mother \$40 a month to help her pay her bills and he spent \$400 during the year on car repairs. He also had to pay the Federal Internal Revenue Service a \$300 refund because he received \$300 too much in advance premium tax credits (Testimony of Appellant, Exhibit 7).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

health insurance which meets minimum essential coverage as defined in the Patient Protection and Affordable Care Act.

The appellant was assessed for a penalty for all of 2018. The appellant has appealed the assessment. Exhibits 1, 2. Appellant had health insurance through the Connector in December, 2017. His penalty for January through March, 2018 is waived since he is entitled to a three-month grace period after he lost coverage. See cite above.

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

According to Table 3 of Schedule HC for 2018, the appellant who filed his Massachusetts taxes as an individual with no dependents claimed with a Federal adjusted gross income of \$22,406 could afford to pay \$54 per month for health insurance. According to Table 4, Appellant, 49 years old and living in Hampshire County, could have purchased insurance for \$317 per month for a plan for an individual. Insurance on the individual market would not have been affordable to the appellant. See Schedule HC for 2018, Tables 3 and 4, Exhibit 1.

Appellant was employed all year at the same job. He was not offered health insurance by his employer. See the testimony of the appellant which I find to be credible.

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

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

Appellant had the following monthly expenses for basic necessities in 2018: rent including heat-\$555; electricity-\$60 on average; phone-\$40; food and personal items-\$365; car insurance-\$60; gas-\$160; clothes-about \$75. Appellant gave his mother \$40 a month to help her pay her bills and he spent \$400 during the year on car repairs. He had no internet service. He also had to pay back the Internal Revenue Service \$300 because the advance premium tax credits he received were too great. See the testimony of the appellant which I find credible and Exhibit 7.

Based upon Appellant's adjusted gross income, he had income of about \$1,800 before taxes a month. He earned \$11.00 an hour. His monthly expenses amounted to approximately \$1,420. Based upon these facts, I determine that the cost of purchasing health insurance would have caused the appellant to experience a serious deprivation of basic necessities. Pursuant to 956 CMR 6.08 (1)(e),and 6.08(3), the appellant had a serious financial hardship such that the cost of purchasing health insurance was not affordable for the appellant. After paying his expenses for basic necessities and taxes, Appellant had little or no disposable income.

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

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

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

CC. Connector Appeals Unit

Hearing Officer

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-416

Appeal Decision: Penalty Overturned in Full

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: August 14, 2019

Decision Date: September 4, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant husband appeared at the hearing which was held by telephone on August 14, 2019 and testified under oath. The hearing record consists of his testimony and the following documents which were admitted into evidence without his objection:

Ex. 1—Statement of Grounds for Appeal—2018

Ex. 1A—2018 United Healthcare Medical Plan Summary

Ex. 2—Final Appeal Decision in PA17-391

Ex. 3—Appeal Case Information from Schedule HC ¹

Ex. 4—Notice of Hearing

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant husband is 47-years-old, the appellant wife is 43 -years-old, and they have two minor children. In 2018, they had health insurance provided through the husband's employer from January through August, and through the wife's employer from September through December. (Testimony, Ex. 2)
2. The appellant husband has been employed for several years by a company based in California which has an office in Massachusetts. Throughout the course of his employment, he and his family have been enrolled in employer provided health insurance which complied with Massachusetts minimum creditable coverage standards (MCC) until 2017. (Testimony)

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

3. The appellant husband and his family enrolled in employer health insurance for 2017. In the spring of 2018, the appellants were preparing their 2017 tax returns and realized that they had not received a Form 1099 HC from the husband's employer certifying whether he and his family had health insurance during the year. The husband determined that other employees in his office encountered the same situation. He spoke to the employer's human resources office and was advised that there was nothing the employer could do to remedy the situation for the 2017 or 2018 tax year, and that the problem would be addressed for 2019. The appellant was not advised at that time why the 2017 insurance was non-compliant. (Testimony)
4. The appellants were each assessed a twelve-month penalty for having non-compliant health insurance for the 2017 tax year and filed an appeal with the Health Connector. A hearing was held and the hearing officer overturned the penalties and concluded that the appellants were unaware of the compliance issue until it was too late to take any remedial action. The hearing officer further concluded that the appellants were insured for the whole year with coverage that provided a broad range of medical benefits as required by state standards. (Testimony, Ex. 2)
5. The appellant husband and his family enrolled in the same employer health insurance plan for 2018, and were unaware of any problems with their coverage until the issue with their 2017 tax returns arose in the spring of 2018. When the husband spoke with the employer's human resources department, the representative was unable to tell him why the plan did not comply with MCC standards, and advised him that there was nothing the employer could do to correct the deviations in their insurance until 2019. The husband later determined that the problem with the plan concerned the maximum out-of-pocket expenditures for a family which exceeded the allowable amount under state standards by \$500.00. (Testimony)
6. The appellant wife began a new job in September, 2018, and enrolled the family in employer health insurance for the remainder of the year which met MCC requirements. The family switched back to the husband's employer's health insurance for 2019 after ascertaining that the plan complied with state MCC standards. (Testimony, Ex. 3)
7. The appellant's health insurance plan offered the following benefits effective January 1, 2018: physician and specialty care services; preventive care; and emergency room, urgent care and virtual visits. The plan has an overall deductible of \$2250.00/person and \$4500.00/family for in-network providers and \$4500.00/person and \$9000.00/family for out-of-network providers. There is an out-of-pocket maximum per individual of \$4000.00 and per family of \$8000.00 for in-network providers, and \$8,000.00/individual and \$16,000.00/family for out-of-network providers. The plan has a \$3000.00/individual and \$6000.00/family out-of-pocket maximum for pharmacy purchases. (Ex. 1A) ²
8. Massachusetts MCC-compliant plans must provide the following coverage: ambulatory patient services, diagnostic imaging and screening procedures, emergency services, hospitalization, maternity and newborn care, medical/surgical care, mental health and substance abuse services, prescription drugs and radiation/chemotherapy. Annual deductibles cannot exceed \$2000.00 for an individual and \$4000.00 for a family for in-network services. Out-of-pocket spending for in-

² The summary does not cover diagnostic imaging and screening procedures, maternity and newborn care, or mental health and substance abuse services. Based on the appellant's testimony, those items were apparently not the source of the problem.

network covered services cannot exceed \$5000.00 for an individual and \$10,000.00 for a family. Prescription drug deductibles cannot exceed \$250.00 for an individual and \$500.00 for a family, and there can be no limits on prescription drug benefits and for the amount paid for a particular illness in a single year. See 956 CMR 5.03. <http://www.mass.gov/dor/tax-professionals/current-year-tax-information/health-care-faqs-for-insurance-carriers/general-questions.html>

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

ANALYSIS AND CONCLUSIONS OF LAW

Massachusetts General Laws c. 111M, section 2, also known as the “individual mandate”, requires every adult resident of the state to obtain health insurance coverage “[s]o long as it is deemed affordable” under the schedule set by the Board of Directors for the Commonwealth Health Insurance Connector Authority. Any health insurance policy must also satisfy the state minimum creditable coverage standards (MCC). Residents who do not obtain compliant insurance are subject to a tax penalty. The tax penalty was enacted by the Massachusetts Legislature to encourage compliance with the mandate that is part of the Health Care Reform Act of 2006.

The appellants submitted a statement of grounds for appeal (Ex. 1), claiming that the individual mandate did not apply to them in 2018 because they purchased health insurance that did not meet minimum creditable coverage standards since that is what the husband’s employer offered, and they felt that their circumstances prevented them from buying other insurance that met its requirements.

The appellants did not have MCC compliant insurance from January through August. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a tax penalty; for Tax Year 2018, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Since the appellants are considered to have been uninsured for eight months, they were assessed and are appealing a penalty of five months each (i.e. the months of uninsurance less the gap period of three months).

The appellant husband testified credibly that he has been employed for a number of years by the same out-of-state company and has always had employer provided health insurance that met state standards. He testified that in the course of preparing his 2017 tax returns in the spring of 2018, he realized that he had not received a Form 1099HC and after discussing the situation with the human resources department, determined that the employer’s health insurance did not comply with MCC requirements. He testified that he and his wife were each assessed a twelve month penalty for 2017 which they appealed. He testified that the penalties were ultimately overturned based on a finding that they were unaware that their plan was non-compliant. He testified that they remained enrolled in his employer’s plan until September when they were able to switch to his wife’s employer plan for the remainder of the year. Finally, he testified that he eventually determined that the reason his employer’s plan was non-compliant was because the maximum out-of-pocket expenditures for a family exceeded the allowable amount under state standards.

The appellant husband offered substantial and credible evidence which established that after being enrolled for many years in employer insurance which complied with state requirements, he discovered in the spring of 2018 while preparing his 2017 taxes, that his coverage for 2017 and 2018 did not meet state standards. By the time he became aware of the issue, it was too late for the employer to take any remedial action for 2018. Since his wife began a new job in September, the appellants were able to enroll in her employer's plan for the remainder of the year.

Based on the totality of the evidence, it is concluded that the appellants had no knowledge of the compliance issue until well into 2018, and they acted diligently to enroll in coverage which met state standards at the earliest opportunity. Furthermore, although their insurance deviated from state requirements in one small area, a review of the summary of benefits indicates that the plan offered comprehensive coverage and covered a "broad range of medical benefits" as specified in the Massachusetts regulations. The appellants' request for a waiver of the penalty is **granted** for the months in question. The determination that they are eligible for a waiver is with respect to 2018, only and is based upon the extent of information submitted by them in this appeal.

PENALTY ASSESSED

Number of Months Appealed (husband): 5 Number of Months Assessed (husband): 0
Number of Months Appealed (wife): 5 Number of Months Assessed (wife): 0

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-417

Appeal Decision: Penalty Overturned in Full

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: August 14, 2019

Decision Date: September 5, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on August 14, 2019 and testified under oath. The hearing record consists of his testimony and the following documents which were admitted into evidence without his objection:

Ex. 1—Statement of Grounds for Appeal—2018

Ex. 1A—2018 Form MA 1099-HC

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 29-years-old, is single and does not have children. In 2018, he had minimum creditable coverage (MCC) health insurance from January through September. (Testimony, Ex. 1A)
2. The appellant was employed from January through September at which time he was laid off from his position. Throughout the course of his employment, he had employer provided health insurance.(Testimony, Ex. 1A)
3. The appellant applied for health insurance through the Health Connector following his layoff, and was determined eligible for subsidized coverage effective January 1, 2019. He continued to be enrolled at the time of the instant hearing. (Testimony)

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

4. The appellant mistakenly indicated on his Schedule HC that he did not have health insurance for any month in 2018. (Testimony, Ex. 2)

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant submitted a statement of grounds for appeal (Ex. 1), claiming that the individual mandate did not apply to him during 2018, but did not check off a specific ground for the appeal. He had health insurance from January through September, but indicated on his Schedule HC that he was uninsured for the entire year. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a tax penalty; for Tax Year 2018, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Although the appellant was insured for nine months, he was assessed and is appealing a penalty of twelve months based on the information he provided on his Schedule HC.

The appellant submitted a Form MA 1099-HC with his appeal which indicated that he had MCC insurance from January through September. As such, the only remaining months in question are from October through December when he was uninsured. Since he enrolled in insurance beginning on January 1, 2019, he is entitled to the aforementioned three-month gap in coverage, and is therefore not subject to a penalty.

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

PENALTY ASSESSED

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-419

Appeal Decision: Penalty Overturned in Full

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: August 14, 2019

Decision Date: September 6, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on August 14, 2019, and testified under oath. The hearing record consists of the appellant's testimony and the following documents which were admitted into evidence without his objection:

Ex. 1—Statement of Grounds for Appeal—2018

Ex. 2—Appeal Case Information from Schedule HC ¹

Ex. 3—Notice of Hearing

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

Ex. 4— Employer Health Insurance Information Form for 2018

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is 55-years-old, is single, and has an adult child. In 2018, he resided in Bristol County. He had health insurance for the month of January, 2018. (Testimony, Ex. 2)
2. Prior to 2018, the appellant was never assessed a penalty for being uninsured or not having adequate health insurance. (Testimony)

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

3. The appellant had health insurance with MassHealth for the month of January, 2018. He believes that the insurance was terminated thereafter because he did not respond to a request for information from the Health Connector in a timely manner. (Testimony, Ex. 2)
4. The appellant was employed by a lawn company on a seasonal basis from April through November, 2018. The employer offered minimum creditable coverage (MCC) insurance for which the appellant could have enrolled from October 1, 2018 through October 31, 2018. The appellant's share of the premium for the lowest cost individual plan would have been \$244.94/month. He did not enroll because he determined that the cost was unaffordable. (Testimony, Ex. 4)
5. The appellant declared bankruptcy in the winter of 2018. (Testimony)
6. The appellant has been enrolled in subsidized health insurance through the Health Connector in 2019 and has been paying a monthly premium of approximately \$40.00. (Testimony)
7. The appellant reported an adjusted gross income of \$29,451.00 on his 2018 federal tax return, and reported that he was single with no dependents. (Ex. 2)
8. The appellant lived with his girlfriend in 2018 and shared some living expenses with her. In 2018, he had regular monthly expenses of approximately \$1582.00 for rent (\$875.00), heat (\$75.00), electricity (\$100.00), internet (\$100.00), cell phone (\$30.00), car and motorcycle insurance (\$42.00), food (\$200.00), and gasoline (\$160.00). (Testimony)

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

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant submitted a statement of grounds for appeal (Ex. 1), claiming that the individual mandate did not apply to him during 2018 because the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. He did not have insurance from February through December. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a tax penalty; for Tax Year 2018, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Since the appellant was uninsured for eleven months, he was assessed and is appealing a penalty of eight months (i.e. the months of uninsurance less the gap period of three months).

The appellant testified credibly that he had insurance through MassHealth for the month of January and it was terminated because he did not respond to a request for information from the Connector in a timely manner. He testified that he was employed on a seasonal basis from April through November and was eligible for employer health insurance, but did not enroll because of the cost. He testified that he declared bankruptcy in the winter of

2018. Finally, he testified that he has been enrolled in subsidized insurance through the Connector for approximately one year.

The evidence provided by the appellant established that his income for 2018, \$29,451.00, was less than 300% of the federal poverty level (FPL), which for 2018 was \$36,180.00 for a single person. Table 3 of the Affordability Schedule indicates that an individual filing separately with no dependents with a federal adjusted gross income between \$24,121.00 and \$30,150.00 is deemed to be able to afford a monthly premium of \$103.08 (4.20% of \$29,451.00/12). Table 4 of the Premium Schedule indicates that a 54-year-old individual (the appellant's age in 2018) in Bristol County (where the appellant resided in 2018) could have purchased private health insurance for \$411.00 per month, more than the monthly amount deemed affordable from Table 3. Thus, according to the foregoing analysis, the appellant could not have purchased affordable private health insurance in 2018.

Since the appellant's income was within 300% of the FPL, from February through September, 2018, and from November through December, when he did not have access to employer health insurance, the appellant should have qualified for subsidized health insurance through the Health Connector, assuming he met all other eligibility criteria, and for which he would have been subject to a subsidized premium of approximately \$103.08 per month, pursuant to the aforementioned Affordability Schedule in Table 3.

The next portion of the analysis typically examines whether the appellant had access to affordable employer health insurance. The information submitted by the employer indicated that the appellant would only have been eligible to enroll in employer insurance for the month of October. This response seems odd, and makes any further analysis relatively meaningless. Hence, it is concluded that the appellant simply did not have access to employer insurance in light of the fact that he only qualified for one month of insurance during his employment.

Even though subsidized 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 2018. Examples of hardships include being homeless or overdue in rent or mortgage payments, receiving a shut-off notice for utilities, or incurring unexpected increases in basic living expenses due to domestic violence, death of a family member, sudden responsibility for providing care for a family member or fire, flood or natural disaster. In addition, the appellant's tax penalty for 2018 could be waived if 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 he incurred basic monthly expenses of approximately \$1582.00 in 2018. Those expenses were less than his regular monthly pre-tax income of approximately \$2454.00 thereby making a subsidized health insurance premium through the Health Connector of \$103.08/month seemingly manageable. While it is recognized that an approximate difference between income and expenses of \$872.00 per month is not a panacea, it does not appear on its face that the payment of \$103.08/month for health insurance would have caused an undue hardship.

Based on the foregoing, it is concluded that the appellant could have afforded subsidized health insurance and failed to establish that he experienced a financial hardship that would entitle him to a waiver of the penalty. Notwithstanding this conclusion, the penalty will be waived for the following reasons. First, the appellant testified that he declared bankruptcy in the winter of 2018 which suggests that he underwent a significant amount of financial turmoil and hardship that the foregoing numbers do not reveal. Second, the appellant has been enrolled in health insurance since the beginning of 2019 thereby demonstrating that the mandate to obtain insurance has not been lost on him.

Therefore, based upon the totality of the evidence, it is concluded that the appellant's request for a waiver from the penalty is **granted** for the months in question. The determination that the appellant is eligible for a waiver is with respect to 2018, only and is based upon the extent of information submitted by him in this appeal.

PENALTY ASSESSED

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-420

Appeal Decision: Penalty Overturned in Full

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: August 14, 2019

Decision Date: September 7, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on August 14, 2019, and testified under oath. The hearing record consists of the appellant's testimony and the following documents which were admitted into evidence without his objection:

- Ex. 1—Statement of Grounds for Appeal-2018
- Ex. 1A—Letter from the appellant, undated
- Ex. 1B—Final Appeal Decision in PA17-717
- Ex. 1C—Final Appeal Decision in PA15-563
- 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 63-years-old, is married, and does not have children. In 2018, he resided in Worcester County, MA. The appellant did not have health insurance in 2018. (Testimony, Ex. 2)
2. The appellant's wife, aged 52-years-old, is disabled and receives social security disability benefits. In 2018, she had health insurance through Medicare. (Testimony)
3. The last time the appellant had health insurance prior to 2018 was from January through May of 2017 through the Health Connector. He was assessed a penalty of four months for the remaining months he

¹ Ex. 2 is a computer printout that extracts information submitted by the appellant and his wife on Schedule HC as part of their 2018 Massachusetts income tax return. It also contains information about prior appeals, if any.

was uninsured and filed an appeal with the Health Connector. Following a hearing, the hearing officer overturned the penalty on the grounds that although private health insurance was affordable, he experienced financial circumstances that would have caused a serious deprivation of basic necessities. (Testimony, Ex. 1B)

4. The appellant and his wife did not have health insurance in 2015 and were each assessed a twelve-month penalty. They filed an appeal with the Health Connector, and the penalty was overturned following a hearing. The hearing officer concluded that they had suffered extreme hardship for several years, and that the expense of health insurance would have caused a serious deprivation of food, shelter, and clothing. (Testimony, Ex. 1C)
5. The appellant was employed by a restaurant on a seasonal basis from May through October, 2018. The employer did not offer health insurance. He picked up another job in November, 2018, but was subject to a 90-day waiting period before becoming eligible for health insurance. He broke his ankle while at work and was unable to continue working. He received unemployment insurance benefits from January through May, 2019. (Testimony)
6. The appellant investigated health insurance options for 2018 and determined that any premium was beyond his means. (Testimony)
7. The appellant and his wife reported an adjusted gross income of \$25,885.00 on their jointly filed 2018 federal tax return, and reported that they were married with no dependents. Of that amount, the appellant earned approximately \$15,000.00 and received an additional \$3600.00 in unemployment benefits. (Ex.1A, 2)
8. In 2018, the appellant and his wife had regular monthly expenses of approximately \$2242.00 for their rent (\$462.00), heat (\$72.00), electricity (\$207.00), cable and internet package (\$211.00), renter's insurance (\$59.00), automobile payment (\$335.00), automobile insurance (\$146.00), gasoline (\$150.00), and food (\$600.00). In addition, he paid approximately \$828.00/month for credit card debt. (Testimony)

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

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant submitted a statement of grounds for appeal (Ex. 1), claiming that the individual mandate did not apply to him during 2018 because the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. He also submitted a letter (Ex. 1A) with his statement in which he stated in part that it is a struggle to survive and pay bills. He further stated that he is waiting to go back to work this fall and hopes to be able to afford his employer's 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 2018, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Since the appellant was uninsured for the entire year, he was assessed and is appealing a penalty of twelve months.

The appellant testified credibly that he was employed by a restaurant on a seasonal basis from May through October and the employer did not offer health insurance. He testified that he picked up another job in November, but was subject to a 90-day waiting period before becoming eligible for health insurance. He testified that he broke his ankle at work, and was unable to continue working. He testified that he received unemployment insurance benefits from January through May, 2019. Finally, he testified that he investigated health insurance options for 2018 and determined that any premium was beyond his means.

The evidence provided by the appellant established that his joint income for 2018, \$25,885.00, was less than 300% of the federal poverty level, which for 2018 was \$48,720.00 for a two-person family. Table 3 of the Affordability Schedule indicates that a married person filing jointly with no dependents with a federal adjusted gross income between \$24,361.00 and \$32,480.00 is deemed to be able to afford a monthly premium of \$93.83 (4.35% of \$25,885.00/12). Table 4 of the Premium Schedule indicates that a 51-year-old individual (the appellant's wife's age and the younger of the two in 2018) in Worcester County (where the appellant resided in 2018) could have purchased private health insurance for \$822.00 per month, more than the monthly amount deemed affordable from Table 3. Thus, according to the foregoing analysis, the appellant could not have purchased affordable private health insurance in 2018.

Since the appellant's income was within 300% of the FPL, he should have qualified for subsidized health insurance through the Health Connector, assuming he met all other eligibility criteria, and for which he would have been subject to a subsidized premium of approximately \$93.83 per month, pursuant to the aforementioned Affordability Schedule in Table 3.

Even though subsidized health insurance may have been affordable to the appellant under the law, 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 2018. Examples of hardships include being homeless or overdue in rent or mortgage payments, receiving a shut-off notice for utilities, or incurring unexpected increases in basic living expenses due to domestic violence, death of a family member, sudden responsibility for providing care for a family member or fire, flood or natural disaster. In addition, the appellant's tax penalty for 2018 could be waived if 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 sufficient 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 2018 he incurred basic monthly expenses of approximately \$3070.00, including credit card debt. Those expenses were more than his regular monthly pre-tax joint income of approximately \$2157.00, thereby making a subsidized health insurance premium through the Health Connector of \$93.83/month unmanageable. Hence, it is concluded that the totality of the evidence presented by the appellant established that he experienced financial circumstances such that the expense of purchasing health insurance that met minimum creditable coverage standards would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08 (1)(e).

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

PENALTY ASSESSED

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-421

Appeal Decision: Penalty Overturned in Full

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: August 14, 2019

Decision Date: September 8, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on August 14, 2019, and testified under oath. The hearing record consists of the appellant's testimony and the following documents which were admitted into evidence without his objection:

Ex. 1—Statement of Grounds for Appeal—2018

Ex. 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 35-years-old, is single, and has three minor children. He resided in Plymouth County, MA in 2018. He did not have health insurance in 2018. (Testimony, Ex. 2)
2. The appellant was employed in 2018, but the employer did not offer health insurance. He investigated health insurance options through the Health Connector and determined that the lowest cost plan was approximately \$300.00/month which he could not afford. (Testimony)
3. Prior to 2018, the last time the appellant had health insurance was in 2017 through MassHealth. He has never paid a tax penalty for being uninsured since the Health Care Reform Act of 2006 was enacted. (Testimony)

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

4. The appellant has been working for a different employer in 2019 who does not offer health insurance. He investigated health insurance options for the year, but missed the open enrollment period, and was unable to enroll. (Testimony)
5. The appellant received a shut-off notice for his heat in 2018, and was able to negotiate a payment plan with the heating provider of approximately \$350.00/month to avoid termination of his service. He did not retain a copy of the notice. (Testimony)
6. The appellant reported an adjusted gross income of \$66,924.00 on his 2018 federal tax return, and reported that he was single with no dependents. (Ex. 2)
7. In 2018, the appellant had regular monthly expenses of approximately \$1818.00 for rent (\$950.00), heat averaged over 12 months (\$128.00), electricity averaged over 12 months (\$100.00), internet and cable service (\$110.00), automobile insurance (\$120.00), cell phone (\$60.00), gasoline (\$100.00), and food (\$250.00). In addition, the appellant paid approximately \$440.00/month in child support. (Testimony)

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

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant submitted a statement of grounds for appeal (Ex. 1), claiming that the individual mandate did not apply to him during 2018 because the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities.

The appellant did not have insurance from January through December. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a tax penalty; for Tax Year 2018, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Since the appellant was uninsured for the entire year, he was assessed and is appealing a penalty of twelve months.

The appellant testified credibly that he was employed in 2018, but the employer did not offer health insurance. He testified that he investigated insurance options and determined that the lowest cost plan would have cost approximately \$300.00/month which he could not afford. He testified that he had insurance in 2017 through MassHealth and did not enroll in 2019 because he missed the open enrollment period. Finally, he testified that he received a shut-off notice for his heat and was able to negotiate a payment plan with the provider to avoid a termination of his service.

The evidence provided by the appellant established that his income for 2018, \$66,924.00 was greater than 300% of the federal poverty level, which for 2018 was \$36,180.00 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 over \$48,241.00 is expected to be able to afford a monthly premium of \$449.00 (8.05% of \$66,924.00/12). Table 4 of the Premium Schedule indicates that a 34-year-old individual (the appellant's age in 2018) in Plymouth County (where the appellant resided in 2018) filing separately as an individual with no dependents could have purchased private health insurance for \$282.00 per month, less than the monthly amount deemed affordable from Table 3. Thus, according to the foregoing analysis, the appellant could have purchased affordable private health insurance in 2018.

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 2018. Examples of hardships include being homeless or overdue in rent or mortgage payments, receiving a shut-off notice for utilities, or incurring unexpected increases in basic living expenses due to domestic violence, death of a family member, sudden responsibility for providing care for a family member or fire, flood or natural disaster. In addition, the appellant's tax penalty for 2018 could be waived if 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 2018 he incurred basic monthly expenses of approximately \$2258.00, including his child support payments. Those expenses were less than his regular monthly pre-tax income of approximately \$5577.00, thereby making a health insurance premium of \$282.00/month seemingly manageable, even with the child support payments factored in. (It should be noted that child support payments are not typically considered in a hardship analysis.) While it is recognized that an approximate difference between income and expenses of \$3319.00 per month is not a panacea, it does not appear on its face that the payment of \$282.00/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. First, while child support payments are not part of the calculation for financial hardship, it bears consideration that the appellant's monthly obligations were high and reduced the cushion of available funds in light of unforeseeable expenses which inevitably arise. Second, the appellant testified credibly that he received a shut-off notice for his heat (even though he could not produce it) which suggests a level of financial distress not revealed by the foregoing numbers. Indeed, in order to avoid a shut-off, he entered a payment plan requiring monthly payments of \$350.00 which are not reflected in the foregoing hardship analysis.

Hence, based upon the totality of the evidence, it is concluded that that the appellant's request for a waiver from the penalty is **granted** for the months in question. The determination that the appellant is eligible for a partial waiver is with respect to 2018, only and is based upon the extent of information submitted by him in this appeal.

PENALTY ASSESSED

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

ADDENDUM

The appellant is advised not to rely on a similar grant of leniency should he be assessed and appeal a penalty for not purchasing health insurance in the future. He is also encouraged to leave a sufficient amount of time to investigate health insurance options for 2020 during the open enrollment period which begins in November and runs through January, 2020.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-443

Appeal Decision: Appeal Approved
Hearing Issue: Appeal of the 2018 Tax Year Penalty
Hearing Date: August 21, 2019
Decision Date: September 19, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

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

Exhibit 1: Notice of Hearing sent to Appellant dated July 9, 2019
Exhibit 2: Appeal Case Information Sheet from Schedule HC 2018
Exhibit 3: Notice of Appeal dated April 4, 2019
Exhibit 4: Statement in Support of Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 25 years old in 2018 and filed a 2018 Massachusetts tax return as single, with no dependents claimed (Exhibit 2).
2. Appellant lived in Worcester County, MA in 2018 (Exhibit 2).
3. Appellant's Adjusted Gross Income for 2018 was \$24,210 (Exhibit 2).
4. From January through June 2018, Appellant was covered by government subsidized health insurance (Testimony of Appellant).
5. Appellant's government subsidized insurance ended in June 2018, but Appellant did not become aware of the termination until 2019 (Testimony of Appellant).

6. Employer sponsored health insurance was not available to Appellant (Testimony of Appellant).
7. Appellant's mother was diagnosed with cancer in February 2018 (Testimony of Appellant).
8. Appellant has two disabled brothers. The brothers were cared for by Appellant's mother and father (Testimony of Appellant).
9. When Appellant's mother became ill, Appellant took care of the mother. Appellant took Appellant's mother to appointments, and paid for the mother's healthcare supplies. Appellant also took care of Appellant's brothers (Testimony of Appellant).
10. Appellant's mother passed away in March 2019 (Exhibit 4 and Testimony of Appellant).
11. During 2018, Appellant struggled to pay Appellant's expenses as well as expenses for Appellant's mother (Testimony of Appellant).
12. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
13. According to Table 3 of Schedule HC for 2018 a person filing as single, with no dependents claimed and with a Federal Adjusted Gross Income of \$24,210 could afford to pay \$85 per month for health insurance. According to Table 4, Appellant, age 25 and living in Worcester County, could have purchased private insurance for \$249 per month. Private insurance was not considered affordable for Appellant in 2018.
14. According to Table 2 of Schedule HC for 2018, Appellant, earning less than \$36,180 would have met the income eligibility guidelines for government subsidized insurance.
15. Appellant was assessed a penalty for three months for 2018 (Exhibit 2).
16. Appellant filed an appeal, claiming that Appellant incurred a significant, unexpected increase in essential expenses resulting from the sudden responsibility for providing full care for an aging parent (Exhibit 3).
17. Appellant was insured at the time of the hearing (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

Year 2018, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

Appellant has been assessed a tax penalty for three 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 because Appellant incurred a significant unexpected increase in essential expenses resulting from the sudden responsibility for providing full care for an aging parent. See 956 CMR 6.

Employer sponsored health insurance was not available to Appellant. According to Table 2 of Schedule HC for 2018, Appellant, whose income was less than \$36,180, was income eligible for government subsidized health insurance. Since Appellant potentially had access to affordable insurance, we need to consider whether Appellant experienced a financial hardship as defined by 956 CMR 6.08.

Appellant's mother became ill in 2018 and passed away in 2019. Appellant provided care for Appellant's mother. Appellant also helped care for Appellant's disabled brothers, who had been cared for by Appellant's mother. Appellant struggled to pay Appellant's expenses and the expenses for Appellant's mother. See Exhibit 4 and Testimony of Appellant, which I find to be credible. I find that health insurance was not affordable to Appellant because Appellant incurred a significant, unexpected increase in essential expenses resulting directly from the sudden responsibility for providing full care for an aging parent 956 CMR 6.08 (1)(d)(3).

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

PENALTY ASSESSED

Number of Months Appealed: 3

Number of Months Assessed: 0

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-449

Appeal Decision: Appeal Denied.

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: August 23, 2019

Decision Date: September 3, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on August 23, 2019. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated July 10, 2019.

Exhibit 2: Appeal Case Information from Schedule HC 2018.

Exhibit 3: Statement of Grounds for Appeal signed by the Appellant on April 9, 2019, with attachments.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant turned 28 years old in April 2018. The Appellant filed their Federal Income Tax return as a single person with no dependents claimed (Exhibit 2).
2. The Appellant lived in Hampden County, MA in 2018 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2018 was \$101,570 (Exhibit 2).
4. The Appellant did not have health insurance for any months of tax year 2018 (Exhibit 2 and Appellant Testimony).
5. The Appellant has been assessed a twelve-month tax penalty for 2018. The Appellant filed an appeal of the assessment in April 2019 (Exhibits 2, 3).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4

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

7. In accordance with Table 3 of Schedule HC for 2018, the Appellant filing the Federal tax return as a single person, with no dependents claimed, with an annual adjusted gross income of \$101,470 could afford to pay \$681 per month for health insurance. In accordance with Table 4, the Appellant, age 28, living in Hampden County, could have purchased private insurance for \$249 per month for a single plan (Schedule HC for 2018). Private insurance was affordable for the Appellant.
8. The Appellant would not have been eligible for ConnectorCare coverage in 2018 because the Appellant's income was greater than 300% of the federal poverty level, which was \$36,180 in 2018. (See Table 2 of Schedule HC-2018 and 956 CMR 12.04) (Appellant Testimony).
9. The Appellant testified that they are employed in a family construction business and the business does not offer health insurance. The Appellant said that they had Harvard Pilgrim health insurance in tax year 2017 and paid approximately \$3,700 annually for the coverage. The Appellant explained that the same plan cost \$7,000 for tax year 2018 (\$583 monthly) and was not affordable. The Appellant provided verification of two student loan payments of \$225 and \$845.23 (Exhibit 3 and Appellant Testimony).
10. The Appellant was asked about their monthly living expenses. The Appellant explained that they were living with their parents and did not have shelter expenses. The Appellant uses a business vehicle for work and does not have a car/truck loan or pay for vehicle insurance. The Appellant said that they drive a truck and pay approximately \$40-\$50 per day for gasoline (\$975 monthly average for a five-day week) while on the road. The Appellant indicated that they pay \$25-\$30 per day for food (\$849 monthly based on seven-day week). The Appellant testified that it was less expensive to pay for their medical treatment out of pocket than pay a high monthly health insurance premium and co-payments (Appellant Testimony).

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellant did not have health insurance for any months of tax year 2018 and consequently has been assessed a twelve-month penalty. The Appellant submitted a statement of grounds for this appeal alleging that the expense of purchasing health insurance would have caused the Appellant to experience a serious deprivation of food, shelter, clothing or other necessities.

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

In accordance with Table 3 of Schedule HC for 2018, the Appellant filing the Federal tax return as a single person with no dependents claimed, with an adjusted gross income of \$101,570 could afford to pay \$681 per month for health insurance. In accordance with Table 4, the Appellant, age 28, living in Hampden County, could have purchased private insurance for \$249 per month for a plan (Schedule HC for 2018). Private insurance was affordable for the Appellant in 2018.

The Appellant testified that they are employed in a family business that does not offer health insurance. The Appellant would not have been eligible for ConnectorCare because the Appellant's income of \$101,570 exceeded 300% of the federal poverty level of \$36,180 (See Table 2 of Schedule HC-2018 and 956 CMR 12.04).

The Appellant testified that they had Harvard Pilgrim health insurance in tax year 2017 but the premium cost doubled to \$7,000 for tax year 2018 and was not affordable. It is noted that the monthly cost for this particular insurance was \$583 and was less than the \$681 deemed affordable for the Appellant in accordance with Table 3 of Schedule HC for 2018. As noted below, this was not the only option available to the Appellant.

The Appellant was living with their parents and did not have to pay for rent, mortgage, heat or electricity in 2018. The Appellant uses a company vehicle for transportation and has no car loan or car insurance expenses. The Appellant's average monthly income was \$8,464 in 2018. Accepting the Appellant's testimony at face value, the Appellant paid \$1,824 monthly for gasoline and food. The Appellant's student loan payments totaled \$1,070 monthly. Given the Appellant's income of \$8,464 and expenses of \$2,894, the Appellant has failed to demonstrate that purchasing health insurance at a cost of \$249 as detailed in Table 4 of Schedule HC for 2018 would have caused the Appellant to experience a serious financial hardship. See 956 CMR 6.08. The Appellant's twelve-month penalty is upheld.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-451

Appeal Decision: Appeal Approved.

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: August 23, 2019

Decision Date: September 3, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

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

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated July 10, 2019.
- Exhibit 2: Appeal Case Information from Schedule HC 2018.
- Exhibit 3: Statement of Grounds for Appeal dated April 9, 2019.
- Exhibit 4: The Appellant's letter in support of this appeal dated April 10, 2019.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant turned 33 years old in May 2018. 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 2018 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2018 was \$27,748 (Exhibit 2, Appellant Testimony).
4. The Appellant did not have insurance for any months in tax year 2018 (Exhibit 2, Appellant Testimony).

5. The Appellant has been assessed a twelve-month tax penalty for 2018. The Appellant filed an appeal of the assessment in April 2019 (Exhibits 3, 4 and Appellant Testimony).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
7. In accordance with Table 3 of Schedule HC for 2018, the Appellant filing the Federal tax return as an individual, with no dependents claimed, with an annual adjusted gross income of \$27,748 could afford to pay \$97 per month for health insurance. In accordance with Table 4, the Appellant, age 33, living in Middlesex County, could have purchased private insurance for \$282 per month for a plan (Schedule HC for 2018). Private insurance was not affordable for the Appellant in 2018.
8. The Appellant would have been eligible for ConnectorCare coverage in 2018 because the Appellant's income was less than 300% of the federal poverty level, which was \$36,180 in 2018. The Appellant did not have access to employer sponsored insurance (See Table 2 of Schedule HC-2018 and 956 CMR 12.04) (Appellant Testimony).
9. The Appellant testified that they were originally from Maine but moved to Massachusetts to live with a partner. The Appellant said that they were employed as a massage therapist and had lower income because they were trying to build a client base. In May the Appellant's partner served the Appellant with a notice to quit. The Appellant said that they could not afford a place to live in the area and as a result commuted from their parent's home in Maine to work in Massachusetts in July and August. The Appellant said that they started a business with a partner in September 2018 and have been staying with a friend until they can earn enough money to pay rent on their own. The Appellant said that they could not afford health insurance due to low income and high expenses (exhibit 4 and Appellant Testimony).
10. For the period of January through June, the Appellant was paying \$1,000 monthly for rent and utilities. The Appellant's other monthly expenses included: car loan-\$350; car insurance-\$100; gasoline-\$100; telephone-\$150; food-\$325; and business license/insurance cost of \$42. The Appellant said that they did not have rent in July and August, but the commute from Maine to work in Massachusetts was expensive. For the period of September through December, the Appellant was paying \$600 to stay with their friend. he Appellant testified that they struggled to pay for these expenses and could not afford to pay a health insurance premium. I found the Appellant to be credible (Appellant Testimony).

ANALYSIS AND CONCLUSIONS OF LAW

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

CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector’s regulations provide for a waiver of the tax penalty in the case of financial hardship. See 956 CMR 6.08.

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

In accordance with Table 3 of Schedule HC for 2018, the Appellant filing the Federal tax return as a single person with no dependents claimed with an adjusted gross income of \$27,748 could afford to pay \$97 per month for health insurance. According to Table 4, the Appellant, age 33, living in Middlesex County, could have purchased a private insurance plan for \$282 per month. See Schedule HC for 2018. Private insurance was not affordable for the Appellant in tax year 2018.

The Appellant had no access to affordable employer-sponsored health insurance in tax year 2018. The Appellant would have been eligible for ConnectorCare coverage based upon the Appellant’s income which was less than \$36,180. See Table 2 of Schedule HC 2018 and 956 CMR 12.04 for eligibility criteria. Since affordable insurance was available to the Appellant in 2018, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1).

The Appellant testified credibly that they were living with a partner until the partner served the Appellant with an eviction notice in May 2018. The Appellant was employed as a massage therapist in Massachusetts and was trying to build a client base. The Appellant explained that beginning in July 2018 they stayed with family in Maine and commuted from Maine to Massachusetts for work. Beginning in September, the Appellant was staying with a friend. The Appellant was trying to build a business and save money to finance permanent housing. The Appellant verified substantial monthly living expenses in 2018 and testified credibly that they struggled to meet their day to day living expenses without a permanent home. In accordance with 956 CMR 6.08 (1)(a), the Appellant has demonstrated that the cost of purchasing health insurance would have caused the Appellant to experience a serious financial hardship. See 956 CMR 6.08(1)(e). The Appellant’s twelve -month penalty is therefore waived.

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

PENALTY ASSESSED

Number of Months Appealed: ____12____ Number of Months Assessed: __0____

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

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

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-453

Appeal Decision: Appeal Denied

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: August 22, 2019

Decision Date: September 25, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on August 22, 2019. The Appellant offered testimony under oath or affirmation. At the end of the hearing, the record was closed.

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

- Exhibit 1: Appeal Case Information from 2018 Schedule HC (1 page)
- Exhibit 2: 4/3/19 Appeal (8 pages)
- Exhibit 3: 7/10/19 Hearing Notice (3 pages)

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant appealed from the assessment of a twelve-month penalty on his 2018 income tax return. (Exhibit 1)
2. The Appellant's filing status in 2018 was Single with no dependents. The Appellant's federal AGI in 2018 was \$42,808. The Appellant resided in Worcester County in 2018. The Appellant turned twenty-seven years old in April 2018. (Exhibit 1)
3. In his appeal, the Appellant stated that he did not purchase health insurance in 2018 due to his financial condition and that "the cost of health insurance would have resulted in the inability to pay other bills such as rent, utilities, food and car related expenses." (Exhibit 2)
4. The Appellant was employed during all of 2018. His employer did not offer health insurance coverage. (Appellant's testimony)
5. The Appellant did not have any health insurance coverage in 2018. The Appellant does not have any health insurance coverage currently. (Appellant's testimony)

6. The Appellant’s basic monthly expenses for 2018 included: \$600 rent for first three months and \$1,200 for rest of 2018 (due to losing his roommate); \$130, heat/hw; \$50, cable/Internet; \$85, phone; \$110, car insurance; \$433, gas; \$125, m/r; \$650, food; and, \$25, clothing, for a total of \$2,209/monthly for the first three months of 2018, and a total of \$2,808/monthly for the last nine months of 2018. (Appellant’s testimony)
7. According to Table 2 of the 2018 Schedule HC, the Appellant was not eligible for government-subsidized health insurance coverage in 2018, since his federal AGI for 2018 exceeded \$36,180 for a family of one.
8. According to Table 3, Affordability, of the 2018 Schedule HC, based on his 2018 AGI and Single tax filing status, the Appellant could have afforded to pay up to 7.6 percent of his income for health insurance coverage in 2018, which calculates to a monthly premium of up to \$271.
9. According to Table 4, Premiums, of the 2018 Schedule HC, the Appellant could have purchased individual health insurance coverage in the private market in 2018 at a monthly cost of \$249, based on his age and county of residence in 2018.

ANALYSIS AND CONCLUSIONS OF LAW

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

At hearing, the Appellant testified that he looked for health insurance coverage through the Health Connector at the beginning of 2018; that the lowest cost coverage he found cost \$200/monthly; and, that he decided he could not afford to pay that much for coverage. I do not find this testimony credible, since the Appellant had a roommate during the first three months of 2018 and, as a result, was paying \$600/month less in rent than during the rest of 2018. I also do not find credible the Appellant’s statement in his appeal cover letter that his 2018 rent totaled \$22,200 and his 2018 electric bill about \$3,000, as the Appellant’s testimony at hearing lowered considerably his 2018 expenses for these items from what he presented in his written statement.

If the Appellant had actually sought health insurance coverage during 2018, he would have found coverage on the private market for a monthly premium of \$249 (or, \$2,988 for the year). The Appellant has not established that he could not have afforded to pay that much for coverage in 2018. To the contrary, the Appellant’s 2018 expenses for basic necessities were \$31,899, while his 2018 AGI was \$42,808. The Appellant has failed to establish that the additional expense of \$2,988 for health insurance coverage in 2018 was unaffordable for him.

Therefore, I conclude that the Appellant has not established that health insurance that provided minimum creditable coverage was not affordable to him in 2018 because he experienced a hardship, under 956 CMR 6.08.

Accordingly, the Appellant’s twelve-month penalty for 2018 shall not be waived or reduced.

PENALTY ASSESSED

Number of Months Appealed: ____12____ Number of Months Assessed: __12__

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-454

Appeal Decision: Appeal Granted

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: August 22, 2019

Decision Date: September 25, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on August 22, 2019. The Appellant offered testimony under oath or affirmation. At the end of the hearing, the record was closed.

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

- Exhibit 1: Appeal Case Information from 2018 Schedule HC (1 page)
- Exhibit 2: 4/11/19 Appeal (5 pages)
- Exhibit 3: 7/10/19 Hearing Notice (3 pages)

FINDINGS OF FACT

The record shows, and I so find:

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

6. The Appellant was unemployed until the end of July 2018, when he started a new full-time job. His new employer offered health insurance coverage for \$100/weekly. The Appellant did not enroll because he could not afford the coverage when he was making only \$420/weekly at the job. (Appellant’s testimony)
7. According to Table 2 of the 2018 Schedule HC, the Appellant was not eligible for government-subsidized insurance in 2018, since his AGI for 2018 was less than \$36,180 for a family of one.
8. According to Table 3, Affordability, of the Schedule HC 2018, based on his 2018 AGI and Single tax filing status, the Appellant could have afforded to pay up to 4.2 percent of his income for health insurance in 2018, which calculates to a monthly premium of up to \$92 for coverage.
9. According to Table 4, Premiums, the Appellant could have purchased health insurance coverage in the private market in 2018 for \$282/monthly, based on his age and county of residence in 2018.

ANALYSIS AND CONCLUSIONS OF LAW

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

After losing his health insurance coverage at the end of February 2018, the Appellant had a three-month grace period, through the end of May 2018, to obtain new insurance coverage. During that period, the Appellant’s only income was a \$100/weekly unemployment benefit, and this benefit ended in mid-May 2018. Even coverage for \$92/monthly was unaffordable for the Appellant at that time. Most of the Appellant’s income for 2018 came after he found new employment at the end of July 2018. While his new employer offered health insurance coverage to employees, the cost of \$100/weekly for the coverage exceeded what the Appellant could afford, based on his income from his new job of \$420/weekly.

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

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

PENALTY ASSESSED

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

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-457

Appeal Decision: Appeal Granted

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: August 22, 2019

Decision Date: September 25, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on August 22, 2019. The Appellant offered testimony under oath or affirmation. At the end of the hearing, the record was left open until September 5, 2019, for the Appellant to submit additional evidence. At the Appellant's subsequent request, the open-record period was extended to September 19, 2019. On September 16, 2019, additional evidence was received from the Appellant, and the record was closed.

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

- Exhibit 1: Appeal Case Information from 2018 Schedule HC (1 page)
- Exhibit 2: 4/12/19 Appeal (9 pages)
- Exhibit 3: 7/10/19 Hearing Notice (3 pages)
- Exhibit 4: Cover letter for open-record submission (1 page)
- Exhibit 5: Documentation of Spring 2018 enrollment at Florida college (Jan-June 2018: tuition bill, student record, Florida address (4 pages)
- Exhibit 6: Colorado rental agreement, 6/1/18-8/1/18 (1 page)
- Exhibit 7: 2018 W-2s for Colorado employer (1 page)
- Exhibit 8: 7/3/18 Apartment Lease in Massachusetts for 8/1/18 to 8/31/19 tenancy and related documents (14 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 2018 income tax return, checking off "Other" on the appeal form as the grounds for her appeal. (Exhibit 2)

2. The Appellant's filing status for 2018 was Single with no dependents. The Appellant's federal AGI in 2018 was \$22,325. The Appellant resided in Middlesex County in 2018. The Appellant turned twenty-eight years old in 2018. (Exhibit 1)
3. The Appellant did not begin residing in Massachusetts in 2018 until August 2018, when she started graduate school in the Boston area. The Appellant had lived in Florida and then Colorado for two months in 2018, before arriving in Massachusetts. (Exhibits 5-8; Appellant's testimony)
4. The Appellant had health insurance coverage from August 2018 through December 2018 through her university. (Exhibit 2; Appellant's testimony)

ANALYSIS AND CONCLUSIONS OF LAW

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

As the Appellant did not begin residing in Massachusetts in 2018 until August 2018, she had a three-month grace period to obtain coverage. However, the Appellant obtained health insurance coverage immediately, beginning on August 1, 2018, and continuing for the rest of 2018.

Therefore, I conclude that the Appellant fully met the requirements of the individual mandate in 2018, under M.G.L c. 111M, § 2.

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

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-458

Appeal Decision: Appeal Granted

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: August 22, 2019

Decision Date: September 25, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on August 22, 2019. The Appellant offered testimony under oath or affirmation. At the end of the hearing, the record was closed.

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

- Exhibit 1: Appeal Case Information from 2018 Schedule HC (1 page)
- Exhibit 2: 4/10/19 Appeal (5 pages)
- Exhibit 3: 7/10/19 Hearing Notice (3 pages)

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant appealed from the assessment of a twelve-month penalty on her 2018 income tax return. (Exhibit 1)
2. The Appellant's filing status for 2018 was Single with no dependents. The Appellant's federal AGI in 2018 was \$22,571. The Appellant resided in Plymouth County in 2018. The Appellant turned sixty-three years old in 2018. (Exhibit 1)
3. The Appellant did not have any health insurance coverage during 2018. The Appellant last had health insurance coverage in 2014. The Appellant's husband took care of her health insurance coverage when he was alive. (Appellant's testimony)
4. The Appellant has been confused about how to find coverage, how to learn the cost of coverage, and how to apply for coverage, since her husband passed away. (Appellant's testimony)
5. The Appellant did not apply for health insurance coverage in 2018. The Appellant went to the Health Connector website toward the end of open enrollment for 2018 to get coverage. From what she could tell from her efforts, health insurance coverage would cost her \$800/monthly. (Appellant's testimony)

6. The Appellant was employed part time with the same employer throughout 2018. Her employer did not hire full-time employees and did not offer health insurance coverage. (Appellant’s testimony)
7. According to Table 2 of the 2018 Schedule HC, the Appellant was eligible for government-subsidized insurance in 2018, since her AGI for 2018 was less than \$36,180 for a family of one.
8. According to Table 3, Affordability, of the Schedule HC 2018, based on her 2018 AGI and Single tax filing status, the Appellant could have afforded to pay up to 2.9 percent of her income for health insurance in 2018, which calculates to a monthly premium of up to \$54 for coverage.
9. According to Table 4, Premiums, the Appellant could have purchased health insurance coverage in the private market in 2018 for \$423/monthly, based on her age and county of residence in 2018.
10. The Appellant did not know that health insurance coverage was available to her in 2018 at a cost of \$54/monthly. If she had known this, she would have purchased the 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.

Although the Appellant did not have health insurance coverage in 2018, I credit the Appellant’s testimony that she really wanted to have health insurance coverage in 2018 but was overwhelmed by the process of obtaining it and was unaware that low-cost coverage was available to her. Her husband had been responsible for obtaining their coverage before his passing, and the Appellant seemed genuinely surprised and happy to hear that coverage was available to her in 2018 for as low as \$54/monthly.

Under these circumstances, I conclude that it would not fulfill the purposes of M.G.L c. 111M, § 2, to assess the Appellant any tax penalty for not having health insurance coverage in 2018.

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

PENALTY ASSESSED

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

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-462

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

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: September 4, 2019

Decision Date: September 9, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on September 4, 2019. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated July 23, 2019.
- Exhibit 2: Appeal Case Information from Schedule HC 2018.
- Exhibit 3: Statement of Grounds for Appeal signed by the Appellant on April 9, 2019.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant turned 26 years old in September 2018. The Appellant filed their Federal Income Tax return as a single person with no dependents claimed (Exhibit 2).
2. The Appellant lived in Barnstable County, MA in 2018 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2018 was \$40,370 (Exhibit 2).
4. The Appellant did not have health insurance for any months of tax year 2018 (Exhibit 2 and Appellant Testimony).
5. The Appellant has been assessed a twelve-month tax penalty for 2018. The Appellant filed an appeal of the assessment in April 2019 (Exhibits 2, 3).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4

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

7. In accordance with Table 3 of Schedule HC for 2018, the Appellant filing the Federal tax return as a single person, with no dependents claimed, with an annual adjusted gross income of \$40,370 could afford to pay \$251 per month for health insurance. In accordance with Table 4, the Appellant, age 26, living in Worcester County, could have purchased private insurance for \$249 per month for a single plan (Schedule HC for 2018). Private insurance was affordable for the Appellant in 2018.
8. The Appellant would not have been eligible for ConnectorCare coverage in 2018 because the Appellant's income was greater than 300% of the federal poverty level, which was \$36,180 in 2018. The Appellant testified that their employer did not provide access to employer-sponsored insurance (See Table 2 of Schedule HC-2018 and 956 CMR 12.04) (Appellant Testimony).
9. The Appellant testified that they accumulated some debt and were trying to pay it off. The Appellant also testified that they thought it would save money if they chose not to purchase health insurance and to pay the tax penalty instead. The Appellant said they did not realize the penalty would be so high. The Appellant argues that if they are required to pay the tax penalty, they will be unable to obtain health insurance, which is, he argued the goal (Appellant Testimony).
10. The Appellant testified that they rent an apartment from a parent and pay \$1,200 monthly for rent and utilities. The Appellant identified the following additional expenses: telephone-\$80; car loan-\$472; car insurance-\$250; gasoline-\$217; a Best Buy credit card payment of \$100 and food-\$100-\$250 weekly. The Appellant was asked about the high cost of food for one person and they testified that some weeks they purchase more to stock up. I did not find the Appellant's testimony regarding the weekly cost of food to be credible (Appellant Testimony).
11. In tax year 2018, the Appellant was not homeless, was not facing eviction and did not receive any utility shut off notices. The Appellant did not incur a significant and unexpected increase in expenses due to a family emergency (Appellant Testimony).
12. The Appellant was involved in a car accident in September 2018 and had to pay a \$1,200 deductible to get their vehicle fixed. This unexpected expense would have caused the Appellant to experience a financial hardship in the last quarter of tax year 2018 (Appellant Testimony).
13. The Appellant remains uninsured as of the date of the hearing, September 4, 2019 (Appellant Testimony).

ANALYSIS AND CONCLUSIONS OF LAW

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

CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector’s regulations provide for a waiver of the tax penalty in the case of financial hardship. See 956 CMR 6.08.

The Appellant did not have health insurance for any months of tax year 2018. The Appellant has been assessed a twelve-month penalty. The Appellant submitted a statement of grounds for this appeal citing financial hardship. To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met minimum creditable coverage standards was available to the Appellant through employment, through private insurance, or through a government sponsored program. If affordable insurance was available, it must be determined if such insurance was not affordable to the Appellant because the Appellant experienced a financial hardship as defined in 956 CMR 6.08.

In accordance with Table 3 of Schedule HC for 2018, the Appellant filing the Federal tax return as a single person with no dependents claimed, with an adjusted gross income of \$40,370 could afford to pay \$251 per month for health insurance. In accordance with Table 4, the Appellant, age 26, living in Barnstable County, could have purchased private insurance for \$249 per month for a plan (Schedule HC for 2018). Private insurance was affordable for the Appellant in 2018.

The Appellant would not have been eligible for ConnectorCare coverage in 2018 because the Appellant’s income of \$40,370 was greater than 300% of the federal poverty level, which was \$36,180 in 2018. The Appellant testified that their employer did not provide access to affordable insurance (See Table 2 of Schedule HC-2018 and 956 CMR 12.04). Since affordable insurance was available to the Appellant in 2018, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1).

For the period of January through August, accepting the Appellant’s testimony regarding average monthly food costs of \$650, the Appellant’s monthly living expenses were \$2,969. The Appellant was not homeless, was not facing eviction, did not receive any utility shut off notices and did not incur significant and unexpected expenses due to a family emergency or other disaster. The Appellant testified that they chose not to purchase health insurance believing that it would be less expensive to pay the tax penalty and consequently save some money. The Appellant indicated that they did not realize the tax penalty would be substantial. Given the Appellant’s income of \$40,370 and the fact that private insurance was available to the Appellant at a cost of \$249 per month, the Appellant has failed to demonstrate that purchasing health insurance would have caused the Appellant to experience a serious deprivation of food, shelter, clothing or other necessities during the period of January through August in tax year 2018. The Appellant is correctly subject to a tax penalty for this eight-month period.

The Appellant was involved in a car accident in September of 2018. The Appellant explained that they were required to pay a \$1,200 insurance deductible in order to have their car repaired. This unexpected substantial expense would have created a financial hardship for the Appellant making it difficult to afford the health care premium of \$249 for the months of September through December in tax year 2018. See 956 CMR 6.08. The Appellant’s penalty for this four-month period is waived.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-463

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

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: September 4, 2019

Decision Date: September 9, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on September 4, 2019. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated July 23, 2019.
- Exhibit 2: Appeal Case Information from Schedule HC 2018.
- Exhibit 3: Statement of Grounds for Appeal signed by the Appellant on April 2, 2019.
- Exhibit 4: The Appellant's letter in support of this appeal, with attachments dated April 7, 2019.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant turned 25 years old in January 2018. The Appellant filed their Federal Income Tax return as a single person with no dependents claimed (Exhibit 2).
2. The Appellant lived in Plymouth County, MA in 2018 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2018 was \$41,991 (Exhibit 2).
4. The Appellant did not have health insurance for any months of tax year 2018 (Exhibit 2 and Appellant Testimony).
5. The Appellant has been assessed a twelve-month tax penalty for 2018. The Appellant filed an appeal of the assessment in April 2019 (Exhibits 2, 3, 4).

6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
7. In accordance with Table 3 of Schedule HC for 2018, the Appellant filing the Federal tax return as a single person, with no dependents claimed, with an annual adjusted gross income of \$41,991 could afford to pay \$261 per month for health insurance. In accordance with Table 4, the Appellant, age 25, living in Plymouth County, could have purchased private insurance for \$249 per month for a single plan (Schedule HC for 2018). Private insurance was affordable for the Appellant in 2018.
8. The Appellant testified that their employer did provide access to employer sponsored health insurance at a monthly cost of \$150. This is less than the \$261 deemed affordable under Table 3 of Schedule HC for 2018 (Appellant Testimony).
9. The Appellant would not have been eligible for ConnectorCare coverage in 2018 because the Appellant's income was greater than 300% of the federal poverty level, which was \$36,180 in 2018 and the Appellant had access to affordable employer-sponsored insurance (See Table 2 of Schedule HC-2018 and 956 CMR 12.04) (Appellant Testimony).
10. The Appellant testified that they have a great deal of student debt and with paying for their monthly living expenses could not afford to purchase insurance. The Appellant also said they were involved in an accident in late 2017 and purchased a car for \$4,500 in January. Shortly thereafter, the transmission broke and the Appellant had to pay for repairs totaling \$2,562.85. The Appellant submitted documentation verifying monthly student loan payments of \$878.58. The verification was dated in 2019 but the Appellant testified that they were paying this amount in 2018 (Exhibit 4 and Appellant Testimony).
11. In addition to the \$878.58 in student loans, the Appellant testified that their monthly living expenses include: rent and utilities \$750; internet-\$35; telephone-\$70; gasoline-\$150; car insurance-\$175 and food-\$217. The Appellant said that they moved in with a parent in November 2018 because they could not afford their expenses (Appellant Testimony).
12. In tax year 2018, the Appellant was not homeless, was not facing eviction and did not receive any utility shut off notices. The Appellant did not incur a significant and unexpected increase in expenses due to a family emergency (Appellant Testimony).
13. The Appellant remains uninsured as of the date of the hearing, September 4, 2019 (Appellant Testimony).

ANALYSIS AND CONCLUSIONS OF LAW

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

make the transition between health insurance policies See G.L. C. 111M, sec. 2(b) and for Tax Year 2010, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c.176Q as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of financial hardship. See 956 CMR 6.08.

The Appellant did not have health insurance for any months of tax year 2018. The Appellant has been assessed a twelve-month penalty. The Appellant submitted a statement of grounds for this appeal citing financial hardship. To determine if the penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met minimum creditable coverage standards was available to the Appellant through employment, through private insurance, or through a government sponsored program. If affordable insurance was available, it must be determined if such insurance was not affordable to the Appellant because the Appellant experienced a financial hardship as defined in 956 CMR 6.08.

In accordance with Table 3 of Schedule HC for 2018, the Appellant filing the Federal tax return as a single person with no dependents claimed, with an adjusted gross income of \$41,991 could afford to pay \$261 per month for health insurance. In accordance with Table 4, the Appellant, age 25, living in Plymouth County, could have purchased private insurance for \$249 per month for a plan (Schedule HC for 2018). Private insurance was affordable for the Appellant in 2018.

The Appellant would not have been eligible for ConnectorCare coverage in 2018 because the Appellant's income of \$40,370 was greater than 300% of the federal poverty level, which was \$36,180 in 2018. The Appellant testified that their employer did provide access to insurance at a monthly cost of \$150. This is less than the \$261 deemed affordable for the Appellant in accordance with Schedule 3 (See Table 2 of Schedule HC-2018 and 956 CMR 12.04). Since affordable insurance was available to the Appellant in 2018, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1).

The Appellant was involved in a car accident in late 2017. The Appellant explained that they purchased a car in January 2018 for \$4,500 and had to pay an additional \$2,563 for repairs. While the Appellant was able to pay for the car, the unexpected repairs would have created a financial hardship for the Appellant making it difficult to afford the health care premium for the months of January through March in tax year 2018. See 956 CMR 6.08. The Appellant's penalty for this three-month period is waived.

For the period of January through September, the Appellant's monthly living expenses, including their student loans, totaled \$2,276. As of November 2018, the Appellant was no longer paying rent and their expenses decreased by \$750 for November and December. The Appellant was not homeless, was not facing eviction, did not receive any utility shut off notices and did not incur significant and unexpected expenses due to a family emergency or other disaster. Given the Appellant's average monthly income of \$3,499 and the fact that the Appellant had access to employer sponsored insurance at a cost of \$150 per month as well as private insurance at a cost of \$249 per month, the Appellant has failed to demonstrate that purchasing health insurance would have caused the Appellant to experience a serious deprivation of food, shelter, clothing or other necessities during the period of April through December in tax year 2018. The Appellant is correctly subject to a tax penalty for this nine-month period.

PENALTY ASSESSED

Number of Months Appealed: 12 Number of Months Assessed: 9

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA18-472

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

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: September 5, 2019

Decision Date: September 10, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2018;
3. Appellant's Letter in Support of Appeal (1 page, undated);
4. Appellant's 2016 IRS Form 1044 Tax Return (1st page);
5. Appellant's 2017 IRS Form 1044 Tax Return (1st page);
6. Appellant's 2018 IRS Form 1044 Tax Return (2 pages); and
7. Health Connector's Notice of Hearing (3 pages, dated 7/23/19).

FINDINGS OF FACT

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

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

2. The Appellant filed a Massachusetts personal income tax return for 2018 as a single person with no dependents. The Appellant's federal adjusted gross income (AGI) for 2018 was \$63,913. Exhibit 1.
3. The Appellant was 59 years old at the beginning of 2018 (she is now 61 years old), and she resided in [name of city or town omitted] in Suffolk County, Massachusetts. Exhibit 1.
4. The Appellant's 2018 AGI (\$63,913) was more than 300% of the federal poverty level (\$36,180 for a one person household). DOR Table 2. On this basis I infer that the Appellant would not satisfy the financial eligibility requirements for government-subsidized health insurance.
5. Based on DOR Table 3 the Appellant could afford to pay 8.05% -- or \$429 per month for health insurance coverage in 2018. (The calculation is 8.05 % multiplied by \$63,913 AGI = \$5,144.99 per year divided by 12 months = \$428.74 per month.)
6. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage at her age and location for \$423 per month in 2018.
7. At the beginning of 2017 the Appellant was employed in a salaried job that provided her health insurance coverage as a job benefit. The employer eliminated her position in April 2017, resulting in the loss of her health insurance coverage for the remainder of 2017. Exhibit 3 and Testimony. The Appellant's income for 2017 consisted of approximately two-thirds wages and salary (\$41,214) and one-third unemployment compensation (\$20,775). See Exhibit 5 at lines 7 and 19.
8. The Appellant obtained her current job with a small (7 person) employer in February 2018 with a \$10,000 decrease in pay and no employer-sponsored health insurance coverage or other benefits (such as MBTA pass). The Appellant has not had health insurance coverage for all of 2018. Exhibits 1 and 3 and Testimony. Compare Exhibits 4 at line 37, Exhibit 5 at line 37, and Exhibit 6 at line 7.
9. The Appellant has been seeking a part-time job to supplement her income to make ends meet. The Appellant has researched health insurance options through the Health Connector but feels that she cannot currently afford to pay the premiums. She has also been seeking a job that provides health insurance benefits, but she has found that obtaining a new position is difficult at her age. Due to her personal situation – her fiancé died after an extended and extraordinarily expensive illness – the Appellant is acutely aware of the importance of health insurance. Testimony and Exhibit 3.
10. The Appellant is concerned about the potential loss of her home that she purchased in 2003 using withdrawals from her tax-deferred personal retirement funds. Exhibit 3 and Testimony.

11. The Appellant has outstanding loans, including a \$51,000 balance on a home equity loan for home improvements, a \$498 per month payment for a car lease, and credit card debt that includes a \$10,000 balance for funeral expenses.
12. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2018 Massachusetts income tax return.
13. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2018. See 956 Code Mass. Regs. 6.05. Table 1 sets forth income levels less than 150% of the federal poverty level that are exempt from the assessment of a state tax penalty. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2018. (The DOR instructions are published online at <http://www.mass.gov/dor/2018ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2018.)

ANALYSIS AND CONCLUSIONS OF LAW

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

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

If these requirements are not met, a tax penalty is assessed for "each of the months" that the person did not have health insurance, as required by the individual mandate. Mass. Gen. Laws 111M, sec. 2(b). See Exhibit 1. There is, however, a three-month grace period for any lapse in coverage to allow the taxpayer to make a transition between health insurance policies. Health Connector's

Administrative Bulletin 03-10, applying Mass. Gen. Laws 111M, sec. 2(b). See also DOR Instructions, at page HC-3. A tax penalty will not be assessed during the 3-month administrative grace period.

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

In this case, the Appellant had health insurance coverage until April 2017 when her job was eliminated, she lost her employer-sponsored health benefit, and she obtained unemployment insurance benefits. When the Appellant obtained a new job in February 2018 she was paid \$10,000 per year less than in her former job, and her new employer did not provide health insurance as a job benefit. See, e.g., Findings of Fact, Nos. 7 and 8, above.

The Appellant’s struggle to restore her financial situation is reflected in her earnest efforts to obtain employment, including a part-time supplemental job, and in the objective standards set forth in the affordability standards adopted by the state government. Under DOR Table 3 the Appellant could afford to pay \$429 per month for health insurance coverage based on her 2018 income. However, individual coverage would cost her approximately the same amount at her age – \$423 per month – under DOR Table 4. See Findings of Fact, Nos. 5 and 6, above. Against this backdrop I also consider her indebtedness, including both the home equity loan and especially the \$10,000 credit card balance for funeral expenses. See Findings of Fact, No. 11, above.

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

PENALTY ASSESSED

Number of Months Appealed: ____12____ Number of Months Assessed: ___-0-_____

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA18-475

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

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: September 5, 2019

Decision Date: September 10, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellant's Statement of Grounds for Appeal – 2018; and
3. Health Connector's Notice of Hearing (3 pages, dated 7/23/19).

FINDINGS OF FACT

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

1. The Appellant appealed from the Department of Revenue's assessment of an 8 month penalty for 2018. The basis for the penalty was that the Appellant was insured for the month of January but was not insured for the remainder of 2018. Exhibits 1 and 2. Based on Exhibit 1, which the Appellant did not contradict during the hearing, I find that the penalty assessment is accurate. (The calculation is 12 months minus 1 month insured = 11 months uninsured minus 3-month administrative grace period = 8 penalty months.)
2. In the Statement of Grounds for Appeal that the Appellant submitted he checked the first ground: "During 2018, you were homeless; more than 30 days in arrears in rent or mortgage

payments; or received an eviction or foreclosure notice.” Exhibit 2, page 2. The Appellant did not submit any documents or any written explanation to support the reason for his appeal.

3. The Appellant filed a Massachusetts personal income tax return for 2018 as a single person with no dependents. The Appellant testified that he is divorced and that his former Wife maintains some of his records. The Appellant was 35 years old at the beginning of 2018. Exhibit 1.
4. The Appellant’s federal adjusted gross income (AGI) for 2018 was \$20,511. Exhibit 1.
5. I accept the Appellant’s appeal hearing testimony that he was previously insured by MassHealth, that he had not received any written notice that his coverage had ended in 2018, and that he had not used any medical or hospital services in 2018 that would have made him aware of his lack of health insurance coverage. The Appellant stated that his tax preparer informed him of the lack of coverage and his appeal right in early 2019 when his 2018 state income tax return was being prepared. Testimony.
6. The Appellant’s 2018 AGI (\$20,511) was less than 300% of the federal poverty level (\$\$36,180 for a one person household). DOR Table 2. On this basis I infer that the Appellant would satisfy the financial eligibility requirements for government-subsidized health insurance.
7. The Appellant was employed as a personal care attendant in 2018. I accept his testimony that the address used in the appeal papers is the address of the person that he cares for. Testimony. See Exhibit 1, Exhibit 2, page 2, and Exhibit 3, page 1.
8. I credit the Appellant’s appeal hearing testimony that he was homeless for all of 2018 and for periods before and after 2018.
9. Based on DOR Table 3 the Appellant could afford to pay 2.90% of his income -- or \$50 per month -- for health insurance coverage in 2018. (The calculation is 2.90 % multiplied by \$20,511 AGI = \$594.81 per year divided by 12 months = \$49.56 per month.)
10. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage at his age and location for \$290 per month in 2018. (I have used Middlesex County as the Appellant’s residence for the purpose of this calculation. See, e.g., Exhibit 1 and Findings of Fact, No. 7, above.)
11. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant’s 2018 Massachusetts income tax return.
12. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2017 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and

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

ANALYSIS AND CONCLUSIONS OF LAW

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

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

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

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

The Appellant in this appeal was homeless throughout 2018, based on his testimony during the appeal hearing that I find credible. On that basis he is entitled to relief under the Health Connector's financial hardship regulation. See 956 Code Mass. Regs. 6.08 (a). In addition, information derived from the objective standards set forth in the DOR Tables supports the conclusion health insurance was not

affordable. Under DOR Table 3 the Appellant could afford to pay only \$50 per month for health insurance based on his income. However, the Appellant would have to pay \$290 per month to obtain individual health insurance coverage. See Mass. Gen. Laws c. 111M, sec. 2 (a), above. See, e.g., Findings of Fact, Nos. 8 – 10, above.

After considering all the circumstances, I conclude that it is appropriate to waive the entire penalty assessed against the Appellant for 2018. I add, however, that the Appellant is now aware that he is no longer insured under MassHealth but that he should qualify for government-subsidized health insurance from either MassHealth or the Health Connector. Accordingly, the Appellant should take appropriate steps to apply for and enroll in government-subsidized health insurance coverage as required by Massachusetts law. See my RECOMMENDATION below.

PENALTY ASSESSED

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

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

RECOMMENDATION. I suggest that you call Customer Service at 1-877-623-6765 for guidance about what steps you should take at this point for the remainder of 2019 and for health insurance coverage that will take effect on January 1, 2020. Most local hospitals or community health programs will also help you prepare and file an application.

If you would like to obtain advice from outside the government, I suggest that you call Health Care For All, a private, non-profit organization. You can reach the free consumer helpline at 1-800-272-4232 or use the website at www.hcfama.org.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-479

Appeal Decision: Appeal Approved.

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: September 6, 2019

Decision Date: September 9, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

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

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

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant, age 28 and their Spouse, age 26 in 2018, filed their Federal Income Tax return as a married couple with no dependents claimed (Exhibit 2).
2. The Appellants reported that they were full-year residents of Massachusetts living in Middlesex county in tax year 2018 (Exhibit 2).
3. The Appellants' Federal Adjusted Gross Income for 2018 was \$90,625 (Exhibit 2).
4. The Appellant had health insurance for all of tax year 2018 and is not being assessed a tax penalty. The Appellant Spouse did not have health insurance in tax year 2018 (Exhibit 2 and Appellant Testimony).
5. The Appellant Spouse has been assessed a twelve-month tax penalty for 2018. The Appellants filed an appeal of the assessment in April 2019 (Exhibits 2, 3, 4).

6. The Appellant testified that their Spouse is not a U.S. citizen. The Spouse entered the United States on September 11, 2018 under a CR1 Visa as a spouse of a U.S. citizen. The Appellant explained that they were unable to add their Spouse to their employer sponsored health insurance upon arrival because the open enrollment period for the company had ended. The Appellant said that effective January 2019 their Spouse was added to their plan. The Appellant’s credible testimony is supported by a copy of their Spouse’s Visa verifying the date of entry into the U.S. (Exhibit 4 and Appellant Testimony).

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellants filed their income tax return as a married couple with no dependents claimed. The Appellants claimed full year Massachusetts residency in Middlesex county during tax year 2018. The Appellant had health insurance for all of 2018 and is not being assessed a tax penalty. The Appellant Spouse did not have health insurance for any months of tax year 2018 and consequently has been assessed a twelve-month tax penalty for tax year 2018.

The Appellants filed a timely appeal. The Appellant testified that their Spouse is not a U.S. citizen and did not enter the country until September 11, 2018. The Appellant said they immediately tried to enroll their Spouse in their employer sponsored health insurance but was told that due to open enrollment restrictions their Spouse could not be added to their insurance until January 2019. The Appellant’s credible testimony was supported by a copy of their Spouse’s Visa verifying their date of entry as September 11, 2019. Under these circumstances, the twelve-month penalty of the Appellant Spouse is waived.

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

PENALTY ASSESSED

Appellant Spouse: 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.

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-482

Appeal Decision: Appeal Approved.

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: September 6, 2019

Decision Date: September 9, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on September 6, 2019. The Appellant Spouse did not appear. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated July 23, 2019.
- Exhibit 2: Appeal Case Information from Schedule HC 2018.
- Exhibit 3: Statement of Grounds for Appeal dated April 14, 2019.
- Exhibit 4: The Appellants' letter in support of this appeal, with attachments.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellants, both age 60 in 2018, filed their Federal Income Tax return as a married couple with no dependents claimed (Exhibit 2).
2. The Appellants reported on their Schedule HC that they were residents of Massachusetts living in Worcester county for the period of January 1 through September 30 in tax year 2018 (Exhibit 2).
3. The Appellants' Federal Adjusted Gross Income for 2018 was \$24,475 (Exhibit 2, Appellant Testimony).
4. The Appellants did not have health insurance that met Massachusetts minimum creditable coverage standards for the period of January 1, 2018 through September 30, 2018 (Exhibit 2).

5. The Appellant and their Spouse have each been assessed a six-month tax penalty for 2018. The Appellants filed an appeal of the assessment in April 2019 (Exhibits 2, 3, 4).
6. The Appellant testified that they did not reside in Massachusetts for the period of January through September in tax year 2018. The Appellant explained that they moved to Maine in January 2018 to be close to family members. The Appellant said that they owned property in Massachusetts that was not sold until September of 2018. The Appellant said that they hired a tax accountant to complete their 2018 tax returns because with the sale of property they thought the return would be complicated. The accountant made a mistake on the Schedule HC reporting that the Appellant and their Spouse were Massachusetts residents in 2018. The Appellant testified that the accountant told them they had filed an amended return to correct the problem. The Appellant's credible testimony is supported by documents from the State of Maine Bureau of Motor Vehicles including vehicle registrations and driver's licenses issued to the Appellant and their Spouse at their Maine address as well as documentation of a storage rental unit in Maine. The Appellant also submitted documentation from the Massachusetts Registry of Motor Vehicles verifying the cancellation of the Appellant's Massachusetts vehicle registration effective January 24, 2018 (Exhibit 4 and Appellant Testimony).

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellants filed their income tax return as a married couple with no dependents claimed. The Appellants claimed residency in Worcester county during the period of January 1, 2018 through September 30, 2018. The Appellants did not have health insurance that met Massachusetts minimum creditable coverage standards for the nine-month period of January through September and have consequently each been assessed a six-month tax penalty for tax year 2018.

The Appellant testified credibly that they and their Spouse moved to Main in January of tax year 2018. They owned a home in Massachusetts that did not sell until September 2018. The Appellant said that the accountant who prepared their tax return made a mistake when they reported that the Appellants were Massachusetts residents in tax year 2018. They had to report the sale of their Massachusetts real estate in September 2018, but the tax preparer must have entered something incorrectly. The Appellant's credible testimony was supported by documents from the State of Maine Bureau of Motor Vehicles and the Massachusetts Registry of Motor Vehicles verifying the Appellants' change of residency in January 2018. Since the Appellants were not living in Massachusetts during the period of January through September in tax year 2018, the Appellants' six-month penalty is waived.

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

PENALTY ASSESSED

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

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

ADDEDUM

The Appellants are advised to contact the tax preparer of their 2018 tax return and verify that an amended return has been submitted to the Massachusetts Department of Revenue.

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-486

Appeal Decision: Penalty Overturned in Full

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: September 10, 2019

Decision Date: September 15, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on September 10, 2019, and testified under oath. The hearing record consists of the appellant's testimony and the following documents which were admitted into evidence without her objection:

Ex. 1—Statement of Grounds for Appeal—2018

Ex. 2—Appeal Case Information from Schedule HC ¹

Ex. 3—Notice of Hearing

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is 30-years-old, is single, and does not have children. In 2018, she resided in Bristol County. She did not have health insurance in 2018. (Testimony, Ex. 2)
2. Prior to 2018, the appellant last had health insurance in 2016 through her then employer. She did not have insurance in 2017 and was assessed a penalty for which she recently entered into a payment plan with the Department of Revenue (DOR). (Testimony)
3. The appellant worked for the same employer from January, 2017 until April, 2019, and had access to employer health insurance, but never purchased it because she could not afford the monthly premium of approximately \$472.00. (Testimony, Ex. 2)

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

4. The appellant investigated health insurance options for 2018 through the Health Connector and was determined eligible for subsidized insurance, but could not enroll until January, 2019 because of problems with verification of her residential address. She remained enrolled until the end of March, at which time she started a new job and enrolled in employer insurance for \$127.00/month. (Testimony)
5. The appellant reported an adjusted gross income of \$34,554.00 on her 2018 federal tax return, and reported that she was single with no dependents. (Ex. 2)
6. The appellant owned and maintained a car in 2018 from January through September, when it broke down. She did not fix it and took it off the road. (Testimony)
7. From January through September, 2018, the appellant had regular monthly expenses of approximately \$2046.00 for rent (\$500.00), heat and electricity (\$200.00), internet and cable service (\$120.00), cell phone (\$118.00), car insurance (\$108.00), commuter rail pass (\$460.00), food (\$400.00), and gasoline (\$140.00). From October through December when she no longer paid insurance for her car, her monthly expenses were \$1938.00. (Testimony)

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

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant submitted a statement of grounds for appeal (Ex. 1), claiming that the individual mandate did not apply to her during 2018 because the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. She did not have insurance from January through December. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a tax penalty; for Tax Year 2018, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Since the appellant was uninsured for the entire year, she was assessed and is appealing a penalty of twelve months.

The appellant testified credibly that she worked for the same employer from January, 2017 through April, 2019, and had access to employer health insurance, but did not purchase it because she could not afford the monthly premium of approximately \$472.00. She testified that she investigated insurance options through the Health Connector but was unable to enroll until January, 2019, due to problems with verification of her residential address. She testified that she remained enrolled until April, 2019, at which time she started a new job and enrolled in employer health insurance. Finally, she testified that she did not have insurance in 2017 and was assessed a penalty for which she recently entered into a payment plan with the DOR.

The evidence provided by the appellant established that her income for 2018, \$34,554.00, was less than 300% of the federal poverty level (FPL), which for 2018 was \$36,180.00 for a single person. Table 3 of the Affordability Schedule indicates that an individual filing separately with no dependents with a federal adjusted gross income

between \$30,151.00 and \$36,180.00 is deemed to be able to afford a monthly premium of \$144.00 (5.00% of \$34,554.00/12). Table 4 of the Premium Schedule indicates that a 29-year-old individual (the appellant's age in 2018) in Bristol County (where the appellant resided in 2018) could have purchased private health insurance for \$249.00 per month, more than the monthly amount deemed affordable from Table 3. Thus, according to the foregoing analysis, the appellant could not have purchased affordable private health insurance in 2018.

Since the appellant's income was within 300% of the FPL, she should have qualified for subsidized health insurance through the Health Connector, but evidently had an issue with her verification of her residence which prevented an eligibility determination until January, 2019.

The next issue to consider is whether the appellant had access to affordable employer health insurance in 2018. The appellant testified that a monthly premium for an individual plan through her employer was approximately \$472.00. (This information could not be verified because the appellant no longer works for that employer.) Pursuant to 26 IRC section 36B and 45 CFR section 155.305(f), applicants are eligible for an Advanced Premium Tax Credit (APTC) if they meet qualifying income levels and other eligibility requirements. Massachusetts residents may also be eligible for additional state premium assistance through the Health Connector's ConnectorCare program if: a) their household income does not exceed 300 percent of the Federal Poverty Level (FPL) and b) they are eligible for an APTC. 956 CMR 12.09(1) An applicant who has access to other qualifying health insurance, including insurance through an employer, will be blocked from eligibility for an APTC if the coverage is affordable and meets minimum value standards, as those terms are defined by the law. See 26 CFR section 1.36B-2(c)(3). Coverage for plan year 2018 is considered to be affordable if the employee's contribution for an individual plan is 9.56 percent or less of the employee's projected household modified adjusted income (MAGI). The coverage is considered to meet minimum value standards if it has an actuarial value of at least 60 percent.

In this case, the monthly cost for an individual plan through the appellant's employer was approximately \$472.00. (It is not known whether the employer's coverage met minimum value standards.) That cost is more than 9.56 percent of the appellant's projected household MAGI for 2018 (i.e. 9.56 percent of \$34,554.00 is \$3303.00 or \$275.00/month).² Hence, since the cost of employer insurance is more than \$275.00/month, she 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).

Based on the foregoing, it is concluded that since the appellant could not have afforded private or employer health insurance, and since she was unable to get an eligibility determination for subsidized insurance during 2018, her request for a waiver from the penalty is **granted** for the months in question. The determination that the appellant is eligible for a waiver is with respect to 2018, only and is based upon the extent of information submitted by him in this appeal.

PENALTY ASSESSED

Number of Months Appealed: 12 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 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-488

Appeal Decision: Penalty Overturned in Full

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: September 10, 2019

Decision Date: September 16, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant wife appeared at the hearing which was held by telephone on September 10, 2019, and testified under oath. The hearing record consists of the appellant's testimony and the following documents which were admitted into evidence without her objection:

- Ex. 1—Statement of Grounds for Appeal-2018
- Ex. 1A—Final Appeal Decision in PA17-319
- 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 wife is 40-years-old and the appellant husband is 46-years-old. They have two minor children. In 2018, they resided in Worcester County, MA. They did not have health insurance in 2018. (Testimony, Ex. 2)
2. Prior to 2018, the appellants last had health insurance for a portion of 2016 through MassHealth. (Testimony, Ex. 1A)
3. The appellants were each assessed a twelve-month penalty for the 2017 tax year for not having health insurance. They appealed to the Health Connector and following a hearing, the penalties were overturned in full. The hearing officer concluded that the appellants' expenses used most of their income and that

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

paying for health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities. (Testimony, Ex. 1A)

4. The appellant husband was employed in 2018, but the employer did not offer health insurance. The appellant wife was not employed in 2018. (Testimony)
5. The appellants investigated health insurance options for 2018 through the Health Connector and determined that a monthly premium would have cost approximately \$600.00 which they could not afford. (Testimony)
6. The appellants' children had health insurance through MassHealth in 2018. (Testimony)
7. The appellants did not enroll in health insurance in 2019 because the cost was unaffordable. The appellant husband is starting a new job soon and the employer offers health insurance for which he will be eligible. (Testimony)
8. The appellants reported an adjusted gross income of \$59,760.00 on their jointly filed 2018 federal tax return, and reported that they were married with two dependents. (Ex. 2)
9. The appellant wife paid \$115.00/month towards repayment of her student loan for six months in 2018, but had to defer payment for the rest of the year because she was having difficulty meeting other basic monthly expenses. (Testimony)
10. For six months in 2018, the appellants had regular monthly expenses of approximately \$4827.00 for their mortgage which included real estate taxes (\$1441.00), condominium fee (\$70.00), heat (\$100.00), electricity (\$160.00), water and sewer (\$60.00), cable and internet package (\$180.00), cell phones (\$165.00), automobile payments for two vehicles (\$555.00), automobile insurance for two vehicles (\$181.00), student loan debt (\$115.00), gasoline for two vehicles (\$700.00), and food (\$1100.00). In addition, they paid approximately \$150.00/month for credit card debt. Their monthly expenses dropped to \$4712.00 when the appellant wife stopped repayment of her student loans. (Testimony)

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

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellants submitted a statement of grounds for appeal (Ex. 1), claiming that the individual mandate did not apply to them during 2018 because the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities.

The appellants did not have insurance from January through December. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a tax penalty; for Tax Year 2018,

Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Since the appellants were uninsured for the entire year, they were assessed and are appealing a penalty of twelve months each.

The appellant wife testified credibly that her husband was employed in 2018, but the employer did not offer health insurance. She testified that they investigated health insurance options through the Health Connector, and determined that a monthly premium would have cost approximately \$600.00. She testified that they last had health insurance in 2016 through MassHealth for a portion of the year. She testified that they were assessed a penalty of twelve months each for the 2017 tax year and appealed to the Health Connector. She testified that the penalties were overturned following a hearing on the ground that health insurance would have caused a serious deprivation of food, shelter, clothing and other necessities. Finally, she testified that they did not purchase insurance in 2019 due to the cost, but hoped that they would be able to enroll in employer health insurance through her husband's new job.

The evidence provided by the appellants established that their income for 2018, \$59,760.00, was less than 300% of the federal poverty level, which for 2018 was \$73,800.00 for a four-person family. Pursuant to the Code of Massachusetts Regulations, 956 CMR 6.05(1), the Connector has established an affordability schedule that sets forth the percentage of an individual's adjusted gross income which s/he can be expected to contribute toward the cost of private health insurance that meets minimum creditable coverage standards. Table 3 of the Affordability Schedule indicates that a married couple filing jointly with one or more dependents with a federal adjusted gross income between \$51,051.00 and \$61,260.00 is deemed to be able to afford a monthly premium of \$296.31 (5.95% of \$59,760.00/12). Table 4 of the Premium Schedule indicates that a 39-year-old individual (the age of the younger of the two appellants in 2018) in Worcester County (where the appellants resided in 2018) could have purchased private health insurance for \$736.00 per month, more than the monthly amount deemed affordable from Table 3. Thus, according to the foregoing analysis, the appellants could not have purchased affordable private health insurance in 2018.

Since the appellants' income was within 300% of the FPL, they should have qualified for subsidized health insurance through the Health Connector, assuming they met all other eligibility criteria, and for which they would have been subject to a subsidized premium of approximately \$296.31 per month, pursuant to the aforementioned Affordability Schedule in Table 3.

Even though subsidized health insurance may have been affordable to the appellants under the law, they may nevertheless not be subject to a penalty for failing to get health insurance for the months in question if they can show that they experienced a hardship during 2018. Examples of hardships include being homeless or overdue in rent or mortgage payments, receiving a shut-off notice for utilities, or incurring unexpected increases in basic living expenses due to domestic violence, death of a family member, sudden responsibility for providing care for a family member or fire, flood or natural disaster. In addition, the appellants' tax penalty for 2018 could be waived if they experienced financial circumstances such that the expense of purchasing health insurance would have caused them to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08.

The evidence presented by the appellants in this case is sufficient to establish that they experienced a financial hardship as defined by law so as to waive their penalty for the months in question. The appellant wife testified that in 2018 they incurred basic monthly expenses of approximately \$4977.00 including credit card debt for six months and \$4862.00 for the remaining six months. Those expenses were only a few dollars less than their regular monthly pre-tax income of approximately \$4980.00, thereby making a subsidized health insurance premium

through the Health Connector of \$296.31/month unmanageable. Hence, it is concluded that the totality of the evidence presented by the appellants established that they experienced financial circumstances such that the expense of purchasing health insurance that met minimum creditable coverage standards would have caused them to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08 (1)(e).

Therefore, based upon the foregoing, the appellants' request for a waiver from the penalty is **granted** for the months in question. The determination that the appellants are eligible for a hardship waiver is with respect to 2018, only and is based upon the extent of information submitted by them in this appeal.

PENALTY ASSESSED

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

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA17-512

Appeal Decision: Penalty Overturned in Full

Hearing Issue: Appeal of the 2017 Tax Year Penalty

Hearing Date: November 27, 2018

Decision Date: January 11, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant and her husband appeared at the hearing which was held by telephone on November 27, 2018, and testified under oath. The hearing record consists of their testimony and the following documents which were admitted into evidence without objection:

- Ex. 1—Statement of Grounds for Appeal—2017
- Ex. 1A—Letter from the appellant dated May 12, 2018
- Ex. 1B—Copy of Master’s Diploma dated January 31, 2018
- Ex. 1C—Copy of United States Permanent Resident Card
- Ex. 1D—Copy of Immigrant Visa issued by the U.S. Embassy on July 20, 2017
- Ex. 1E—E-ticket itinerary
- Ex. 2—Appeal Case Information from Schedule HC ¹
- Ex. 3—Notice of Hearing

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

- Ex. 4—Letter from the United States Department of State dated June 1, 2017
- Ex. 5—Letter from the United States Department of State dated February 8, 2017
- Ex. 6—Private Bank debit card statement for the months of June-December, 2017
- Ex. 7—Private bank credit loan reference
- Ex. 8—Private bank savings account statement

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

Ex. 9—Reference certifying appellant’s enrollment in a master’s program at Zaporizhzya National University in Ukraine dated July 7, 2017 ²

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is 33-years-old and her husband is 54-years old. In 2017, the appellant did not have health insurance. The appellant’s husband had employer sponsored health insurance for the entire year. (Testimony, Ex. 2)
2. The appellant is a citizen of Ukraine and lived there until she moved to the United States in February, 2018. (Testimony)
3. The appellant married her husband in Ukraine in January, 2017. (Testimony)
4. Subsequent to her marriage, the appellant continued her studies in a translation program in Ukraine from which she graduated in January, 2018. She lived in a hostel in Kiev, Ukraine while she attended school. (Testimony, Exs. 1B,9)
5. The only time the appellant was in the U.S. during 2017 was when she visited her husband from August 16, 2017-August 25, 2017. (Testimony, Ex. 1E)
6. After her marriage, the appellant filed a petition for a U.S. immigrant visa. On June 1, 2017, she had her immigrant visa interview at the U.S. Embassy in Kiev, Ukraine. On July 20, 2017, she was issued an immigrant visa and on August 16, 2017, she was issued her Permanent Resident card. (Testimony, Exs. 4,5,1C, 1D)
7. After obtaining her degree, the appellant moved to the U.S. permanently on February 28, 2018. She enrolled in health insurance through the Health Connector until she began to work a few months later and obtained employer health insurance for one month. She then enrolled in her husband’s employer health insurance for the remainder of the year. (Testimony)
8. The appellant filed a joint tax return for 2017 and reported that she was married with no dependents. (Ex.2)

ANALYSIS AND CONCLUSIONS OF LAW

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

The appellant submitted a statement of grounds for appeal (Ex. 1), claiming that the individual mandate did not apply to her during 2017 for “other” reasons such as being a non-resident of the state or not qualifying for

² With the exception of Ex. 9, all of the documents submitted as part of the Open Record Request have redacted the appellant’s name and other personal information. As such, their probative value is minimized with respect to verification of the appellant’s address in Ukraine for the period of time in question.

government subsidized insurance. She also submitted a letter (Ex. 1A) with her statement in which she stated in part that in 2017 she lived, worked and studied in Ukraine, and the only time she was in the U.S. was to visit her husband from August 16, 2017-August 25, 2017.

The appellant indicated on her Schedule HC that she did not have insurance for the entire year, and did not indicate that she did not reside in Massachusetts for any part of the year. According to M.G.L. c. 111M, s. 2, residents are permitted a 63-day gap between periods of coverage without facing a tax penalty; for Tax Year 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 indicated that she was uninsured for all of 2017, she was assessed and is appealing a penalty of twelve months.

The appellant and her husband testified credibly that the appellant is a citizen of Ukraine where she lived until she moved to the U.S. in February, 2018. They testified that they got married in Ukraine in January, 2017, and the appellant remained there to continue her studies in a translation program in Kiev. The appellant testified that she applied for an immigrant visa to the U.S. in February, 2017, and it was issued to her in July, 2017. She testified that she obtained a permanent resident card in August, 2018, and began to reside in the U.S. permanently in February, 2018. She testified that the only time she was in the U.S. in 2017 was to visit her husband from August 16, 2017-August 25, 2017. Finally, she testified that subsequent to moving to the U.S. in 2018, she was enrolled in health insurance throughout the year.

Although most of the documents that the appellant submitted to establish her residence in Ukraine during 2017 have her name redacted, thereby eliminating the connection between her identity and her address, she nevertheless submitted sufficient and credible evidence to corroborate that she did not reside in the U.S. in 2017. Accordingly, she is not liable for a penalty for any part of the year.

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

PENALTY ASSESSED

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

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

FINAL APPEAL DECISION: PA18-511

Appeal Decision: The Appeal is denied and the penalty is upheld.

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: September 12, 2019

Decision Date: September 25, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant Husband appeared at the hearing, which was held by telephone on September 12, 2019. The procedures to be followed during the hearing were reviewed with the appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

- Exhibit 1: Appeal Case Information from Schedule HC 2018.¹(1P)
- Exhibit 2: Statement of Grounds for Appeal 2018 signed by Appellant on April 29, 2019. (3PP).
- Exhibit 3: Notice of Hearing dated July 25, 2019. (3PP).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant Husband, who filed a 2018 Massachusetts tax return reported he was married, was age 51 in 2018, lived in Plymouth County, and had no dependents. (Exhibit 1, Testimony of Appellant).
2. Appellant Husband was employed full time until May 2018 but was laid off. (Testimony of Appellant).
3. Appellant Husband had employer health insurance through May 2018. (Exhibit 1, Testimony of Appellant).
4. Appellant's Spouse who was employed had employer health insurance in 2018 and was not assessed a penalty. (Exhibit 1, Testimony of Appellant).
5. Appellant Husband and Appellant Spouse's Federal Adjusted Gross Income for 2018 was \$163,064 (Exhibit 1).
6. Appellant Husband has been assessed a tax penalty for four (4) months in 2018. The Appellant has appealed this assessment (Exhibits 1, 2). Appellant Spouse was not assessed a tax penalty in 2018.

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

7. Appellant Husband testified he investigated and attempted to obtain health insurance during the time he was unemployed, but it was too expensive given that he did not have any employment income and all of joint income was needed to pay for living expenses. (Testimony of Appellant, Exhibit 2).
8. Appellant Husband investigated obtaining health insurance through his Spouse's employer's plan but testified it was too expensive. (Testimony of Appellant).
9. Appellant Husband testified the cost of obtaining private insurance was approximately \$628 per month. (Testimony).
10. Appellant Husband testified he was not eligible for public insurance because of the combined income of Appellant Husband and Appellant's Spouse.
11. Appellant Husband testified the Appellant's Spouse's annual income was approximately \$110,000 in 2018. (Testimony of Appellant).
12. Appellant Husband and Appellant's Spouse had the following monthly expenses for necessities in 2018: Mortgage: \$3,090/month, Two (2) Auto Loans: \$760/month, Verizon/Comcast: \$183/month, Home Equity Loan: \$466/month, Car Insurance: \$154/month, Credit Card: \$72/month, Memberships: \$170/month, Revolving Debt: \$72/month, Student Loan: \$164/month, totaling \$ 5,131/month. (Testimony of Appellant, Exhibit 2(a)).
13. According to Table 3 Appellants' could have afforded \$1,093.89 per month for health insurance in 2018. According to Table 4 the cost for married couples in Plymouth County reflected the Appellant the could have purchased insurance for \$822.00 per month for a married couple. Table 4 reflects the cost for a married individual filing separately would have been \$411 per month.
14. In addition to the foregoing, I take administrative notice of the 2018 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov/dor/docs/dor/health-care/2018>, and in particular, Tables 1-6 which, as discussed below, include the Affordability Schedule and other financial information used in making 2018 individual mandate tax penalty determinations.

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2018 should be waived, either in whole or in part. Appellant has been assessed a tax penalty for four (4) months in 2018. Appellant Husband has appealed the penalty. See Exhibits 1 and 2.

The Appellant Husband submitted a statement of grounds for appeal (Ex. 2) wherein he indicated he expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities.

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

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

Appellant Husband testified credibly that she was laid off in May 2018 and investigated obtaining insurance through private and public means. (Testimony of Appellant).

According to Table 3 of Schedule HC for 2018, the Appellant Husband and his Spouse had an adjusted gross income of \$163,064 in 2018 and could have afforded \$1,093.89 per month. According to Table 4, Appellant Husband, age 51 and living in Plymouth County during the time he was being penalized for not having insurance, could have purchased insurance for \$822.00 per month. Table 4 reflects the cost for a married individual filing separately would have been \$411 per month. Appellant Husband testified the cost of obtaining private insurance was approximately \$628 per month. (Testimony). Individual coverage was affordable through the individual market for the appellant in 2018 (Schedule HC for 2018).

Appellant Husband did not have had access to health insurance through the ConnectorCare program where the Appellant and Appellant's Spouse combined income were over the income limit for a married couple person during those months. See Table 2 of Schedule HC. Since Appellant Husband did not have access to insurance through the ConnectorCare program, we need to determine if he experienced a financial hardship such the coverage would have been unaffordable for him. See 956 CMR 6.08. et. seq.

Even though private health insurance may have been affordable to the Appellant Husband 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 2018. Examples of hardships include being homeless or overdue in rent or mortgage payments, receiving a shut-off notice for utilities, or incurring unexpected increases in basic living expenses due to domestic violence, death of a family member, sudden responsibility for providing care for a family member or fire, flood or natural disaster. In addition, the Appellant's tax penalty for 2018c 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 Husband 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. Appellant testified credibly that Appellant Husband and Appellant's Spouse had the following monthly expenses totaling \$ 5,131/month in 2018 consisting of the following: Mortgage: \$3,090/month, 2 Auto Loans \$760/month, Verizon/Comcast \$183/month, Home Equity Loan: \$466/month, Car Insurance \$154/month, Credit Card \$72/month, Memberships \$170/month, Revolving Debt: \$72/month, Student Loan \$164/month, (Testimony of Appellant, Exhibit 2). Those expenses were less than their regular monthly pre-tax income of approximately \$13,588.66, thereby making a private health insurance premium of \$822.00/month, or \$628/month as the Appellant testified seemingly manageable. Accordingly, it does not appear on its face that the payment of \$628/month for health insurance would have caused an undue hardship. (Exhibit 2).

The Appeal is denied and the Appellants' penalty is, therefore, upheld.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Hearing Officer

ADDENDUM

If the appellant still does not have health insurance, and if his income and employment have not changed, hhe is advised to investigate his eligibility for subsidized health insurance through the Health Connector at www.mahealthconnector.org or by contacting customer service at 1-877-623-6765. The open enrollment period runs from November 1, 2018-January 23, 2019.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-521

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: September 9, 2019

Decision Date: September 25, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on September 9, 2019.

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 26, 2019
- Exhibit 2: Appeal Case Information from form Schedule HC
- Exhibit 3: Statement of Grounds for Appeal
- Exhibit 4: Written Statement of Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is thirty-three years old and is single. He lives in Norfolk County, Massachusetts.
2. Appellant worked in a warehouse and had health insurance for the first three months of 2018. Appellant had an opportunity to become an apprentice electrician but it meant that he had to take a decrease in his pay. He has to work ten thousand hours before he becomes an electrician.
3. Appellant state he can't afford health insurance.
4. Appellant does not have health insurance in 2019.
5. The Appellant's monthly expenses totaled \$2,217.00, consisting of rent \$500.00, car payment \$409.00, car insurance \$140.00, car gas \$160.00, school supplies \$200.00, food \$400.00, credit card \$220.00, personal loan \$188.00.
6. The Appellant did submit a Statement of Grounds for Appeal-2018 under the grounds for Appeal, " During 2018, 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 2018. 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 2018.
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 \$29,632.00 was less than \$36,180.00. The monthly premium for health insurance available on the private market in Norfolk County for a 32 year old single person was \$249.00. The tables reflect that Appellant could afford \$103.71. The Appellant had an opportunity to obtain health insurance from his employer but the cost was \$252.00 per month. 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-2018 under the grounds for Appeal, “During 2018, 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 2018, 150 percent of the FPL was \$18,090.00 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 2018 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 2018. 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 2018 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$29,632.00 in 2018, 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 2018 Massachusetts Schedule HC, Appellant could afford to pay \$103.71 monthly for health insurance. See 2018 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 \$249.00 monthly for coverage with zero dependents *Id.* at Table 4. Employer insurance was available at \$252.00 per month.

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 had an opportunity to improve his economic standing by becoming an electrician apprentice, however he had to take a salary decrease in order to take advantage of this opportunity.

Appellant is deemed to afford \$103.71 for health insurance coverage because of his income. Private insurance in the market place was \$249.00 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 2018. 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 2018 penalty assessed is **OVERTURNED**.

PENALTY ASSESSED

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

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-534

Appeal Decision: Appeal Granted

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: September 10, 2019

Decision Date: September 27, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on September 10, 2019. The Appellant offered testimony under oath or affirmation. At the end of the hearing, the record was closed.

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

- Exhibit 1: Appeal Case Information from 2018 Schedule HC (1 page)
- Exhibit 2: 4/24/19 Appeal (15 pages)
- Exhibit 3: 7/30/19 Hearing Notice (3 pages)

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant appealed from the assessment of a seven-month penalty on his 2018 income tax return, checking off "Other," as the basis for his appeal. (Exhibit 1)
2. The Appellant's filing status for 2018 was Single with no dependents. The Appellant's federal AGI in 2018 was \$24,171. The Appellant resided in Essex County in 2018. The Appellant turned twenty-eight years old in 2018. (Exhibit 1)
3. The Appellant was unemployed for most of 2017. (Appellant's testimony)
4. The Appellant worked for the same company throughout 2018. He worked exclusively for this company as a self-employed independent contractor from January through September 2018, while continuing to look for a full-time job. He was paid a total of \$8,900 for his services during that period, with more than half of this income being paid in August and September 2018. (Appellant's testimony)
5. In September 2019, the company offered the Appellant a full-time job, beginning on October 1, 2018, with a starting salary of \$70,000. As he had been seeking full-time employment all year, he accepted the offer immediately. The employer offered health insurance coverage to employees. The Appellant enrolled

in the coverage as soon as he was eligible. His coverage began on November 1, 2018, and continued for the rest of 2018. (Exhibit 2; Appellant’s testimony)

6. According to Table 2 of the 2018 Schedule HC, the Appellant was eligible for government-subsidized insurance in 2018, since his AGI for 2018 was less than \$36,180 for a family of one.
7. According to Table 3, Affordability, of the Schedule HC 2018, based on his 2018 AGI and Single tax filing status, the Appellant could have afforded to pay up to 4.2 percent of his income for health insurance in 2018, which calculates to a monthly premium of up to \$84 for coverage.
8. According to Table 4, Premiums, the Appellant could have purchased health insurance coverage in the private market in 2018 for \$249/monthly, based on his age and county of residence in 2018.

ANALYSIS AND CONCLUSIONS OF LAW

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

In this case, the Appellant struggled with unemployment during 2017 and was still unable to find stable employment throughout 2018. During the first nine months his income as an independent contractor was lumpy. While he averaged less than \$1,000/monthly over that period, most of this income came at the end of this period, in August and October. During that time, the Appellant’s financial position was so unstable that he could not afford to pay for health insurance coverage at any cost. When the Appellant finally got a full-time job, starting on October 1, 2018, with a starting salary of \$70,000, his financial situation improved dramatically. The Appellant signed up for his employer’s health insurance coverage as soon as possible, effective November 1, 2019.

Therefore, I conclude that health insurance that provided minimum creditable coverage was not affordable for the Appellant from January 2018 through October 2018, under 956 CMR 6.08(3).

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

PENALTY ASSESSED

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

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA18-498

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: September 6, 2019

Decision Date: September 17, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellants appeared at the hearing, which was held by telephone, on September 6, 2019.

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 25, 2019
- Exhibit 2: Appeal Case Information from form Schedule HC
- Exhibit 3: Statement of Grounds for Appeal dated April 14, 2019
- Exhibit 4: Written Statement of Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is twenty-eight years old and her husband is thirty years old. They live in Hamden County, Massachusetts.
2. Appellant's husband stated that he lost his job in April 2018 and did not find work again until November 2018. He had the health insurance and they lost coverage when he lost his job. His wife was able to get coverage for herself with her job. Their baby was born in October 2018 and Appellant's wife put the baby on her insurance right away. When the husband obtained a job in November, they would not allow him to start health insurance until January 2019. The Appellant could obtain health insurance at her work for the family for \$700.26.
3. Appellants husband had health insurance for part of 2018 and they have health insurance in 2019.
4. The Appellant's monthly expenses totaled \$4,051.00, consisting of mortgage \$1,360.00, heat & light \$417.00, water \$45.00, trash \$91.00, cell phone \$200.00, car payments for two cars \$571.00 car insurance \$225.00, food \$600.00, credit card \$250.00.
5. The appellant did submit a Statement of Grounds for Appeal-2018 under the grounds for Appeal, " During 2018, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities."
6. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2018. 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 2018.
7. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant would not have been eligible for subsidized health insurance, since Appellant's income of \$80,805.00 was more than \$61,260.00. The monthly premium for health insurance available on the private market in Hamden County for a 30 year old married person with one dependent was \$697.00. The tables reflect that Appellants could afford \$511.76. 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-2018 under the grounds for Appeal, “During 2018, 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 2018, 150 percent of the FPL was \$30,630.00 for a married person with one dependent. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%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 2018 income was more than 150 percent of the FPL, making them potentially subject to an individual mandate penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to them in 2018. 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 2018 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$80,805.00 in 2018, and Appellant’s filing status was married with one dependent. EX 2. According to the Affordability Schedule established by the Connector’s board and included in the Instructions and Worksheets of the 2018 Massachusetts Schedule HC, Appellant could afford to pay \$511.76 monthly for health insurance. See 2018 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to them from the Premium Tables, at a cost of \$979.00 monthly for coverage. *Id.* at Table 4.

Appellants are subject to the tax penalty unless appellants demonstrate a hardship. 956 Mass. Code Regs. 6.07(1) (2008). To prevail on a hardship appeal, an appellant must establish that “based on all his

circumstances, minimum creditable coverage was not affordable to him[er] because [s]he experienced a hardship.” Id. at 6.08(1).

Appellants husband lost his job in April 2018 and they lost their health coverage. They were able to afford health insurance for her and subsequently their baby in October 2018. They could not afford to cover the family because the cost was \$700.26, which was more than they could afford. In addition, when the husband finally returned to the workforce in October 2018, the new company he worked for would not allow him to start his health care coverage until January 2019. Appellant is deemed to afford \$511.76 for health insurance coverage because of their income. Private insurance in the market place was \$697.00 per month, which is more than they could afford. On these facts, I find that Appellants have shown that they were precluded from purchasing affordable health insurance during 2018. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that they are exempt from a tax penalty for their non-compliance with the individual mandate.

Accordingly, Appellant’s appeal is **ALLOWED**, and the 2018 penalty assessed is **OVERTURNED**.

PENALTY ASSESSED

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

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

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 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: PA18-501

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: September 6, 2019

Decision Date: September 17, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on September 6, 2019.

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 25, 2019
- Exhibit 2: Appeal Case Information from form Schedule HC
- Exhibit 3: Statement of Grounds for Appeal dated April 25, 2019
- Exhibit 4: Written Statement of Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is thirty-four years old and his wife is thirty-seven years old. They live in Middlesex County, Massachusetts.
2. Appellant stated that he works in computer storage. His business was drastically reduced in 2018 from 2017. In addition, Appellant and his wife were married in October 2018, so his wife's income which was much higher than his was attributed to both of them. Appellant's income as shown on his profit and loss statement was only \$20,020.00 for 2018.
3. Appellants have health insurance in 2019.
4. The Appellants monthly expenses totaled \$3,180.00, consisting of mortgage \$1,700.00, heat & light \$350.00, internet and cable \$100.00, cell phone \$50.00, car gas \$60.00 car insurance \$100.00, credit card \$350.00, clothing \$100.00, toiletries \$40.00, entertainment \$130.00, water and sewer \$200.00.
5. The appellant did submit a Statement of Grounds for Appeal-2018 under the grounds for Appeal, " Other. During 2018 other circumstances, such as: applying the Affordability Tables in Schedule HC to you is inequitable (for example, because of family size)" Appellant should also have appealed under " During 2018, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities." I will hear their appeal under both grounds.
6. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2018. 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 2018.
7. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant would not have been eligible for subsidized health insurance, since Appellant's income of \$71,868.00 was more than \$61,260.00. The monthly premium for health insurance available on the private market in Middlesex County for a 37 year old married person with one dependent was \$736.00. The tables reflect that Appellants could afford \$455.16. 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-2018 under the grounds for Appeal, “ Other. During 2018 other circumstances, such as: applying the Affordability Tables in Schedule HC to you is inequitable (for example, because of family size)” Appellant should also have appealed under “ During 2018, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities.” I will hear their 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 2018, 150 percent of the FPL was \$30,630.00 for a married person with one dependent. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%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 2018 income was more than 150 percent of the FPL, making them potentially subject to an individual mandate penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to them in 2018. 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 2018 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$71,868.00 in 2018, and Appellant’s filing status was married with one dependent. EX 2. According to the Affordability Schedule established by the Connector’s board and included in the Instructions and Worksheets of the 2018 Massachusetts Schedule HC, Appellant could afford to pay \$455.16 monthly for health insurance. See 2018 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to them from the Premium Tables, at a cost of \$736.00 monthly for coverage. *Id.* at Table 4.

Appellants are subject to the tax penalty unless appellants demonstrate a hardship. 956 Mass. Code Regs. 6.07(1) (2008). To prevail on a hardship appeal, an appellant must establish that “based on all his

circumstances, minimum creditable coverage was not affordable to him[er] because [s]he experienced a hardship.” Id. at 6.08(1).

Appellant married his wife in October 2018. His income for the year was \$20,020.00. His wife’s income, which was far more than his was attributed to both of them when they were married in October 2018. Appellant is deemed to afford \$455.16 for health insurance coverage because of their income. Private insurance in the market place was \$736.00 per month, which is more than they could afford. On these facts, I find that Appellants have shown that they were precluded from purchasing affordable health insurance during 2018. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that they are exempt from a tax penalty for their non-compliance with the individual mandate.

Accordingly, Appellant’s appeal is **ALLOWED**, and the 2018 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 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 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: PA18-502

Appeal Decision Appeal Approved

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: September 6, 2019

Decision Date: September 17, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on September 6, 2019.

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 25, 2019
- Exhibit 2: Appeal Case Information from form Schedule HC
- Exhibit 3: Statement of Grounds for Appeal dated April 25, 2019
- Exhibit 4: Written Statement of Appeal

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is thirty-four years old and his wife is thirty-seven years old. They live in Middlesex County, Massachusetts.
2. Appellant stated that he works in computer storage. His business was drastically reduced in 2018 from 2017. In addition, Appellant and his wife were married in October 2018, so his wife's income which was much higher than his was attributed to both of them. Appellant's income as shown on his profit and loss statement was only \$20,020.00 for 2018.
3. Appellants have health insurance in 2019.
4. The Appellants monthly expenses totaled \$3,180.00, consisting of mortgage \$1,700.00, heat & light \$350.00, internet and cable \$100.00, cell phone \$50.00, car gas \$60.00 car insurance \$100.00, credit card \$350.00, clothing \$100.00, toiletries \$40.00, entertainment \$130.00, water and sewer \$200.00.
5. The appellant did submit a Statement of Grounds for Appeal-2018 under the grounds for Appeal, " Other. During 2018 other circumstances, such as: applying the Affordability Tables in Schedule HC to you is inequitable (for example, because of family size)" Appellant should also have appealed under " During 2018, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities." I will hear their appeal under both grounds.
6. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2018. 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 2018.
7. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant would not have been eligible for subsidized health insurance, since Appellant's income of \$71,868.00 was more than \$61,260.00. The monthly premium for health insurance available on the private market in Middlesex County for a 37 year old married person with one dependent was \$736.00. The tables reflect that Appellants could afford \$455.16. 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-2018 under the grounds for Appeal, “Other. During 2018 other circumstances, such as: applying the Affordability Tables in Schedule HC to you is inequitable (for example, because of family size)” Appellant should also have appealed under “During 2018, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities.” I will hear their 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 2018, 150 percent of the FPL was \$30,630.00 for a married person with one dependent. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%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 2018 income was more than 150 percent of the FPL, making them potentially subject to an individual mandate penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to them in 2018. 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 2018 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$71,868.00 in 2018, and Appellant’s filing status was married with one dependent. EX 2. According to the Affordability Schedule established by the Connector’s board and included in the Instructions and Worksheets of the 2018 Massachusetts Schedule HC, Appellant could afford to pay \$455.16 monthly for health insurance. See 2018 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to them from the Premium Tables, at a cost of \$736.00 monthly for coverage. *Id.* at Table 4.

Appellants are subject to the tax penalty unless appellants demonstrate a hardship. 956 Mass. Code Regs. 6.07(1) (2008). To prevail on a hardship appeal, an appellant must establish that “based on all his

circumstances, minimum creditable coverage was not affordable to him[er] because [s]he experienced a hardship.” Id. at 6.08(1).

Appellant married his wife in October 2018. His income for the year was \$20,020.00. His wife’s income, which was far more than his was attributed to both of them when they were married in October 2018. Appellant is deemed to afford \$455.16 for health insurance coverage because of their income. Private insurance in the market place was \$736.00 per month, which is more than they could afford. On these facts, I find that Appellants have shown that they were precluded from purchasing affordable health insurance during 2018. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that they are exempt from a tax penalty for their non-compliance with the individual mandate.

Accordingly, Appellant’s appeal is **ALLOWED**, and the 2018 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 2018 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 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: PA18-446

Appeal Decision: Appeal Denied.

Hearing Issue: Appeal of the 2018 Tax Year Penalty

Hearing Date: August 13, 2019

Decision Date: October, 2019

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant Spouse appeared at the hearing, which was held by telephone, on August 23, 2019. The person listed as the Primary taxpayer on the Schedule HC 2018 did not attend. The procedures to be followed during the hearing were reviewed with the Appellant who was then sworn in. Exhibits were marked and admitted into evidence with no objection from the Appellant. The record was left open until September 6, 2018 to allow the Health Connector to submit additional information. The information was submitted on August 28, 2019 and copies were mailed to the Appellant. The Appellant was advised that the record would remain open until September 23, 2019 to allow the Appellant to submit a written response.

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

- Exhibit 1: Health Connector Appeals Unit Notice of Hearing dated July 10, 2019.
- Exhibit 2: Appeal Case Information from Schedule HC 2018.
- Exhibit 3: Statement of Grounds for Appeal signed by the Appellant Spouse and the Primary taxpayer on April 10, 2019.
- Exhibit 4: A letter written by the Appellant in support of this appeal, with attachments.
- Exhibit 5: Health Connector Appeals Unit Open Record Form dated August 23, 2019.
- Exhibit 6: Business records submitted by the Health Connector during the record open period (Exhibit 6).

FINDINGS OF FACT

The record shows, and I so find:

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

3. The Appellants' Federal Adjusted Gross Income for 2018 was \$92,463 (Exhibit 2).
4. The Appellant Primary had health insurance for the period of January through May but did not have health insurance for the period of June through December in tax year 2018. The Appellant Primary has been assessed a four month tax penalty (Exhibit 2).
5. The Appellant Spouse did not have health insurance for any months of tax year 2018 (Exhibit 2 and Appellant Testimony).
6. The Appellant Spouse has been assessed a twelve-month tax penalty for 2018. The Appellant Spouse filed an appeal of the assessment in April 2019 (Exhibits 2, 3, 4).
7. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2018 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2018. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2018.
8. In accordance with Table 3 of Schedule HC for 2018, the Appellants filing the Federal tax return as a married couple, with no dependents claimed, with an annual adjusted gross income of \$92,463 could afford to pay \$620 per month for health insurance. In accordance with Table 4, the Appellants, ages 26 and 27, living in Norfolk County, could have purchased private insurance for \$498 per month for a plan (Schedule HC for 2018). Private insurance was affordable for the Appellants.
9. The Appellants would not have been eligible for ConnectorCare coverage in 2018 because the Appellants' income was greater than 300% of the federal poverty level, which was \$48,720 for a family of two in 2018. (See Table 2 of Schedule HC-2018 and 956 CMR 12.04).
10. The Appellants signed the Statement of Grounds for Appeal on April 5, 2019 citing Other as the basis of the appeal. The Appellant Spouse wrote that they had attempted to purchase health insurance but due to errors on the part of the Health Connector (Exhibit 3).
11. The Appellant Spouse testified that they are not disputing the assessment of the four month tax penalty for the Appellant Primary taxpayer. The Appellant Spouse said that in November they attempted to purchase health insurance for 2018 and sent in all requested documentation. The Appellant said that they spoke with someone at Customer Service and were told they were all set. The Appellant maintains that they paid the premium for the month of January 2018 but did not receive a healthcare card. The Appellant indicated that they called Customer Service in mid-January and was told the insurance company may take weeks to send a card. The Appellant said they waited a month and then called the insurance company. The company informed the Appellant that they did not have an active account for the Appellant. The Appellant said they again telephoned the Health Connector and was informed they were disenrolled effective January 1, 2018 and could not enroll because open enrollment had ended in January. The Appellant Spouse asserts no notice was issued by the Health Connector (Appellant Testimony).
12. The Appellant Spouse submitted documentation verifying that on November 20, 2017 they had attempted to enroll in Tufts Health Direct ConnectorCare 3 effective January 1, 2018 (Exhibit 4).

13. The Appellant Spouse was advised that the record would be left open to ask the Health Connector to submit business records including Notes from Customer Service Interactions-SalesForce and any notices issued to the Appellant Spouse regarding their health insurance coverage for the period beginning January 1, 2018. The Health Connector submitted information on August 28, 2019 (Exhibits 5, 6).
14. The Appellant Spouse was enrolled in ConnectorCare Health Insurance for the period of January 1, 2017-November 30, 2017. On December 28, 2017 the Appellant telephoned Health Connector Customer service to dispute a bill they received. The Appellant Spouse informed Customer Service that they had cancelled their health insurance effective October 31, 2017. The Appellant Spouse indicated that they had made a payment in October thinking it was for October. The Appellant Spouse's request for retroactive termination was denied. On December 11, 2017 the Appellant Spouse was notified that their health insurance was terminated effective November 30, 2017 due to non- payment (Exhibit 6).
15. On January 10, 2018 the Health Connector notified the Appellant Spouse that based on their verified income they were eligible for Health Connector Plans, without subsidies. The Appellant Spouse was informed that they could enroll in a plan effective February 1, 2018. The Appellant Spouse was also advised that must enroll and pay the monthly premium due by January 23, 2018 for coverage to be effective February 1, 2018. The notice was sent to the address of record (Exhibit 6).
16. The Appellant telephoned Customer Service on February 1, 2018 to ask about insurance and was advised of the January 10, 2018 notice that had been sent (Exhibit 6).
17. The Appellant was employed throughout tax year 2018. The Appellant did not submit any evidence or testimony to demonstrate financial hardship (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 listed as the Primary tax payer had health insurance for the first five months of tax year 2018 but was uninsured for the period of June through December. The Appellant Primary was assessed a four month tax penalty. The Appellant Spouse did not have health insurance for any months of tax year 2018 and has been assessed a towel month penalty. The Appellants submitted a statement of grounds for this appeal citing circumstances other than financial hardship as the reason for their failure to obtain health insurance tax year 2018. At the Hearing, the Appellant Spouse, representing both household members, testified that the Appellant Primary is not disputing the assessment of their four month penalty. The Appellant Spouse disputes their twelve month penalty.

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

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

The Appellants would not have been eligible for ConnectorCare coverage in 2018 because their income exceeded 300% of the federal poverty level of \$48,720 for a family of two (See Table 2 of Schedule HC-2018 and 956 CMR 12.04).

The Appellant did not offer any evidence or testimony alleging financial hardship as the reason for their failure to obtain health insurance. The Appellant argues that they enrolled in a plan and paid the premium for the month of January 2018. The Appellant asserts that they were informed in February that they had been disenrolled and could not purchase insurance through the Health Connector because the open enrollment period for 2018 ended. The Appellant testified that they did not receive any notice from the Health Connector.

The Appellant's testimony is not supported by the business records submitted by the Health Connector during the record open period. The Appellant had ConnectorCare health insurance coverage through the Health Connector in tax year 2017. The Appellant was notified on December 11, 2017 that their coverage terminated effective November 30, 2017 for non-payment. It appears from the records submitted by the Appellant Spouse that on November 20, 2017 the Appellant attempted to enroll in in ConnectorCare for the period beginning January 1, 2018.

On January 10, 2018 the Appellant was notified by the Health Connector that they were no longer financially eligible for ConnectorCare but were eligible for Health Connector plans, without subsidies based on their household's income. The Appellant was instructed to choose a new plan, enroll and pay the premium due by January 23, 2018 for insurance to be effective February 1, 2018. The Appellant did not enroll in a new plan.

During the period of May through December 2018, the Appellant was employed and did not demonstrate that purchasing health insurance would have caused the Appellant to experience a serious financial hardship. See 956 CMR 6.08. The Appellant's penalty for all five months is upheld.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit