

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA 20-492

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

Hearing Issue: Appeal of the 2020 Tax Year Penalty

Hearing Date: September 8, 2021

Decision Date: September 16, 2021

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone, on September 8, 2021. The hearing record consists of the testimony of Appellant, and the following documents, which were admitted into evidence:

- Exhibit 1: Health Connector Hearing Notice (2 pages)
- Exhibit 2: Appeal Case Information sheet¹ (1 page)
- Exhibit 3: Statement of Grounds with attachment (14 pages)

FINDINGS OF FACT

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

1. Appellant was 37 years old at the end of 2020.
2. During 2020, Appellant lived in Suffolk County.
3. Appellant filed her 2020 Massachusetts taxes as single with no dependents.
4. Appellant reported on her Massachusetts tax return and confirmed at the hearing that she had adjusted gross income in 2020 of \$47,371. See Exhibit 2.
5. Appellant reported in the Schedule HC that she filed with her 2020 state income taxes and confirmed at the hearing that she had health insurance meeting minimum creditable (MCC)

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

standards from January through June 2020, but did not have any insurance for the remaining six months of the year. Exhibit 2.

6. At the start of 2020, Appellant was working at two jobs. One job provided her with health insurance, which she enrolled in. The other job did not provide health insurance.
7. In the middle of 2020, she stopped working at the job that provided health insurance, as a result of the disruption caused by the Covid-19 pandemic. She continued working at the other job.
8. At some point in 2021, she started a new job that provided her with health insurance and she enrolled in that insurance. She was insured as of the date of the hearing.
9. During 2020, Appellant was paying back a student loan that she had taken out in order to cover the costs of a job training program that she had completed.
10. Appellant also regularly sent money to her parents and siblings who lived in Cambodia.

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

ANALYSIS AND CONCLUSIONS OF LAW

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

Further, according to M.G.L. c. 111M, § 2, residents are permitted a 63-day gap between periods of insurance. The Health Connector’s “Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00”, which can be found at <https://betterhealthconnector.com/wp-content/uploads/rules-and-regulations/AdminBulletin03-10.pdf>, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. In Appellant’s case, she reported on her Schedule HC that she was without insurance for six months in 2020. Because she was entitled to a three-month gap without penalty, she has been assessed a penalty for only three months.

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

During the last six months of 2020, when Appellant did not have health insurance, she was not working at a job that offered her health insurance. She had left the job that did provide her with health insurance in the middle of the year because of the pandemic and she did not obtain a new position that provided health insurance until sometime in 2021. Therefore, Appellant did not have access to employment-based insurance during the period when she was uninsured.

Further, based on the annual income that Appellant provided on her 2020 state tax return, she would not have been eligible for Connector Care, which is government-subsidized insurance. Her annual income in 2020 of \$47,371 was above \$37,470, which is 300 percent of the federal poverty limit for a household of one person like Appellant's. (I obtain the figure of \$37,470 from Table 2 to the instructions for the 2020 Schedule HC.) Persons with household incomes above 300 percent of the federal poverty limit are not eligible for Connector Care, which is government-subsidized insurance. 956 CMR 12.04 (Connector Care eligibility requirements.)

However, Appellant could have afforded unsubsidized insurance purchased on the non-group market under state affordability standards set by the Health Connector board pursuant to M.G.L. c. 111M. Under those standards, a person like Appellant who had income of \$47,731 for a tax household of one person was deemed able to afford 7.6 percent of income for health insurance. (I obtain that percentage figure from Table 3 to the instructions for the 2020 Schedule HC.) In Appellant's case, that amounts to \$3,627 annually or \$302 a month. During 2020, a person like Appellant who lived in Suffolk County and was 37 years of age could have obtained insurance for a monthly premium of \$302 for health insurance. (I obtain the premium figure from Table 4 to the instructions for the 2020 Schedule HC). Thus, under state standards, this amount would have been affordable for Appellant.

Because Appellant could have afforded insurance, but didn't obtain it, I must determine whether she has stated grounds to waive the penalty under the Health Connector's regulations. See 956 C.M.R. § 6.08(1). First, I note that, although insurance is deemed affordable for her on her income, it is only barely so. Moreover, during the period of time when she was uninsured, her income was lower than it had been during the first part of the year when she was insured, because she was only working at one job, not two. Further, she had unusual expenses throughout the year, including the obligation to pay back a student loan and a commitment to sending money to her family overseas. Further, I take into account the fact that she obtained insurance in 2021 when it was again available to her through her work. Given all these factors, I exercise my discretion to waive the penalty assessed against Appellant in its entirety.

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 2020.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

FINAL APPEAL DECISION: PA19-1175

Appeal Decision: The penalty is overturned in full.

Hearing Issue: Appeal of the 2019 Tax Year Penalty

Hearing Date: September 21, 2021

Decision Date: September 29, 2021

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant, who are married, appeared at the hearing, which was held by telephone on September 21, 2021. 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. The 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. (1 page).
- Exhibit 2: Statement of Grounds for Appeal 2019 Signed by Appellant on 4/14/2021. (2 PP).
- Exhibit 2(a): Statement of Grounds Submitted with Appeal (1P).
- Exhibit 2(b): Documentation Submitted by the Appellant (Health Connector Eligibility Details and 2018 and 2019 1040's, C. 7 Bankruptcy Filing documentation.) (6PP).
- Exhibit 3: Health Connector's Notice of Hearing dated 8/5/2021 (2 PP).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2019 Massachusetts tax return filed married joint with a family size of 5, were both age 49 in 2019, lived in Norfolk County, and have three (3) dependents. (Exhibit 1).
2. Appellant's Federal Adjusted Gross Income for 2019 was \$71,998. (Exhibit 1).
3. Appellant Husband was self-employed and could not afford the cost of private health insurance. (Appellant's Testimony).

4. Appellant Spouse was employed for an employer with a handful of employees and did not have access to Employer Sponsored Insurance. (“ESI”). (Appellant’s Testimony).
5. Appellant has three (3) children two (2) of whom were in college. (Appellant’s Testimony).
6. Appellant had been experiencing financial hardship since 2010, had been carrying substantial accrued debts and Appellant Husband filed for bankruptcy in 2019. (Appellant’s Testimony, Exhibit 2(a)).
7. Appellant had overestimated their income and did not realize it had dropped when they had applied for health coverage through the Connector. (Appellant’s Testimony Exhibit 2(a), (b)).
8. Appellant completed an eligibility application through the Connector in November 2019, and they were not eligible for subsidized insurance. (Appellant’s Testimony Exhibit 2(a), (b)).
9. Appellant and their family have foregone necessary health care checkups because of being uninsured. (Appellant’s Testimony Exhibit 2(a), (b)).
10. Appellant testified they have been delinquent on their mortgage on their mortgage in 2019. (Appellant Testimony).
11. Appellant testified they do not have any savings or retirement and may have to sell their home to avoid foreclosure. (Appellant Testimony).
12. Appellant re-applied for coverage through the Connector in 2021 and are now insured due to the substantial reduction in their Adjusted Gross Income in 2019 and qualified for a substantial advance premium tax credit. (Appellant’s Testimony Exhibit 2(a), (b)).
13. Appellant has been assessed a tax penalty for twelve (12) months in 2019. The Appellant has appealed this assessment (Exhibits 1, 2).
14. Appellant had the following average monthly living expenses in 2019: Mortgage and Tax/Insurance escrow: \$2,192, Homeowner’s Association: \$131, Maintenance and Repair: \$ 20, Trash: \$85, Utilities: \$200, Cell Phone \$200, Food: \$800, Car Insurance: \$75, Gas and Transportation Costs: \$700, Internet/Cable: \$200, Clothing and Incidentals: \$ 90, Medicals out of pocket: \$150, Child Care Education \$140, Tax Payment arrears: \$70, totaling: \$5,053. (Appellant’s Testimony).
15. Appellant testified his self-employment income was minimal and their net take home pay was approximately \$66,000. (Appellant’s Testimony Exhibit 2(a), (b)).
16. According to Table 3 Appellant could have afforded \$479.99 per month for health insurance in 2019. According to Table 4 Appellant could have purchased insurance for \$855.00 per month.
17. The Appellant would have been eligible for ConnectorCare coverage in 2019 because the Appellant’s income was less than 300% of the poverty level, which was \$88,260.00. (See Table 2 of Schedule HC 2019, Appellant’s Testimony).

18. In addition to the foregoing, I take administrative notice of the 2019 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov/dor/docs/dor/health-care/2019>, and in particular, Tables 1-6 which, as discussed below, include the Affordability Schedule and other financial information used in making 2019 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 2019 should be waived, either in whole or in part. Appellant has been assessed a tax penalty for twelve (12) months in 2019. Appellant has appealed the penalty. (See Exhibits 1 and 2).

The Appellant submitted a statement of grounds for appeal (Ex. 2) with the appeal, claiming that the individual mandate did not apply to them during 2019 because the expense of purchasing health insurance would have caused them to experience a serious deprivation of food, shelter, clothing or other necessities and that during 2019. See 956 CMR 6.08. The Appellant did not have insurance from January through December. (See Exhibit 1).

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’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.

The evidence provided by the Appellant established that their income for 2019, \$71,998.00 was less than 300% of the federal poverty level, which for 2019 was \$88,260.00 for a family size of five (5). According to Table 3 of Schedule HC for 2019, the Appellant had an adjusted gross income of \$71,998 in 2019 and could have afforded \$478.99 per month. According to Table 4, Appellant, ages 49 and living in Norfolk County during the time they were being penalized for not having insurance, could have purchased insurance for \$855.00 per month. Individual coverage was not affordable through the individual market for the Appellant in 2019 (Schedule HC for 2019).

The next issue to consider is whether the Appellant had access to affordable employer health insurance in 2019. The Appellant credibly testified that he was self-employed and could not afford the cost of health insurance. The Appellant also testified that his Spouse did not have access to Employer Sponsored Insurance (“ESI”) because of the small number of employees. Thus, the Appellant did not have access to affordable ESI” for the months they were penalized. (Appellant’s Testimony).

Where the Appellant did not have access affordable coverage through ESI and did not have access to affordable coverage through the individual market, we need to determine if the Appellant experienced a financial hardship such the coverage would have been unaffordable for him. See 956 CMR 6.08. et. seq. The Appellant may 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 2019. 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 2019 could be waived if he experienced financial circumstances such that the expense of purchasing health insurance would have caused her to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08.

The Appellant had the following average monthly living expenses in 2019: Mortgage and Tax/Insurance escrow: \$2,192, Homeowner’s Association: \$131, Maintenance and Repair: \$ 20, Trash: \$85, Utilities: \$200, Cell Phone \$200, Food: \$800, Car Insurance: \$75, Gas and Transportation Costs: \$700, Internet/Cable: \$200, Clothing and Incidentals: \$ 90, Medicals out of pocket: \$150, Child Care Education \$140, Tax Payment arrears: \$70, totaling: \$5,053. (Appellant’s Testimony, Exhibits 2(a), (b)).

The evidence presented by the Appellant 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 credibly testified that their family has experienced financial hardship since 2010 and the Appellant Husband had to file for bankruptcy in 2019. Appellant also credibly testified that they have been delinquent on their mortgage. The Appellant’s did not have adequate income to pay their monthly expenses of \$5,053 and were unable to afford the cost of purchasing private insurance for \$478.99 per month. I find this would have caused the Appellant to experience a serious deprivation of food, shelter clothing, or other necessities. (Exhibits 2(a)(b), Appellant Testimony).

Appellant should note that any waiver granted here is for 2019 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

The Connector has notified the Department of Revenue that pursuant to its decision, you should be assessed a penalty for Tax Year 2019 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Hearing Officer

ADDENDUM

If the Appellant still does not have health insurance, and if his income and employment have not changed, he 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.

Massachusetts Health Connector Appeals Unit
Final Appeal Decision PA 20-323

Appeal Decision: ___Penalty Upheld XXPenalty Overturned in Full ___Penalty Overturned in Part

Hearing Issue: Whether the 2020 Tax Year Penalty Should Be Waived in Whole or in Part

Hearing Date: July 23, 2021

Decision Date: August 29, 2021

AUTHORITY

This hearing was conducted pursuant to section 1411(f) of the Patient Protection and Affordable Care Act (2010), 45 C.F.R 155, M.G.L. c.30A, M.G.L. c.111M and M.G.L. c.176Q, 956 C.M.R 12.00, 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 M.G.L. c.30A and M.G.L. c.111M, 45 C.F.R. 155, 801 C.M.R. 1.02, 956 C.M.R. 6.07, 956 C.M.R. 12.00, and the rules and regulations promulgated thereunder.

HEARING RECORD

Appellant and her Representative appeared at the hearing, which was held by telephone on July 23, 2021. The procedures to be followed during the hearing were reviewed with Appellant and her Representative, who were both sworn in. Exhibits were marked and admitted into evidence without objection. The hearing record consists of the Appellant and her Representative's testimony, and the following documents, which were admitted into evidence:

- Exhibit 1: Statement of Grounds for the Appeal dated March 9, 2021.
- Exhibit 2: Appeal Case Information from Schedule HC dated June 18, 2021.
- Exhibit 3: Health Connector Appeals Unit Notice of Hearing dated June 28, 2021.

FINDINGS OF FACT

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

1. In 2020, Appellant turned 54 years old and resided in Plymouth County. (Exhibit 2).
2. Appellant filed her 2020 Federal Income Tax return as single with no dependents claimed, reporting an Adjusted Gross Income ("AGI") of \$29,862. (Exhibit 2).
3. Appellant submitted a Statement of Grounds for Appeal, dated March 9, 2021, claiming that the expense of purchasing health insurance would have caused Appellant a serious deprivation of food, shelter, clothing or other necessities. (Exhibit 1).

4. In 2020, Appellant worked for an employer offering employer sponsored health insurance (“ESI”) from January until she was furloughed in April due to the pandemic. (Appellant’s Representative’s Testimony).
5. In 2020, Appellant’s employer did not offer her a consistent number of hours per week, and her hours fluctuated anywhere from twenty-five to forty. (Appellant’s Representative’s Testimony).
6. Appellant received unemployment benefits in 2020 as a result of her furlough. (Appellant’s Representative’s Testimony).
7. Appellant enrolled in health insurance through the Health Connector in July of 2020. (Appellant’s Representative’s Testimony).
8. At the time of the hearing, Appellant was enrolled in health insurance through the Connector. (Appellant’s Representative’s Testimony).

In addition to the foregoing facts, I take administrative notice of the 2020 Schedule HC Instructions and Worksheets, and in particular Tables 1-6 which includes the Affordability Schedule and other financial information used in making 2020 individual mandate tax penalty determinations.

ANALYSIS AND CONCLUSIONS OF LAW

The Massachusetts legislature enacted the tax penalty to encourage compliance with M.G.L c. 111M, § 2, also called the “individual mandate”, which requires that every adult resident of Massachusetts obtain insurance coverage “[s]o long as it is deemed affordable.” 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 the individual did not have health insurance. The Connector’s regulations provide for a waiver of the tax penalty in the case of financial hardship. *See* 956 C.M.R. 6.08.

Pursuant to the Connector’s Administrative Bulletin 03-10, applying M.G.L. c. 111M, §2(b), taxpayers are given a three-month grace period for any lapse in coverage to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. Because Appellant had health insurance for a portion of 2020, she is entitled to a three-month grace period, and is appealing a three-month tax penalty for 2020. (Exhibit 2).

In support of her appeal, Appellant submitted a Statement of Grounds dated March 9, 2021, claiming that the expense of purchasing health insurance would have caused Appellant to suffer a serious deprivation of food, shelter, clothing or other necessities. (Exhibit 1).

The issue to be determined is whether the three-month 2020 Tax Year penalty assessed against Appellant should be waived in whole or in part. To make this determination, there must be an evaluation of whether affordable insurance meeting minimum creditable coverage standards was available to Appellant in 2020. 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 available to Appellant through employer-sponsored plans,

government-subsidized programs or on the private insurance market. See 2020 Schedule HC Instructions and Worksheets. If affordable insurance was available, it must be determined if such insurance was, in fact, not affordable based on Appellant experiencing a financial hardship, as defined in 956 C.M.R. 6.08.

Based on Schedule HC for 2020 Table 4, it would have cost Appellant, age 54 and living in Plymouth County, \$420 per month to purchase an individual plan on the private insurance market. Based on the Affordability Schedule, Appellant, filing the Federal tax return as single with no dependents with an AGI of \$29,862, could afford to pay \$105 monthly for a single plan. See 2020 Schedule HC Instructions and Worksheets, *supra*, at Table 3. Based on these Tables showing that Appellant could afford \$105 per month, while private insurance would cost \$420 per month, I conclude that affordable private insurance was not available to Appellant in 2020. See 2020 Schedule HC Instructions and Worksheets, Tables 3 and 4.

According to Schedule HC for 2020 Table 2, I find that Appellant's 2020 AGI of \$29,862 made her eligible for Connector Care (eligibility for government-subsidized health insurance is based on income being no more than 300% of the Federal Poverty Level, which in 2020 was \$37,470 for an individual). See 2020 Schedule HC Instructions and Worksheets, *supra*, at Table 2. Appellant's 2020 AGI of \$29,862 is less than 300% of the FPL, making Appellant eligible for subsidized health insurance through the Health Connector.

Appellant credibly testified that during the months in 2020 that she worked for an employer offering ESI, January through March, her employer did not offer her a consistent number of weekly hours. (Appellant's Representative's Testimony). Where Appellant's weekly work hours fluctuated greatly, anywhere from twenty-five to forty, her weekly pay fluctuated as well. (Appellant's Representative's Testimony). I find that the cost of a fixed weekly premium is not affordable for an individual working an inconsistent number of hours per week through no fault of her own, and conclude that while Appellant had access to ESI from January through March of 2020, it was not affordable for her, based on her fluctuating hours. Despite ESI not being affordable for Appellant, access to ESI blocks access to Advanced Premium Tax Credits ("APTC") and Appellant would not have been eligible for subsidized care with the Connector during the months she had access to ESI.

Appellant lost access to ESI beginning in April of 2020 when she was furloughed by her employer and she is entitled to a three-month grace period from April through June to obtain health insurance. (Appellant's Representative's Testimony; See Connector's Administrative Bulletin 03-10, applying M.G.L. c. 111M, §2(b).)

Given that private health insurance was not affordable for Appellant, she did have access to ESI but it was not affordable for her based on her fluctuating hours, and this ESI blocked her access to subsidized health insurance through the Connector, I conclude that Appellant did not have access to affordable health insurance coverage from January through April of 2020. Individuals without access to affordable health insurance are not subject to the individual mandate penalty, as individuals cannot be made to purchase that which is unavailable to them, namely an affordable health insurance plan. See 956 C.M.R. 6.08. Where Appellant is entitled to a grace period for the months of May through June, she is entitled to a waiver of the penalty for all months assessed against her for 2020.

Accordingly, Appellant's appeal is **GRANTED** and the three-month 2020 Tax Penalty assessed against her is **OVERTURNED**.

PENALTY ASSESSED

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should NOT be assessed a penalty for Tax Year 2020.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Massachusetts Health Connector Appeals Unit
Final Appeal Decision PA 20-324

Appeal Decision: ___Penalty Upheld XXPenalty Overturned in Full ___Penalty Overturned in Part

Hearing Issue: Whether the 2020 Tax Year Penalty Should Be Waived in Whole or in Part

Hearing Date: July 23, 2021

Decision Date: August 29, 2021

AUTHORITY

This hearing was conducted pursuant to section 1411(f) of the Patient Protection and Affordable Care Act (2010), 45 C.F.R 155, M.G.L. c.30A, M.G.L. c.111M and M.G.L. c.176Q, 956 C.M.R 12.00, 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 M.G.L. c.30A and M.G.L. c.111M, 45 C.F.R. 155, 801 C.M.R. 1.02, 956 C.M.R. 6.07, 956 C.M.R. 12.00, and the rules and regulations promulgated thereunder.

HEARING RECORD

Appellants appeared at the hearing, which was held by telephone on July 23, 2021. The procedures to be followed during the hearing were reviewed with Appellants, who were both sworn in. Exhibits were marked and admitted into evidence without objection. The hearing record consists of the Appellants' testimony, and the following documents, which were admitted into evidence:

- Exhibit 1: Statement of Grounds for the Appeal dated March 12, 2021.
- Exhibit 2: Appeal Case Information from Schedule HC dated June 18, 2021.
- Exhibit 3: Utility shutoff notice dated February 18, 2020.
- Exhibit 4: Health Connector Appeals Unit Notice of Hearing dated June 28, 2021.

FINDINGS OF FACT

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

1. In 2020, Appellant Husband turned 28 years old, Appellant Wife turned 26 years old, and they resided in Middlesex County. (Exhibit 2).
2. Appellants married in July of 2020. (Appellants' Testimony).
3. Appellants filed their 2020 Federal Income Tax return as married filing jointly, with no dependents claimed, reporting an Adjusted Gross Income ("AGI") of \$53,643. (Exhibit 2).

4. Appellants submitted a Statement of Grounds for Appeal, dated March 12, 2021, claiming that during 2020, they received a shutoff notice relating to essential utilities. (Exhibits 1 and 3).
5. Appellants' submitted a copy of a final termination notice from an essential utility provider dated February 18, 2020. (Exhibit 3).
6. Appellant Husband had health insurance under MassHealth in January and February of 2020, prior to marriage. (Exhibit 2; Appellants' Testimony).
7. MassHealth determined Appellant Husband no longer eligible for MassHealth in or around March of 2020. (Appellants' Testimony).
8. Appellant Husband separated from work in or around the beginning of 2020 to care for his son during the pandemic, and returned to work in December of 2020. (Appellants' Testimony).
9. Appellant Husband does not know if his 2020 employer offered health insurance. (Appellants' Testimony).
10. Appellant Wife worked from January through March of 2020 when she was furloughed due to the pandemic, and returned to work in May of 2020. (Appellants' Testimony).
11. Appellant Wife had no health insurance in 2020. (Exhibit 2; Appellants' Testimony).
12. Appellant's 2020 employer offered employer sponsored health insurance ("ESI"). (Appellants' Testimony).
13. Appellants received unemployment benefits in 2020. (Appellants' Testimony).
14. Appellants enrolled in health insurance through the Health Connector in early 2021, and were enrolled in a Health Connector plan as of the date of the hearing. (Appellants' Testimony).

In addition to the foregoing facts, I take administrative notice of the 2020 Schedule HC Instructions and Worksheets, and in particular Tables 1-6 which includes the Affordability Schedule and other financial information used in making 2020 individual mandate tax penalty determinations.

ANALYSIS AND CONCLUSIONS OF LAW

The Massachusetts legislature enacted the tax penalty to encourage compliance with M.G.L c. 111M, § 2, also called the "individual mandate", which requires that every adult resident of Massachusetts obtain insurance coverage "[s]o long as it is deemed affordable." 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 the individual did not have health insurance. The Connector's regulations provide for a waiver of the tax penalty in the case of financial hardship. See 956 C.M.R. 6.08.

Pursuant to the Connector's Administrative Bulletin 03-10, applying M.G.L. c. 111M, §2(b), taxpayers are given a three-month grace period for any lapse in coverage to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. Because Appellant Husband had health insurance for a portion of 2020, he is entitled to a three-month grace period, and is appealing a seven-month tax penalty for 2020. (Exhibit 2). Because Appellant Wife had no health insurance in 2020, the three-month grace period is inapplicable, and she is appealing a twelve-month tax penalty for 2020. (Exhibit 2).

In support of their appeal, Appellants submitted a Statement of Grounds dated March 12, 2021, claiming that during 2020, they received a shutoff notice relating to essential utilities. (Exhibits 1 and 3).

The issue to be determined is whether the seven and twelve-month 2020 Tax Year penalties assessed against Appellants should be waived in whole or in part. To make this determination, there must be an evaluation of whether affordable insurance meeting minimum creditable coverage standards was available to Appellants in 2020. In determining affordability, consideration is given first to the amount Appellants are deemed able to afford for health insurance premiums under the Affordability Schedule, and second, to the cost of health insurance available to Appellants through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2020 Schedule HC Instructions and Worksheets. If affordable insurance was available, it must be determined if such insurance was, in fact, not affordable based on Appellants experiencing a financial hardship, as defined in 956 C.M.R. 6.08.

Based on Schedule HC for 2020 Table 4, it would have cost Appellants, ages 28 and 26 and living in Middlesex County, \$538 per month to purchase a family plan on the private insurance market. Based on the Affordability Schedule, Appellants, filing the Federal tax return as married filing jointly with no dependents, with an AGI of \$53,643, could afford to pay \$333 monthly for a family plan. See 2020 Schedule HC Instructions and Worksheets, *supra*, at Table 3. Based on these Tables showing that Appellants could afford \$333 per month, while private insurance would cost \$538 per month, I conclude that affordable private insurance was not available to Appellants in 2020. See 2020 Schedule HC Instructions and Worksheets, Tables 3 and 4.

According to Schedule HC for 2020 Table 2, I find that Appellants' 2020 AGI of \$53,643 made them ineligible for Connector Care (eligibility for government-subsidized health insurance is based on income being no more than 300% of the Federal Poverty Level, which in 2020 was \$50,730 for a family of two). See 2020 Schedule HC Instructions and Worksheets, *supra*, at Table 2. Appellants' 2020 AGI of \$53,643 is greater than 300% of the FPL, making Appellants ineligible for subsidized health insurance through the Health Connector.

Appellants testified that Appellant Husband had health insurance under MassHealth in January and February of 2020, prior to Appellants' marriage. (Exhibit 2; Appellants' Testimony). MassHealth determined Appellant Husband no longer eligible for MassHealth in or around March of 2020, and they do not know the reason for this. (Appellants' Testimony). Appellant Husband separated from work in or around the beginning of 2020 to care for his son during the pandemic, and returned to work in December of 2020. (Appellants' Testimony). Appellant Husband does not know if his 2020 employer offered health insurance. (Appellants' Testimony). Appellant Wife worked from January through March

of 2020, when she was furloughed due to the pandemic, and she returned to work in May of 2020. (Appellants' Testimony). Appellant Wife's 2020 employer offered employer sponsored health insurance ("ESI"). (Appellants' Testimony).

Since Appellants had access to ESI in 2020, a determination must be made whether Appellants experienced a financial hardship such that they could not purchase otherwise affordable health insurance available to them. See 956 C.M.R. 6.08 and 956 C.M.R. 12.11. Financial hardship considerations include homelessness, rent or mortgage payments in arrears for more than thirty days, receiving utility shutoff notices, incurring significant, unexpected increases in essential expenses resulting from fire, flood or a natural disaster, domestic violence, death of a family member, sudden responsibility for providing care for a family member, if the expense of purchasing health insurance would have caused a serious deprivation of food, shelter or other necessities, and any other grounds that demonstrate unaffordability. See 956 C.M.R. 6.08 and 956 C.M.R. 12.11.

Appellants testified that in 2020 they received a shutoff notice from their electricity provider. (Exhibit 3; Appellants' Testimony). Appellants' testimony is supported by their submission of a copy of a 'Final Notice of Termination – 72 Hours Left' notice dated February 18, 2020 from the utility provider. (Exhibit 3). Based on Appellants' credible testimony regarding their financial difficulty paying for this essential utility service and the supporting document submitted, I find that Appellants have sufficiently demonstrated that in 2020 they experienced a financial hardship such that they could not purchase otherwise affordable health insurance available to them. See 956 C.M.R. 6.08 and 956 C.M.R. 12.11.

Based on the record before me, I conclude that while Appellants had access to employer sponsored health insurance in 2020, they experienced a financial hardship such that they could not purchase otherwise affordable health insurance available to them. See 956 C.M.R. 6.08 and 956 C.M.R. 12.11.

Accordingly, Appellants' appeal is **GRANTED** and the seven and twelve-month 2020 Tax Penalties assessed against them are **OVERTURNED**.

PENALTY ASSESSED

Number of Months Appealed: 7	Number of Months Assessed: 0
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 NOT be assessed penalties for Tax Year 2020.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Massachusetts Health Connector Appeals Unit
Final Appeal Decision PA 20-444

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

Hearing Issue: Whether the 2020 Tax Year Penalty Should Be Waived in Whole or in Part

Hearing Date: August 17, 2021

Decision Date: September 17, 2021

AUTHORITY

This hearing was conducted pursuant to section 1411(f) of the Patient Protection and Affordable Care Act (2010), 45 C.F.R 155, M.G.L. c.30A, M.G.L. c.111M and M.G.L. c.176Q, 956 C.M.R 12.00, 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 M.G.L. c.30A and M.G.L. c.111M, 45 C.F.R. 155, 801 C.M.R. 1.02, 956 C.M.R. 6.07, 956 C.M.R. 12.00, and the rules and regulations promulgated thereunder.

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone on August 17, 2021. The procedures to be followed during the hearing were reviewed with Appellant, who was sworn in. Exhibits were marked and admitted into evidence without objection. The hearing record consists of the Appellant's testimony, and the following documents, which were admitted into evidence:

- Exhibit 1: Statement of Grounds for the Appeal dated March 17, 2021.
- Exhibit 2: Appellant's letter in support of appeal.
- Exhibit 3: Appellant's 2020 W2s.
- Exhibit 4: Appeal Case Information from Schedule HC dated June 2, 2021.
- Exhibit 5: HC Appeals Unit Notice of Hearing dated June 21, 2021.

FINDINGS OF FACT

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

1. Appellant turned 27 years old and resided in Essex County in 2020. (Exhibit 4).
2. Appellant filed his 2020 Federal Income Tax return as single with no dependents claimed, reporting an Adjusted Gross Income of \$23,774. (Exhibit 4).
3. Appellant submitted a Statement of Grounds for Appeal, dated March 17, 2021, claiming that 'Other' circumstances prevented him from being able to afford health insurance in 2020. (Exhibit 1).

4. In 2020, Appellant worked for five separate employers, all offering employer sponsored health insurance (“ESI”) after a probationary period. (Exhibit 2; Appellant Testimony).

In addition to the foregoing facts, I take administrative notice of the 2020 Schedule HC Instructions and Worksheets, and in particular Tables 1-6 which includes the Affordability Schedule and other financial information used in making 2020 individual mandate tax penalty determinations.

ANALYSIS AND CONCLUSIONS OF LAW

The Massachusetts legislature enacted the tax penalty to encourage compliance with M.G.L c. 111M, § 2, also called the “individual mandate”, which requires that every adult resident of Massachusetts obtain insurance coverage “[s]o long as it is deemed affordable.” 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 the individual did not have health insurance. The Connector’s regulations provide for a waiver of the tax penalty in the case of financial hardship. *See* 956 C.M.R. 6.08.

Pursuant to the Connector’s Administrative Bulletin 03-10, applying M.G.L. c. 111M, §2(b), taxpayers are given a three-month grace period for any lapse in coverage to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. Because Appellant had no health insurance in 2020, the three-month grace period is inapplicable, and Appellant is appealing a twelve-month tax penalty for 2020. (Exhibit 4).

In support of his appeal, Appellant submitted a Statement of Grounds, claiming that ‘Other’ circumstances prevented him from being able to afford health insurance in 2020. (Exhibit 1).

A determination must be made whether the twelve-month 2020 Tax Year penalty assessed against Appellant should be waived in whole or in part. To make this determination, there must be an evaluation of whether affordable insurance meeting minimum creditable coverage standards was available to Appellant in 2020. 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 to Appellant through employer-sponsored plans, government-subsidized programs or on the private insurance market. *See* 2020 Schedule HC Instructions and Worksheets. If affordable insurance was available, it must be determined if such insurance was, in fact, not affordable based on Appellant experiencing a financial hardship, as defined in 956 C.M.R. 6.08.

Appellant credibly testified to the difficulties he experienced in 2020 trying to find and retain employment positions without a drivers’ license. (Exhibit 2; Appellant Testimony). Appellant cycled through five employers in 2020, all offering ESI after a probationary period. (Exhibits 2 and 3; Appellant Testimony). Additionally, Appellant was furloughed from February until June. (Appellant Testimony). Mainly due to transportation issues, Appellant did not remain in these positions long enough to become eligible for enrollment in the ESI. (Exhibit 2 and 3; Appellant Testimony). In October, Appellant secured a job close to home where transportation was not an issue, and enrolled in ESI once his probation period ended, with this coverage becoming effective January 2021. (Exhibit 2; Appellant Testimony). Even

though Appellant was unable to enroll in ESI offered to him because he did not stay employed past the employers' health insurance probation periods for the first four positions held in 2020, I find that he had access to ESI, except for the period of time he was furloughed from March to May of 2020.

Based on Schedule HC for 2020 Table 4, it would have cost Appellant, age 27 and living in Essex County, \$269 per month to purchase an individual plan on the private insurance market. Based on the Affordability Schedule, Appellant, filing the Federal tax return as single with no dependents, with an annual Adjusted Gross Income of \$23,774, could afford to pay \$69 monthly for an individual plan. See 2020 Schedule HC Instructions and Worksheets, *supra*, at Table 3. Based on the Tables, because Appellant could not afford the cost, I conclude that affordable private insurance was not available to Appellant in 2020. See 2020 Schedule HC Instructions and Worksheets, Tables 3 and 4.

According to Schedule HC for 2020 Table 2, I find that Appellant's 2020 Adjusted Gross Income of \$23,774 made him eligible for Connector Care (eligibility for government-subsidized health insurance is based on income being no more than 300% of the Federal Poverty Level, which in 2020 was \$37,470 for an individual). Because Appellant's 2020 AGI of \$23,774 was less than 300% of the FPL, he is eligible for subsidized health insurance through the Connector. See 2020 Schedule HC Instructions and Worksheets, *supra*, at Table 2. Access to ESI, however, even if not enrolled, blocks access to subsidies known as Advanced Premium Tax Credits ("APTC") and Appellant would not have been eligible for Connector Care in 2020 during the months he had access to ESI. See 45 C.F.R. §155.305(f)(1)ii)(B).

For the months when Appellant was not able to enroll in the ESI available to him based on the probation periods, where this ESI nonetheless blocked his access to subsidized health insurance through the Connector, I find that Appellant did not have access to affordable health insurance coverage and he is not subject to the individual mandate penalty. Conversely, I find that during the period of time Appellant was furloughed and ESI was not available to him, and thus nothing blocking Appellant's access to subsidized care, March through May, Appellant had access to affordable health insurance coverage through the Connector.

Because Appellant had access to affordable health insurance through the Connector from March through May 2020, it must be determined whether he experienced a financial hardship during these months, such that he could not purchase otherwise affordable health insurance. See 956 C.M.R. 6.08 and 956 C.M.R. 12.11. Financial hardship considerations include homelessness, rent or mortgage payments in arrears for more than thirty days, receiving utility shutoff notices, incurring significant, unexpected increases in essential expenses resulting from fire, flood or a natural disaster, domestic violence, death of a family member, sudden responsibility for providing care for a family member, if the expense of purchasing health insurance would have caused a serious deprivation of food, shelter or other necessities, and any other grounds that demonstrate unaffordability. See 956 C.M.R. 6.08 and 956 C.M.R. 12.11.

Appellant's 2020 adjusted gross income of \$23,774 equates to gross earnings of \$1,981 per month. (Exhibit 4). Appellant testified to monthly expenses for necessities of \$710, well below his gross monthly earnings. (Appellant Testimony). Appellant was not facing eviction, did not receive any utility shutoff notices and did not occur significant and unexpected expenses due to a family emergency or natural

disaster. Appellant failed to demonstrate that the cost of purchasing health insurance would have caused him to experience a serious deprivation of basic necessities during the months he was eligible for subsidized care through the Connector. I find that during these months Appellant did not experience a financial hardship as defined by the regulation. See 956 C.M.R. 6.08 and 956 C.M.R. 12.11.

Accordingly, Appellant's twelve-month penalty is **UPHELD** in part and **DENIED** in part.

PENALTY ASSESSED

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2020 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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 M.G.L. c. 30A. To appeal, you must file a complaint with the Superior Court in the county where you reside, or Suffolk County Superior Court, within thirty (30) days of your receipt of this decision.

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit
Final Appeal Decision PA 20-445

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

Hearing Issue: Whether the 2020 Tax Year Penalty Should Be Waived in Whole or in Part

Hearing Date: August 17, 2021

Decision Date: September 17, 2021

AUTHORITY

This hearing was conducted pursuant to section 1411(f) of the Patient Protection and Affordable Care Act (2010), 45 C.F.R 155, M.G.L. c.30A, M.G.L. c.111M and M.G.L. c.176Q, 956 C.M.R 12.00, 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 M.G.L. c.30A and M.G.L. c.111M, 45 C.F.R. 155, 801 C.M.R. 1.02, 956 C.M.R. 6.07, 956 C.M.R. 12.00, and the rules and regulations promulgated thereunder.

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone on August 17, 2021. The procedures to be followed during the hearing were reviewed with Appellant, who was sworn in. Exhibits were marked and admitted into evidence without objection. The hearing record consists of the Appellant's testimony, and the following documents, which were admitted into evidence:

- Exhibit 1: Statement of Grounds for the Appeal dated March 25, 2021.
- Exhibit 2: Appellant's letter in support of appeal dated March 31, 2021.
- Exhibit 3: Appellant's 2020 1095-C.
- Exhibit 4: Billing statement.
- Exhibit 5: Appellant's paystub.
- Exhibit 6: Appeal Case Information from Schedule HC dated July 2, 2021.
- Exhibit 7: HC Appeals Unit Notice of Hearing dated June 21, 2021.

FINDINGS OF FACT

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

1. Appellant turned 31 years old and resided in Worcester County in 2020. (Exhibit 6).
2. Appellant filed his 2020 Federal Income Tax return as single with no dependents claimed, reporting an Adjusted Gross Income of \$49,179. (Exhibit 6).

3. Appellant submitted a Statement of Grounds for Appeal, dated March 25, 2021, claiming that the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. (Exhibit 1).
4. From January through June of 2020, Appellant was placed for employment with Company B, by an entity with whom he was working, Company A. (Exhibit 2).
5. From January through June of 2020, Appellant was an employee of Company A, which offered employer sponsored health insurance (“ESI”). (Exhibit 2; Appellant Testimony).
6. From July through December of 2020, Appellant was an employee of Company B, who also offered ESI. (Exhibit 2; Appellant Testimony).
7. Appellant enrolled in his new employer (Company B’s) ESI, effective July of 2020.

In addition to the foregoing facts, I take administrative notice of the 2020 Schedule HC Instructions and Worksheets, and in particular Tables 1-6 which includes the Affordability Schedule and other financial information used in making 2020 individual mandate tax penalty determinations.

ANALYSIS AND CONCLUSIONS OF LAW

The Massachusetts legislature enacted the tax penalty to encourage compliance with M.G.L c. 111M, § 2, also called the “individual mandate”, which requires that every adult resident of Massachusetts obtain insurance coverage “[s]o long as it is deemed affordable.” 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 the individual did not have health insurance. The Connector’s regulations provide for a waiver of the tax penalty in the case of financial hardship. *See* 956 C.M.R. 6.08.

Pursuant to the Connector’s Administrative Bulletin 03-10, applying M.G.L. c. 111M, §2(b), taxpayers are given a three-month grace period for any lapse in coverage to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. Because Appellant had health insurance for a portion of 2020, he is entitled to a three-month grace period, and Appellant is appealing a three-month tax penalty for 2020. (Exhibit 6).

In support of his appeal, Appellant submitted a Statement of Grounds, claiming that the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. (Exhibit 1).

A determination must be made whether the three-month 2020 Tax Year penalty assessed against Appellant should be waived in whole or in part. To make this determination, there must be an evaluation of whether affordable insurance meeting minimum creditable coverage standards was available to Appellant in 2020. 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 to Appellant through employer-sponsored plans, government-subsidized programs or on the private insurance market. *See* 2020 Schedule HC

Instructions and Worksheets. If affordable insurance was available, it must be determined if such insurance was, in fact, not affordable based on Appellant experiencing a financial hardship, as defined in 956 C.M.R. 6.08.

According to Schedule HC for 2020 Table 2, I find that Appellant's 2020 Adjusted Gross Income of \$49,179 made him ineligible for Connector Care (eligibility for government-subsidized health insurance is based on income being no more than 300% of the Federal Poverty Level, which in 2020 was \$37,470 for an individual). Because Appellant's 2020 AGI of \$49,179 was greater than 300% of the FPL, he is ineligible for subsidized health insurance through the Connector. See 2020 Schedule HC Instructions and Worksheets, *supra*, at Table 2.

Based on Schedule HC for 2020 Table 4, it would have cost Appellant, age 31 and living in Worcester County, \$288 per month to purchase an individual plan on the private insurance market. Based on the Affordability Schedule, Appellant, filing the Federal tax return as single with no dependents, with an annual Adjusted Gross Income of \$49,179, could afford to pay \$311 monthly for an individual plan. See 2020 Schedule HC Instructions and Worksheets, *supra*, at Table 3. Based on the Tables, because the cost of private health insurance was less than the amount Appellant could afford, I conclude that affordable private insurance was available to Appellant in 2020. See 2020 Schedule HC Instructions and Worksheets, Tables 3 and 4.

Appellant credibly testified, supported by submission of a 2020 1095-C, that in January and February he was unable to enroll in the ESI offered to him by Company A because of their probationary period. (Exhibit 2; Appellant Testimony). Appellant's 1095-C indicated that he was eligible to enroll in ESI with Company A beginning in March, which Appellant did not do. (Exhibit 3). As of July, Appellant became a full-time employee of Company B, and he enrolled into this employer's ESI at a cost \$159 per month, effective July of 2020.

Because Appellant had access to ESI as well as affordable private health insurance in 2020, it must be determined whether he experienced a financial hardship, such that he could not purchase otherwise affordable health insurance. See 956 C.M.R. 6.08 and 956 C.M.R. 12.11. Financial hardship considerations include homelessness, rent or mortgage payments in arrears for more than thirty days, receiving utility shutoff notices, incurring significant, unexpected increases in essential expenses resulting from fire, flood or a natural disaster, domestic violence, death of a family member, sudden responsibility for providing care for a family member, if the expense of purchasing health insurance would have caused a serious deprivation of food, shelter or other necessities, and any other grounds that demonstrate unaffordability. See 956 C.M.R. 6.08 and 956 C.M.R. 12.11.

Appellant's 2020 adjusted gross income of \$49,179 equates to gross earnings of \$4,098 per month. (Exhibit 6). Appellant testified to monthly expenses for necessities of \$1,912, well below his gross monthly earnings. (Exhibit 2; Appellant Testimony). Appellant testified to incurring additional expenses based on his girlfriend's loss of her job, however, as a single tax filer without dependents, these expenses are not considered Appellant's essential expenses. Neither gas expenditures nor credit card debts are considered essential expenses. (Exhibit 2). Appellant was not facing eviction, did not receive any utility shutoff notices and did not incur significant and unexpected expenses due to a family

emergency or natural disaster. Appellant failed to demonstrate that the cost of purchasing health insurance would have caused him to experience a serious deprivation of basic necessities, and I find that Appellant did not experience a financial hardship as defined by the regulation. See 956 C.M.R. 6.08 and 956 C.M.R. 12.11.

Accordingly, Appellant's three-month penalty is **UPHELD**.

PENALTY ASSESSED

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2020 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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 M.G.L. c. 30A. To appeal, you must file a complaint with the Superior Court in 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: PA20-538

Appeal Decision: The penalty is overturned in full.

Hearing Issue: Appeal of the 2020 Tax Year Penalty

Hearing Date: September 21, 2021

Decision Date: September 29, 2021

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on September 21, 2021. 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. The 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. | (1 page). |
| Exhibit 2: | Statement of Grounds for Appeal 2020 Signed by Appellant on 4/7/2021. | (2 PP). |
| Exhibit 2(a): | Statement Submitted by the Appellant with Appeal | (1P). |
| Exhibit 3: | Health Connector's Notice of Hearing dated 8/5/2021 | (2 PP). |

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2020 Massachusetts tax return filed single with a family size of 1, was age 42 in 2020, lived in Norfolk County, and had zero (0) dependents. (Exhibit 1).
2. Appellant's Federal Adjusted Gross Income for 2020 was \$68,265. (Exhibit 1).
3. Appellant had employer health insurance through February 2020 until he changed jobs. (Exhibit 1, Exhibit 2(a), Appellant's Testimony).
4. Appellant obtained new employment but his new employer had a waiting period before he could enroll. (Appellant's Testimony, Exhibit 2(a)).

5. Appellant was laid off from his new employer due to Covid. (Appellant's Testimony Exhibit 2(a)).
6. Appellant went on unemployment for a short period when he was receiving approximately \$800 a week until he obtained new employment but needed 750 hours to become eligible for employer health insurance.
7. Appellant became eligible for employer health insurance in November 2020. (Appellant's Testimony).
8. Appellant did not investigate obtaining insurance during the first gap in coverage but thought he would soon be obtaining coverage and did not foresee that he would be laid off due to Covid. (Appellant's Testimony).
9. Appellant has been assessed a tax penalty for five (5) months in 2020. The Appellant has appealed this assessment (Exhibits 1, 2).
10. Appellant had the following average monthly living expenses in 2020: Rent: \$600, Utilities: \$300, Cell Phone \$50, Food: \$200, Car Payment: \$263; Car Insurance: \$81, Gas and Transportation Costs: \$500, Internet/Cable: \$70, Credit Card: \$60, totaling: \$2,124. (Appellant's Testimony).
11. According to Table 3 Appellant could have afforded \$455.10 per month for health insurance in 2020. According to Table 4 Appellant could have purchased insurance for \$316.00 per month.
12. The Appellant would not have been eligible for ConnectorCare coverage in 2020 because the Appellant's income was more than 300% of the poverty level, which was \$37,470.00. (See Table 2 of Schedule HC 2020, Appellant's Testimony).
13. In addition to the foregoing, I take administrative notice of the 2020 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov/dor/docs/dor/health-care/2020>, and in particular, Tables 1-6 which, as discussed below, include the Affordability Schedule and other financial information used in making 2020 individual mandate tax penalty determinations.

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2020 should be waived, either in whole or in part. Appellant has been assessed a tax penalty for five (5) months in 2020. Appellant has appealed the penalty. (See Exhibits 1 and 2).

The Appellant submitted a statement of grounds for appeal (Ex. 2) with the appeal, claiming that the individual mandate did not apply to him during 2020 because the expense of purchasing health insurance would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities and that during 2020. See 956 CMR 6.08.

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’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.

The evidence provided by the Appellant established that his income for 2020, \$68,265.00 was more than 300% of the federal poverty level, which for 2020 was \$37,470.00 for a single person. According to Table 3 of Schedule HC for 2020, the Appellant had an adjusted gross income of \$68,265 in 2020 and could have afforded \$455.10 per month. According to Table 4, Appellant, age 42 and living in Norfolk County during the time he was being penalized for not having insurance, could have purchased insurance for \$316.00 per month. Individual coverage was affordable through the individual market for the Appellant in 2020 (Schedule HC for 2020).

The next issue to consider is whether the Appellant had access to affordable employer health insurance in 2020. The Appellant credibly testified that he was unemployed for a period and that his new Employer did not offer health insurance during the months he was penalized and that he was not eligible until he worked a minimum number of hours, and when he reached that goal became insured. Thus, the Appellant did not have access to affordable Employer Sponsored Insurance (“ESI”) for the months when he was employed full time. (Appellant’s Testimony).

Where the Appellant did not have access affordable coverage through ESI and did have access through the individual market, we need to determine if the Appellant experienced a financial hardship such the coverage would have been unaffordable for him. See 956 CMR 6.08. et. seq. The Appellant may 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 2020. Examples of hardships include being homeless or overdue in rent or mortgage payments, receiving a shut-off notice for utilities, or incurring unexpected increases in basic living expenses due to domestic violence, death of a family member, sudden responsibility for providing care for a family member or fire, flood or natural disaster. In addition, the Appellants’ tax penalty for 2020 could be waived if he experienced financial circumstances such that the expense of purchasing health insurance would have caused her to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08.

The Appellant had the following average monthly living expenses in 2020: Rent: \$600, Utilities: \$300, Cell Phone \$50, Food: \$200, Car Payment: \$263; Car Insurance: \$81, Gas and Transportation Costs: \$500, Internet/Cable: \$70, Credit Card: \$60, totaling: \$2,124. (Appellant’s Testimony, Exhibits 2(a), (b)).

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. Given the Appellant was unemployed due to Covid and had to wait to obtain ESI in his new position, he did not have adequate unemployment income to pay his monthly expenses of \$2,124 and was unable to afford the cost of purchasing private insurance for \$455.10 per month. I find this would have caused the Appellant to experience a serious deprivation of food, shelter clothing, or other necessities. (Exhibits 2(a)(b), Appellant Testimony).

Appellant should note that any waiver granted here is for 2020 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: 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 2020 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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, he 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.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION CORRECTED: PA20-338

Appeal Decision: Appeal Approved

Hearing Issue: Appeal of the 2020 Tax Year Penalty

Hearing Date: July 28, 2021

Decision Date: September 15, 2021

AUTHORITY

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

JURISDICTION

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

HEARING RECORD¹

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

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

Exhibit 1	Hearing Notice dated June 28, 2021	2 pages
Exhibit 2	Appeal Case Info. fr. Sch. HC 2020	1 page
Exhibit 3	Statement of Grounds for Appeal with Letter and Documents	6 pages

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant turned 27 years old in April 2020. The Appellant filed their Federal Income Tax Return as a single individual, with no dependents claimed. (Exhibit 2).

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

2. The Appellant lived in Hampshire County, MA in 2020. (Exhibit 2 and Appellant's Testimony).
3. The Appellant's Federal Adjusted Gross Income (AGI) for 2020 was \$51,468.00 as shown on Schedule HC for 2020. (Exhibit 2).
4. The Appellant did not have health insurance that met Minimum Creditable Coverage (MCC) during twelve (12) months of tax year 2020 according to Appeal Case Information from Schedule HC for 2020. (Exhibit 2).
5. The Appellant has been assessed a twelve (12)-month tax penalty for 2020, which they have appealed. (Exhibits 1 and 2).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2020 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2020. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2020.
7. In accordance with Table 3 of Schedule HC for 2020, the Appellant filing the Federal tax return as a single individual, with no dependents claimed, with an annual adjusted gross income of \$51,468.00, could afford to pay \$343.12 per month for government-sponsored health insurance. In accordance with Table 4, the Appellant, age 27, living in Hampshire County, could have purchased private market health insurance for \$241.00 per month. (Table 4, Schedule HC for 2020). Thus, private insurance was affordable for the Appellant in 2020.
8. Employer-sponsored insurance was not available to Appellant during 2020.
9. The Appellant was not income-eligible for ConnectorCare coverage in 2020 because their adjusted gross income of \$51,468.00 was more than 300% of the Federal poverty level, which was \$37,470.00 in 2020 (Schedule HC, Table 2).
10. The Appellant was laid off from their job during 2020 and, therefore, did not receive any employer-sponsored health insurance that year. (Appellant's Testimony and Exhibit 3).
11. The Appellant experienced several periods of 4-8 weeks when they did not receive any unemployment benefits or their benefits were received late. The Appellant pieced together three separate part-time jobs that paid minimum wage, including working at a gas station and as a mechanic at a bowling alley. None of those jobs offered health insurance coverage. (Appellant's Testimony and Exhibit 3).
12. Appellant consulted with a financial advisor at a hospital and was informed that they did not qualify for subsidized health insurance. Appellant testified that they were told

by a hospital representative that unsubsidized insurance would cost \$500.00 monthly, which Appellant did not believe was affordable given the uncertainty of their financial situation. (Appellant's Testimony and Exhibit 3). Appellant was unaware of unsubsidized insurance options through the Health Connector or other private insurance options. (Appellant's Testimony and Exhibit 3).

13. The Appellant's pre-tax monthly expenses of \$2,329.00, during 2020 included: Rent - \$350.00, Heat - \$250.00, Electricity - \$200.00, Phone - \$70.00, Cable/internet - \$129.00, Food - \$550.00, Car insurance - \$150.00, Gasoline - \$200.00, Clothing - \$200.00, Toiletries - \$200.00 and Excise Tax - \$80.00. (Appellant's Testimony).
14. The Appellant recently started a new job and is uncertain about availability of health insurance.² (Appellant's Testimony).

ANALYSIS AND CONCLUSIONS OF LAW

G.L. c. 111M, § 2, also called the "individual mandate", requires every adult resident of Massachusetts to obtain insurance coverage "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for each of the months that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See M.G.L. c. 111M, sec. 2(b) and for Tax Year 2011, Administrative Bulletin 03-10: M.G.L. c. 111M and M.G.L. c. 176Q as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of financial hardship. See 956 CMR 6.08.

As the basis for their appeal, the Appellant checked one box stating that the expense of purchasing health insurance would have caused a serious deprivation of food and other necessities. They checked a second box stating that during 2020 they experienced an unexpected natural disaster, the Covid-19 pandemic. (Exhibit 3 and Appellant's Testimony).

To determine if the twelve (12)-month penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met minimum creditable coverage standards was available to the Appellant through employment, through private insurance, or through a government-sponsored program. If affordable insurance was available, it must be determined if such insurance was not affordable to the Appellant because the Appellant experienced a hardship as defined in 956 CMR 6.08.

² The Appellant was advised that if they do not have affordable health insurance coverage during 2021, they will again be assessed a penalty. Given that Appellant received unemployment benefits during 2020 and the American Rescue Plan's provision to exclude the first \$10,200.00 of unemployment income from taxable income, they are encouraged to determine if their 2020 tax return needs to be amended and, if so, to determine if that would affect their eligibility for insurance through the Health Connector. They should also update their 2022 application if necessary.

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

In accordance with Table 3 of Schedule HC for 2020, the Appellant filing the Federal tax return as a single individual, with no dependents claimed, with an annual adjusted gross income of \$51,468.00, could afford to pay \$343.12 per month for government-sponsored health insurance. In accordance with Table 4, the Appellant, age 27, living in Hampshire County, could have purchased private market health insurance for \$241.00 per month. (Table 4, Schedule HC for 2020). Thus, private insurance was affordable for the Appellant in 2020.

Employer-sponsored insurance was not available to Appellant during 2020.

The Appellant was not income-eligible for ConnectorCare coverage in 2020 because their adjusted gross income of \$51,468.00 was more than 300% of the Federal poverty level, which was \$37,470.00 in 2020 (Schedule HC, Table 2).

The Appellant was laid off from their job during 2020 and, therefore, did not receive any employer-sponsored health insurance that year. (Appellant's Testimony and Exhibit 3). The Appellant experienced several periods of 4-8 weeks when they did not receive any unemployment benefits or their benefits were received late. The Appellant pieced together three separate part-time jobs that paid minimum wage, including working at a gas station and as a mechanic at a bowling alley. None of those jobs offered health insurance coverage. (Appellant's Testimony and Exhibit 3).

Appellant consulted with a financial advisor at a hospital and was informed that they did not qualify for subsidized health insurance. Appellant testified that they were told by a hospital representative that unsubsidized insurance would cost \$500.00 monthly, which Appellant did not believe was affordable given the uncertainty of their financial situation. (Appellant's Testimony and Exhibit 3). Appellant was unaware of unsubsidized insurance options through the Health Connector or other private insurance options. (Appellant's Testimony and Exhibit 3).

Based on all the credible evidence contained in this administrative record and the totality of the circumstances, I conclude that the pandemic created an unanticipated hardship for the Appellant, within the meaning of 956 CMR 6.08 (3), which they could not have predicted. After Appellant was laid off from their job, they consulted with a financial advisor at a hospital and learned that they were ineligible for subsidized insurance. They believed the cost of unsubsidized insurance was not affordable based on information from the hospital, and they were not knowledgeable about other private insurance options. For these reasons, payment for the twelve (12)-month penalty assessment is waived entirely.

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

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

PENALTY ASSESSED

Number of Months Appealed: ____12____ Number of Months Assessed: ____0____

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA20-339

Appeal Decision: Appeal Approved

Hearing Issue: Appeal of the 2020 Tax Year Penalty

Hearing Date: July 28, 2021

Decision Date: September 21, 2021

AUTHORITY

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

JURISDICTION

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

HEARING RECORD¹

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

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

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

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant turned 26 years old in December 2020. The Appellant filed their Federal Income Tax Return as a single individual, with no dependents claimed. (Exhibit 2).

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

2. The Appellant lived in Hampden County, MA in 2020. (Exhibit 2 and Appellant's Testimony).
3. The Appellant's Federal Adjusted Gross Income (AGI) for 2020 was \$45,795.00 as shown on Schedule HC for 2020. (Exhibit 2).
4. The Appellant did not have health insurance that met Minimum Creditable Coverage (MCC) during twelve (12) months of tax year 2020 according to Appeal Case Information from Schedule HC for 2020. (Exhibit 2).
5. The Appellant has been assessed a twelve (12)-month tax penalty for 2020, which they have appealed. (Exhibits 1 and 2).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2020 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2020. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2020.
7. In accordance with Table 3 of Schedule HC for 2020, the Appellant filing the Federal tax return as a single individual, with no dependents claimed, with an annual adjusted gross income of \$45,795.00, could afford to pay \$290.00 per month for government-sponsored health insurance. In accordance with Table 4, the Appellant, age 26, living in Hampden County, could have purchased private market health insurance for \$241.00 per month. (Table 4, Schedule HC for 2020). Thus, private insurance was affordable for the Appellant in 2020.
8. Affordable employer-sponsored insurance was not available to Appellant during 2020.
9. The Appellant was not income-eligible for ConnectorCare coverage in 2020 because their adjusted gross income of \$45,795.00 was more than 300% of the Federal poverty level, which was \$37,470.00 in 2020 (Schedule HC, Table 2).
10. Beginning in March 2020, the Appellant was laid off for several weeks from their job working on an hourly basis for a carpet cleaning company. (Appellant's Testimony).
11. Appellant was uncertain how or when they would find another job and was anxious about saving enough money to pay rent and other living necessities. (Appellant's Testimony).
12. After a lengthy period of time, certain of Appellant's work hours were restored on a part-time basis to a maximum of 25 hours per week. (Appellant's Testimony).
13. The Appellant's pre-tax monthly expenses of \$2,000.00 during 2020 included: Rent - \$660.00, Heat - \$225.00, Electricity - \$200.00, Phone - \$60.00, Cable/internet -

\$45.00, Food - \$125.00, Truck payments - \$485.00, Car insurance - \$180.00, Gasoline - \$70.00, School loans - \$100.00, and Credit card debt - \$50.00.(Appellant's Testimony).

14. The Appellant testified that they were in the process of securing health insurance coverage as they recently had received a raise.² (Appellant's Testimony).

ANALYSIS AND CONCLUSIONS OF LAW

G.L. c. 111M, § 2, also called the "individual mandate", requires every adult resident of Massachusetts to obtain insurance coverage "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for each of the months that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See M.G.L. c. 111M, sec. 2(b) and for Tax Year 2011, Administrative Bulletin 03-10: M.G.L. c. 111M and M.G.L. c. 176Q as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of financial hardship. See 956 CMR 6.08.

As the basis for their appeal, the Appellant checked the box stating that the expense of purchasing health insurance would have caused a serious deprivation of food and other necessities. (Exhibit 3 and Appellant's Testimony).

To determine if the twelve (12)-month penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met minimum creditable coverage standards was available to the Appellant through employment, through private insurance, or through a government-sponsored program. If affordable insurance was available, it must be determined if such insurance was not affordable to the Appellant because the Appellant experienced a hardship as defined in 956 CMR 6.08.

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

In accordance with Table 3 of Schedule HC for 2020, the Appellant filing the Federal tax return as a single individual, with no dependents claimed, with an annual adjusted gross income of \$45,795.00, could afford to pay \$290.00 per month for government-sponsored health insurance. In accordance with Table 4, the Appellant, age 26, living in Hampden County, could have purchased private market health insurance for \$241.00 per month. (Table 4, Schedule HC for 2020). Thus, private insurance was affordable for the Appellant in 2020.

² Appellant was advised that if they did not have affordable health insurance coverage during 2021, they would be assessed a tax penalty again.

Affordable employer-sponsored insurance was not available to Appellant during 2020.

The Appellant was not income-eligible for ConnectorCare coverage in 2020 because their adjusted gross income of \$45,795.00 was more than 300% of the Federal poverty level, which was \$37,470.00 in 2020 (Schedule HC, Table 2).

Beginning in March 2020, the Appellant was laid off for several weeks from their job working on an hourly basis for a carpet cleaning company. (Appellant's Testimony). Appellant was uncertain how or when they would find another job and was anxious about saving enough money to pay rent and other living necessities. (Appellant's Testimony). After a lengthy period of time, certain of their work hours were restored on a part-time basis to a maximum of 25 hours per week. (Appellant's Testimony).

Based on all the credible evidence contained in this administrative record and the totality of the circumstances, I conclude that the pandemic created an unanticipated hardship for the Appellant, within the meaning of 956 CMR 6.08 (3), which they could not have predicted. After Appellant was laid off from their job, they were uncertain how or when they would find another job and became anxious about saving enough money to pay rent and other living necessities. Eventually, certain of their work hours were restored on a part-time basis. For all these reasons, payment for the twelve (12)-month penalty assessment is waived entirely.

The Appellant should note that the waiver of their penalty is based upon facts that I have determined to be true in 2020. The Appellant should not assume that a similar determination will be made for subsequent tax years should they again be assessed a tax penalty for failure to have health insurance in Massachusetts, as the individual mandate requires.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA20-340

Appeal Decision: Appeal Approved

Hearing Issue: Appeal of the 2020 Tax Year Penalty

Hearing Date: July 28, 2021

Decision Date: September 21, 2021

AUTHORITY

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

JURISDICTION

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

HEARING RECORD¹

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

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

Exhibit 1	Hearing Notice dated June 28, 2021	2 pages
Exhibit 2	Appeal Case Info. fr. Sch. HC 2020	1 page
Exhibit 3	Statement of Grounds for Appeal with Letter and Supporting Documents	9 pages

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant turned 52 years old in October 2020. The Appellant filed their Federal Income Tax Return as a single individual, with no dependents claimed. (Exhibit 2).

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

2. The Appellant lived in Middlesex County, MA in 2020. (Exhibit 2 and Appellant's Testimony).
3. The Appellant's Federal Adjusted Gross Income (AGI) for 2020 was \$44,151.00 as shown on Schedule HC for 2020. (Exhibit 2).
4. The Appellant did not have health insurance that met Minimum Creditable Coverage (MCC) during twelve (12) months of tax year 2020 according to Appeal Case Information from Schedule HC for 2020. (Exhibit 2).
5. The Appellant has been assessed a twelve (12)-month tax penalty for 2020, which they have appealed. (Exhibits 2 & 3).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2020 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2020. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2020.
7. In accordance with Table 3 of Schedule HC for 2020, the Appellant filing the Federal tax return as a single individual, with no dependents claimed, with an annual adjusted gross income of \$44,151.00, could afford to pay \$279.62 per month for government-sponsored health insurance. In accordance with Table 4, the Appellant, age 52, living in Middlesex County, could have purchased private market health insurance for \$420.00 per month. (Table 4, Schedule HC for 2020). Thus, private insurance was not affordable for the Appellant in 2020.
8. Appellant's employer offered health insurance at a cost of about \$200.00 per month. (Appellant's Testimony). Therefore, affordable employer-sponsored insurance was available to them.
9. The Appellant was not income-eligible for ConnectorCare coverage in 2020 because their adjusted gross income of \$44,151.00 was more than 300% of the Federal poverty level, which was \$37,470.00 in 2020 (Schedule HC, Table 2).
10. The Appellant was an hourly worker for a fulfillment provider during 2020. Their work hours, plus overtime opportunities, were reduced substantially during the Covid-19 pandemic. (Appellant's Testimony and Exhibit 3).
11. Consequently, Appellant's income was reduced substantially and, moreover, was unpredictable because of their fluctuating hours during the pandemic. (Exhibit 3 and Appellant's Testimony).
12. As a result, Appellant fell behind in payment of their monthly living expenses. They received two Notice to Quit for Non-Payment of Rent and also received multiple

notices about late or no payment of utility bills (electricity, gas, oil heat). (Exhibit 3 and Appellant's Testimony).

13. Appellant testified that, consequently, they could not afford to pay for health insurance coverage. (Appellant's Testimony).
14. The Appellant's pre-tax monthly expenses of \$3,330.00 during 2020 included: Rent - \$1,900.00, Heat - \$500.00, Gas - \$20.00, Electricity - \$125.00, Phone - \$10.00, Food - \$110.00, Car insurance - \$100.00, Credit card debt - \$150.00, and Student loans - \$135.00. (Appellant's Testimony).
15. The Appellant currently has health insurance coverage through the Health Connector. (Appellant's Testimony).

ANALYSIS AND CONCLUSIONS OF LAW

G.L. c. 111M, § 2, also called the "individual mandate", requires every adult resident of Massachusetts to obtain insurance coverage "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for each of the months that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See M.G.L. c. 111M, sec. 2(b) and for Tax Year 2011, Administrative Bulletin 03-10: M.G.L. c. 111M and M.G.L. c. 176Q as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of financial hardship. See 956 CMR 6.08.

As the basis for their appeal, the Appellant checked one box stating that during 2020, they were more than 30 days in arrears on rent payments. They also checked another box stating that the expense of purchasing health insurance would have caused a serious deprivation of food, shelter and other necessities. (Exhibit 3 and Appellant's Testimony).

To determine if the twelve (12)-month penalty should be waived in whole or in part, there must be an evaluation of whether affordable insurance which met minimum creditable coverage standards was available to the Appellant through employment, through private insurance, or through a government-sponsored program. If affordable insurance was available, it must be determined if such insurance was not affordable to the Appellant because the Appellant experienced a hardship as defined in 956 CMR 6.08.

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

In accordance with Table 3 of Schedule HC for 2020, the Appellant filing the Federal tax return as a single individual, with no dependents claimed, with an annual adjusted gross income of \$44,151.00, could afford to pay \$279.62 per month for government-sponsored health insurance. In accordance with Table 4, the Appellant, age 52, living in Middlesex County, could have purchased private market health insurance for \$420.00 per month. (Table 4, Schedule HC for 2020). Thus, private insurance was not affordable for the Appellant in 2020.

Appellant's employer offered health insurance at a cost of about \$200.00 per month. (Appellant's Testimony). Therefore, affordable employer-sponsored insurance was available to Appellant.

The Appellant was not income-eligible for ConnectorCare coverage in 2020 because their adjusted gross income of \$44,151.00 was more than 300% of the Federal poverty level, which was \$37,470.00 in 2020 (Schedule HC, Table 2).

The Appellant's work hours were reduced substantially because of the pandemic. As a result, the amount of income they received on a monthly basis became unpredictable, and they did not have enough money to pay their monthly bills. They received two Notices to Quit for Non-Payment of Rent and also received multiple notices about late or no payment of utility bills (electricity, gas, oil heat). (Exhibit 3 and Appellant's Testimony). Appellant testified that, consequently, they could not afford to pay for health insurance coverage without causing serious deprivation of food and other basic living necessities. (Appellant's Testimony).

Based on all the credible evidence contained in this administrative record and the totality of the circumstances, I conclude that the pandemic created an unanticipated hardship for the Appellant, within the meaning of 956 CMR 6.08(3), which they could not have predicted, and they experienced financial hardship within the meaning of 956 CMR 6.08(1). The Appellant's monthly expenses during 2020 totaled \$5,633 or \$67,596.00 annually. Their annual expenses were almost double their annual income for 2020. For all these reasons, payment for the twelve (12)-month penalty assessment is waived entirely.

The Appellant should note that the waiver of their penalty is based upon facts that I have determined to be true in 2020. The Appellant should not assume that a similar determination will be made for subsequent tax years should they again be assessed a tax penalty for failure to have health insurance in Massachusetts, as the individual mandate requires.

PENALTY ASSESSED

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

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

Hearing Officer

cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA20-462

Appeal Decision: Appeal Approved -- 2020 tax penalty overturned.

Hearing Issue: Appeal of the 2020 Tax Year Penalty

Hearing Date: August 26, 2021

Decision Date: August 28, 2021

AUTHORITY

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

JURISDICTION

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

HEARING 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 testimony under oath by both the Appellant and his Mother 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 – 2020 (3 pages); and
3. Health Connector’s Notice of Hearing (2 pages).

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 2020. The basis for the penalty was that the Appellant was not insured at any time in 2020. Exhibits 1 and 2. Based on Exhibit 1 and the testimony at the appeal hearing, I find that the penalty assessment is accurate, except as to one month that will be discussed further.
2. The Appellant filed a Massachusetts personal income tax return for 2020 as a single person with no dependents. The Appellant's federal adjusted gross income (AGI) for 2020 was \$32,973. Exhibit 1.
3. The Appellant was 59 years old at the beginning of 2020 and resided in [name of city or town omitted] in Essex 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 2020. DOR Table 1 (\$18,735 for one person).
5. The Appellant's 2020 AGI (\$32,973) was less than 300% of the federal poverty level (\$37,470 for a one person household). DOR Table 2. On this basis I infer that it is likely that the Appellant would satisfy the financial eligibility requirements for government-subsidized health insurance for at least some part of 2020.
6. Based on DOR Table 3 the Appellant could afford to pay 5.00 % of his income -- or \$137 per month -- for health insurance coverage in 2020. (The calculation is 5 % multiplied by \$32,973 AGI = \$1,648.65 per year divided by 12 months = \$137.38 per month.)
7. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage at his age and location for \$432 per month in 2020 (age 55+ years).
8. Applying the DOR tables to the Appellant's income for 2020 taken as a whole I find that the Appellant could not afford health insurance since the premium (\$432 per month) is more than the amount that he could afford to pay (\$137 per month). See Findings of Fact, Nos. 5 – 7, above.

9. The Appellant's income varied substantially in 2020. In 2019 the Appellant was enrolled in government-subsidized health care that the Appellant and his Mother identified as Tufts, which indicates that the Appellant's income in 2019 was low. At the beginning of 2020 the Appellant obtained a job that paid him \$82 per hour for work as a plumber. Recognizing that he would no longer satisfy the income eligibility standards, the Appellant cancelled the Tufts health insurance coverage in early 2020. Testimony.
10. After the Appellant started at his new job in 2020 he learned, contrary to his expectation, that he would not have health insurance coverage through his employer. Testimony.
11. The Appellant, with the participation of his Mother, identified and enrolled with a private health insurer, paying \$300 for the first month's premium. Testimony.
12. The Appellant's employment and his income diminished approximately when he paid the first month's premium with the private insurer. Since the Appellant could no longer afford the monthly premium, he allowed the private health insurance to lapse after only one month. The Mother, who prepared the Appellant's 2020 state income tax return, did not provide the Department of Revenue with this coverage information since, as she testified credibly, she felt it was too small to account for on the tax form. Testimony. See also Findings of Fact, No. 1, above, and Exhibit 1.
13. The Appellant did not have health insurance coverage for the remainder of 2020. At some point it appears that the Appellant applied for unemployment insurance. He never obtained a final decision on his application since the Department of Unemployment Assistance held up his claim over a personal identification problem. At some point during the coronavirus pandemic the Appellant did receive a federal stimulus payment. Testimony.
14. On the same day as the appeal hearing (August 26, 2021) the Appellant received a Tufts membership card to resume free health insurance coverage effective on August 4, 2021. (The Appellant verified this information by reading the membership number on the card to me over the telephone.) Testimony. (I note that any question as to why the Appellant was not able to reinstate government-subsidized health insurance sooner than August 2021 is beyond the scope of this appeal, which is limited to the DOR's penalty assessment for 2020. The Appellant

can address this issue if there is a tax penalty appeal hearing in the future for 2021.)

15. The Appellant expects to use his new health insurance to address his back problems that have kept him from working. The Appellant also has multiple other medical problems that have impaired his ability to find and retain employment. Testimony.
16. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2020 Massachusetts income tax return.
17. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2020 Massachusetts Schedule HC Health Care Instructions – Special Section on Minimum Creditable Coverage. 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 2020. 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 2020. (The DOR instructions are published online at <http://www.mass.gov/dor/2020ScheduleHCInstructions> 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 12 month tax penalty because the Appellant did not have health insurance coverage in 2020. 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 – 2020 that the Appellant signed and filed in this case. See Exhibit 2.

The evidence presented in this appeal was not always easy to follow. However, the outline necessary to decide this appeal does emerge from contributions made by the Appellant and his Mother in their testimony during the appeal hearing and from the documentary evidence presented for the state Department of Revenue (DOR) in Exhibit 1.

The starting point is that the Appellant was covered by government-subsidized health insurance in 2019 and 2021 (i.e., both before and after the 2020 tax penalty assessment at issue in this appeal). The Appellant was no longer eligible for government-subsidized health insurance when he started a new job at the beginning of 2020 that paid \$82 per hour. Consequently, the Appellant correctly cancelled his coverage and sought coverage from a private insurer once he learned that his Employer was not offering him a health plan.

The Appellant's testimony that his job-related income soon declined is supported by the evidence in Exhibit 1 and the DOR Tables. The Appellant's federal adjusted gross income (AGI) for all of 2020 dropped to \$32,973. Applying the objective income eligibility standards from DOR Tables 2, 3, and 4, the Appellant's AGI was sufficiently low that he could not afford to pay for health insurance in 2020 after his wages dropped below \$82 per hour. Health insurance would cost \$432 per month, but the Appellant could only afford to pay \$137 per month on his AGI (see Tables 3 and 4). Thus, it was reasonable for the Appellant to drop coverage from a private insurer that quoted a \$300 monthly premium.

The question, then, is how to apply this information to resolve the appeal. Since I found that the testimony by both the Appellant and his Mother about one month of private insurance coverage credible, I will proceed on the reasonable inference that the private insurer coverage was for the month of April 2020. Then I will apply the 3-month grace period described earlier to the months of January, February, and March 2020. In other words, no penalty will be assessed for the first four months in 2020 as the Appellant transitioned out of the government-subsidized health insurance that he was enrolled in during December 2019 (or possibly still in January 2020) and enrolled in the private insurer in April 2020.

Next, I must address the penalty that the DOR assessed for the remainder of 2020. It is undisputed that the Appellant did not have insurance coverage for May through December 2020. But it is also undisputed that the Appellant's AGI (\$32,973) was less than the federal poverty-level (\$37,470) for 2020, even though he had earned a high hourly wage (\$82 per hour) at the beginning of the year. From listening to all the testimony the Appellant seems to have become ensnarled in bureaucracy and his other problems during the pandemic and did not act as quickly as he might have to resume government-subsidized health insurance. At the same time, however, the totality of the evidence is sufficient to establish a hardship under the Health Connector's regulations. See, e.g., 956 Code Mass. Regs. 6.08 (1) (e) ([The Appellant] experienced financial circumstances such that the expense of purchasing health insurance that met minimum creditable coverage standards would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities.").

For the foregoing reasons – a combination of the grace period and hardship -- I waive the entire 12 month penalty that was assessed for 2020. The Appellant should be

mindful of his legal obligation to obtain and maintain health insurance and should not assume that penalties will be waived or reduced 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 2020 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

Tax Penalty Appeal Decision—Docket No. PA20- 464

Appeal Decision: Appeal Approved -- 2020 tax penalty overturned.

Hearing Issue: Appeal of the 2020 Tax Year Penalty

Hearing Date: August 26, 2021

Decision Date: August 27, 2021

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared 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 – 2020 (with handwritten comment) (3 pages); and
3. Health Connector’s Notice of Hearing (2 pages).

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 4 month penalty for 2020. The basis for the penalty was that the Appellant was not insured during the months of January through July (7 months) but was insured for the months of August through December 2020 (5 months). Exhibits 1 and 2. Based on Exhibit 1 and the Appellant's hearing testimony, I find that the penalty assessment is accurate. The penalty calculation is 7 months uninsured minus 3 administrative grace months = 4 penalty months.
2. The Appellant filed a Massachusetts personal income tax return for 2020 as a single person with no dependents. The Appellant's federal adjusted gross income (AGI) for 2020 was \$37,200. Exhibit 1.
3. The Appellant was 23 years old at the beginning of 2020 and resided in [name of city or town omitted] in Worcester 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 2020. DOR Table 1.
5. The Appellant's 2020 AGI (\$37,200) was less than 300% of the federal poverty level (\$37,470 for a one person household). DOR Table 2. On this basis I infer that it is likely that the Appellant would satisfy the financial eligibility requirements for government-subsidized health insurance.

6. Based on DOR Table 3 the Appellant could afford to pay 5.00 % of his income -- or \$155 per month -- for health insurance coverage in 2020. (The calculation is 5 % multiplied by \$37,200 AGI = \$1,860 per year divided by 12 months = \$155 per month.)
7. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage at his age and location for \$269 per month in 2020 (age less than 30 years).
8. Since the health insurance premium is more than the Appellant could afford to pay per month, I infer that the Appellant was eligible for government subsidized health insurance in 2020. See Findings of Fact, Nos. 5, 6 and 7, above.
9. In 2020 the Appellant was employed as a bank teller and subsequently as a mortgage loan originator. He did not have health insurance coverage through his job. Testimony.
10. In 2019 the Appellant was enrolled in government-subsidized health insurance, through either MassHealth or the Health Connector. Testimony.
11. For reasons that are unclear to the Appellant, he lost his government-subsidized health insurance in 2020. Later in the year, the Appellant was advised to reapply, which he did. The Appellant was subsequently re-enrolled in government-subsidized health insurance, with coverage beginning in August 2020. His coverage extended through the remainder of 2020 and into 2021. Testimony. See also Exhibit 1 and Finding of Fact, No. 1. (The hearing record does not clarify if the insurance coverage was provided through MassHealth, as the Appellant stated, or through the Health Connector. The Appellant adds that Tufts was involved in the coverage when he reapplied, but not earlier. The critical point is that the Appellant's testimony and Exhibit 1, indicated

that he satisfied the income eligibility standards for government subsidized health insurance.)

12. In 2020 the Appellant assumed the physical and financial burden of caring for his Mother, who had sustained a work-related back injury and was not able to work for over one year. The Appellant (and his younger brother) assumed responsibility for all or a portion of expenses such as rent, utilities, and his mother's car loan and insurance. Testimony. See also Appellant's handwritten comment on Exhibit 2, page 2 ("My mother was out of work for the year and I had more bills.").
13. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2020 Massachusetts income tax return.
14. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2020 Massachusetts Schedule HC Health Care Instructions – Special Section on Minimum Creditable Coverage. 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 2020. 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 2020. (The DOR instructions are published online at <http://www.mass.gov/dor/2020ScheduleHCInstructions> 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 four month tax penalty because the Appellant did not have health insurance coverage for the months of January through July 2020. 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 – 2020 that the Appellant signed and filed in this case. See Exhibit 2.

In this case the Appellant was enrolled in government-subsidized health insurance both before and after the January through July 2020 period when he was penalized because he did not have health insurance. See Findings of Fact, Nos. 10-11, above. The reason for the gap is not apparent from the hearing record, including the Appellant’s testimony at the appeal hearing. However, the financial information that is available from the tax records and the Health Connector’s affordability tables show that the Appellant’s income was insufficient to afford to pay health insurance premiums in 2020. See Findings of Fact, Nos. 5-8, above.

After considering all the evidence I conclude that the entire penalty assessment should be vacated under the Health Connector’s hardship regulation. The decisive point is that the Appellant, with only the limited financial resources reflected in the hearing record, had to assume additional responsibility due to his mother’s work-related injury. See Findings of Fact, No. 12, above. See, e.g., 956 Code Mass. Regs. 6.08 (1) (e) ([The Appellant] experienced financial circumstances such that the expense of purchasing health insurance that met minimum creditable coverage standards would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities.”).

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 2020 for the amount equal to one half of the lowest cost health insurance plan available to you for

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA 20-493

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

Hearing Issue: Appeal of the 2020 Tax Year Penalty

Hearing Date: September 8, 2021

Decision Date: September 16, 2021

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone, on September 8, 2021. The hearing record consists of the testimony of Appellant, and the following documents, which were admitted into evidence:

- Exhibit 1: Health Connector Hearing Notice (3 pages)
- Exhibit 2: Appeal Case Information sheet¹ (1 page)
- Exhibit 3: Statement of Grounds with attachment (4 pages)

FINDINGS OF FACT

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

1. Appellant was 28 years old at the end of 2020.
2. During 2020, Appellant lived in Bristol County.
3. Appellant filed his 2020 Massachusetts taxes as single with no dependents.
4. Appellant reported on his Massachusetts tax return and confirmed at the hearing that he had adjusted gross income in 2020 of \$46,400. See Exhibit 2.

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

5. Appellant reported in the Schedule HC that he filed with his 2020 state income taxes and confirmed at the hearing that he did not have health insurance meeting minimum creditable (MCC) standards at any point in 2020. Exhibit 2.
6. During 2020, Appellant worked as an apprentice in his field. That job did not offer him employer-subsidized health insurance. He believed that the insurance would have cost him \$400 a month. Without assistance from the employer, the insurance was too expensive for Appellant to afford.
7. At some point in 2021, Appellant's employer offered him assistance in paying for insurance and Appellant took that insurance. He was insured at the time of the hearing.

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

ANALYSIS AND CONCLUSIONS OF LAW

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

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

During 2020, Appellant's employer did not offer him subsidized insurance. The insurance that was offered to him was too expensive because it would have cost him \$400 a month. As discussed below, under affordability standards set by the Health Connector board, Appellant is deemed able to afford only \$293 a month for health insurance. Therefore, the cost of insurance through employment was too high and accordingly Appellant did not have access to affordable employment-based insurance during 2020.

Further, based on the annual income that Appellant provided on his 2020 state tax return, he would not have been eligible for Connector Care, which is government-subsidized insurance. His annual income in 2020 of \$46,400 was above \$37,470, which is 300 percent of the federal poverty limit for a household of one person like Appellant's. (I obtain the figure of \$37,470 from Table 2 to the instructions for the 2020 Schedule HC.) Persons with household incomes above 300 percent of the federal poverty limit are not eligible for Connector Care, which is government-subsidized insurance. 956 CMR 12.04 (Connector Care eligibility requirements.)

However, Appellant could have afforded unsubsidized insurance purchased on the non-group market under state affordability standards set by the Health Connector board pursuant to M.G.L. c. 111M.

Under those standards, a person like Appellant who had income of \$46,400 for a tax household of one person was deemed able to afford 7.6 percent of income for health insurance. (I obtain that percentage figure from Table 3 to the instructions for the 2020 Schedule HC.) In Appellant's case, that amounts to \$3,526 annually or \$293 a month. During 2020, a person like Appellant who lived in Bristol County and was 28 years of age could have obtained insurance for a monthly premium of \$269 for health insurance. (I obtain the premium figure from Table 4 to the instructions for the 2020 Schedule HC). Thus, under state standards, this amount would have been affordable for Appellant.

Because Appellant could have afforded insurance, but didn't obtain it, I must determine whether he has stated grounds to waive the penalty under the Health Connector's regulations. See 956 C.M.R. § 6.08(1). I conclude that he has. He stated that during the period he was uninsured, he hesitated to commit to a new expense because he was uncertain about his employment situation due to the Covid-19 pandemic. He was starting in a new job at the time and was uncertain about the future. He also had the expenses of maintaining a household. Further, I take into account the fact that he obtained insurance in 2021 when it was available to him through her work. Given all these factors, I exercise my discretion to waive the penalty assessed against Appellant in its entirety.

PENALTY ASSESSED

Number of Months Appealed: 12

Number of Months Assessed: 0

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA 20-517

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

Hearing Issue: Appeal of the 2020 Tax Year Penalty

Hearing Date: September 15, 2021

Decision Date: September 20, 2021

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone, on September 15, 2021. The hearing record consists of the testimony of Appellant, and the following documents, which were admitted into evidence:

- Exhibit 1: Health Connector Hearing Notice (3 pages)
- Exhibit 2: Appeal Case Information sheet¹ (1 page)
- Exhibit 3: Statement of Grounds with attachment (5 pages)

FINDINGS OF FACT

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

1. Appellant was 64 years old at the end of 2020.
2. During 2020, Appellant lived in Middlesex County.
3. Appellant filed her 2020 Massachusetts taxes as single with no dependents.
4. Appellant reported on her Massachusetts tax return and confirmed at the hearing that she had adjusted gross income in 2020 of \$24,935. See Exhibit 2.

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

5. Appellant reported in the Schedule HC that she filed with her 2020 state income taxes and confirmed at the hearing that she did not have health insurance meeting minimum creditable (MCC) standards at any point in 2020. Exhibit 2.
6. At the start of 2020, Appellant was working at a part-time job that did not offer her health insurance.
7. Appellant stopped working in March of 2020 because of the Covid-19 pandemic and the quarantine. At some point, she applied for and started receiving Social Security payments.
8. Appellant didn't apply for insurance through the Health Connector because she wasn't aware of the program. In 2020, she thought she would go without health insurance until she turned 65 and was eligible to receive Medicare.
9. Appellant did apply for Medicare in 2021 and was covered as of the date of the hearing.

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

ANALYSIS AND CONCLUSIONS OF LAW

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

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

During 2020, Appellant either worked at a part-time job that did not offer insurance or else was out of work. In either case, she did not have access to affordable employment-based insurance during 2020.

Further, Appellant could not have afforded unsubsidized insurance purchased on the non-group market under state affordability standards set by the Health Connector board pursuant to M.G.L. c. 111M. Under those standards, a person like Appellant who had income of \$24,935 for a tax household based of one person was deemed able to afford 2.9 percent of income for health insurance. (I obtain that percentage figure from Table 3 to the instructions for the 2020 Schedule HC.) In Appellant's case, that amounts to \$723 annually or \$60 a month. During 2020, a person like Appellant who lived in Middlesex County and was 64 years of age would have had to pay at least \$432 a month in premium for health insurance. (I obtain the premium figure from Table 4 to the instructions for the 2020 Schedule HC). Thus, under state standards, this amount would have not been affordable for Appellant.

However, based on the annual income that Appellant provided on her 2020 state tax return, she would have been eligible for Connector Care, which is government-subsidized insurance. Her annual income in 2020 of \$24,935 was below \$37,470, which is 300 percent of the federal poverty limit for a household of one person like Appellant's. (I obtain the figure of \$37,470 from Table 2 to the instructions for the 2020 Schedule HC.) Persons with household incomes below 300 percent of the federal poverty limit are eligible for Connector Care, provided they meet the other eligibility requirements of citizenship or legal permanent residence in the United States, residence in Massachusetts, and lack of access to affordable employer-sponsored insurance. 956 CMR 12.04 (Connector Care eligibility requirements.) I conclude that Appellant met these requirements, based on her testimony and the fact that she was subsequently determined eligible for Medicare. Connector Care is comprehensive and affordable insurance. However, unfortunately, Appellant did not seek to apply for Connector Care in 2020.

Because Appellant could have obtained affordable insurance, but didn't, I must determine whether she has stated grounds to waive the penalty under the Health Connector's regulations. See 956 C.M.R. § 6.08(1). I conclude that she has. During 2020, she was in an uncertain employment situation because she had stopped working due to the pandemic. She was living on Social Security for a good part of the year and her income was low. She believed that she should wait until she became eligible for Medicare in order to get insurance. Further, I take into account the fact that she did enroll in Medicare when it became available to her. Based on all these factors, I exercise my discretion to waive the penalty against Appellant in its entirety.

PENALTY ASSESSED

Number of Months Appealed: 12

Number of Months Assessed: 0

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA 20-518

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

Hearing Issue: Appeal of the 2020 Tax Year Penalty

Hearing Date: September 15, 2021

Decision Date: September 20, 2021

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone, on September 15, 2021. The hearing record consists of the testimony of Appellant, and the following documents, which were admitted into evidence:

- Exhibit 1: Health Connector Hearing Notice (3 pages)
- Exhibit 2: Appeal Case Information sheet¹ (1 page)
- Exhibit 3: Statement of Grounds with attachment (9 pages)

FINDINGS OF FACT

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

1. Appellant was 31 years old at the end of 2020.
2. During 2020, Appellant lived in Suffolk County.
3. Appellant filed his 2020 Massachusetts taxes as single with no dependents.
4. Appellant reported on his Massachusetts tax return and confirmed at the hearing that he had adjusted gross income in 2020 of \$53,377. See Exhibit 2. That income figure included a significant amount of overtime pay that Appellant worked because of staffing shortages during the Covid-19 pandemic.

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

5. Appellant reported in the Schedule HC that he filed with his 2020 state income taxes and confirmed at the hearing that he did not have health insurance meeting minimum creditable (MCC) standards at any point in 2020. Exhibit 2.
6. Appellant works for an employer that offers health insurance. He had been enrolled in that health insurance throughout 2019. That insurance would have cost him \$268 a month in 2020. See Form 1095-C (Exhibit 3).
7. In the fall of 2019, the employer had its annual open enrollment in which employees were required to re-enroll for health insurance in order to maintain coverage. Appellant did re-enroll and believed that he would be covered in 2020.
8. However, on November 25, 2019, his employer sent an email to employees stating that there had been a problem with the on-line enrollment and that everyone who had previously enrolled for 2020 coverage had to enroll another time. Email dated 11/25/19 (Exhibit 3).
9. Further, this re-enrollment had to occur by November 30, which was the final date of open enrollment. Email dated 11/27/19 (Exhibit 3).
10. In 2019, Thanksgiving was on Thursday, November 28.
11. Appellant was on vacation that week and did not see this announcement. Consequently, he did not re-enroll. As a result, he was not enrolled for 2020.
12. He did not realize that he was not covered until February or March when he sought medical services.
13. At that point, he was told by his employer that it was too late to sign up for health insurance until 2021.
14. Appellant applied for subsidized coverage through the Health Connector. However, he was told that his income was too high to receive subsidized coverage. Eligibility notice (Exhibit 3).
15. Consequently, Appellant went without health insurance for the balance of the year.
16. In the fall of 2020, he enrolled in coverage through his employer. He was insured as of the date of the hearing.

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

ANALYSIS AND CONCLUSIONS OF LAW

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

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

During 2020, Appellant was eligible for employer-subsidized insurance. However, through no fault of his own, he was not enrolled in that coverage. He had enrolled for coverage but due to a system error, that enrollment was not processed and he was directed to re-enroll. He was told that he had to re-enroll on the Monday before Thanksgiving, and was given less than a week to do so. Unfortunately he was on vacation that week and did not see the email warning him about this problem; so he missed his opportunity to re-enroll. Thus, in effect, Appellant did not have access to affordable employment-based insurance during 2020.

Further, based on the annual income that Appellant provided on his 2020 state tax return, he would not have been eligible for Connector Care, which is government-subsidized insurance. His annual income in 2020 of \$53,377 was above \$37,470, which is 300 percent of the federal poverty limit for a household of one person like Appellant's. (I obtain the figure of \$37,470 from Table 2 to the instructions for the 2020 Schedule HC.) Persons with household incomes above 300 percent of the federal poverty limit are not eligible for Connector Care, which is government-subsidized insurance. 956 CMR 12.04 (Connector Care eligibility requirements.)

However, Appellant could have afforded unsubsidized insurance purchased on the non-group market under state affordability standards set by the Health Connector board pursuant to M.G.L. c. 111M. Under those standards, a person like Appellant who had income of \$53,377 for a tax household based of one person was deemed able to afford 8 percent of income for health insurance. (I obtain that percentage figure from Table 3 to the instructions for the 2020 Schedule HC.) In Appellant's case, that amounts to \$4,270 annually or \$355 a month. During 2020, a person like Appellant who lived in Suffolk County and was 31 years of age could have obtained health insurance for a monthly premium of \$288. (I obtain the premium figure from Table 4 to the instructions for the 2020 Schedule HC). Thus, under state standards, this amount would have been affordable for Appellant.

Because Appellant could have afforded insurance, but didn't obtain it, I must determine whether he has stated grounds to waive the penalty under the Health Connector's regulations. See 956 C.M.R. § 6.08(1). I conclude that he has. Although Appellant was deemed able to afford health insurance based on his annual income figure, the amount of income he was earning each month was uncertain. That is because his income included a significant amount of overtime pay that he worked because of staffing shortages during the pandemic. He would not have been able to count on this overtime income in advance, when planning to purchase health insurance. Further, I take into account the fact that Appellant had been insured through his employer in 2019 and was insured again in 2021. Thus, the period without insurance in 2020 was an unfortunate consequence of a system error that was not Appellant's fault.

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

PENALTY ASSESSED

Number of Months Appealed: 12

Number of Months Assessed: 0

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA20-540

Appeal Decision: The penalty is overturned in part.
Hearing Issue: Appeal of the 2020 Tax Year Penalty
Hearing Date: September 21, 2021
Decision Date: September 29, 2021

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant, who are married, appeared at the hearing, which was held by telephone on September 21, 2021. 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. The 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. (1 page).
Exhibit 2: Statement of Grounds for Appeal 2020 Signed by Appellant on 4/5/2021. (2 PP).
Exhibit 2(a): 2020 1095A Submitted with Appeal (1P).
Exhibit 3: Health Connector's Notice of Hearing dated 8/5/2021 (2 PP).

The record was left open for the Appellant to submit proof of coverage of Employer Sponsored Insurance. On September 28, 2021, the Appellant submitted the following:

Exhibit 4: Proof of coverage of Employer Sponsored Insurance from April 1, 2020, through July 1, 2020.

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2020 Massachusetts tax return filed married joint with a family size of 2, were ages 22 and 24, respectively, in 2020, lived in Suffolk County. (Exhibit 1).
2. Appellant's Federal Adjusted Gross Income for 2020 was \$69,270. (Exhibit 1).

3. Appellant moved to Massachusetts in January 2020 from Montana. (Appellant Testimony).
4. Appellant were enrolled in Montana publicly sponsored insurance from January through March, 2020. (Appellant's Testimony, Exhibit 2(a)).
5. Appellant testified they were both covered under his Employer Sponsored Insurance from March through the remainder of 2020. (Appellant's Testimony, Exhibit 4).
6. The Proof of coverage from the Appellant's Employer indicated there was employer sponsored Insurance from April 1, 2020, through July 1, 2020. (Exhibit 4).
7. Appellant has been assessed a tax penalty for eight (8) months in 2020. The Appellant has appealed this assessment (Exhibits 1, 2).
8. According to Table 3 Appellant could have afforded \$461.80 per month for health insurance in 2020. According to Table 4 Appellant could have purchased insurance for \$538.00 per month.
9. The Appellant would not have been eligible for ConnectorCare coverage in 2020 because the Appellant's income was more than 300% of the poverty level, which was \$50,730.00. (See Table 2 of Schedule HC 2020, Appellant's Testimony).
10. In addition to the foregoing, I take administrative notice of the 2020 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov/dor/docs/dor/health-care/2020>, and in particular, Tables 1-6 which, as discussed below, include the Affordability Schedule and other financial information used in making 2020 individual mandate tax penalty determinations.

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2020 should be waived, either in whole or in part. Appellant has been assessed a tax penalty for eight (8) months in 2020. Appellant has appealed the penalty. (See Exhibits 1 and 2).

The Appellant submitted a statement of grounds for appeal (Ex. 2) with the appeal, claiming that the individual mandate did not apply to them during 2020 because of Other: that you had insurance. See 956 CMR 6.08. The Appellant did not have insurance from January through December. (See Exhibit 1).

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'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.

The evidence provided by the Appellant established that their income for 2020, \$69,270.00 was more than 300% of the federal poverty level, which for 2020 was \$50,730.00 for a family size of two (2). According to Table 3 of Schedule HC for 2020, the Appellant had an adjusted gross income of \$69,270 in 2020 and could have afforded \$461.80 per month. According to Table 4, Appellant, ages 22 and 24 and living in Suffolk County during the time they were being penalized for not having insurance, could have purchased insurance for \$538.00 per month. Individual coverage was affordable through the individual market for the Appellant in 2020 (Schedule HC for 2020).

The next issue to consider is whether the Appellant had access to affordable employer health insurance in 2020. The Appellant testified that he was employed and was enrolled in Employer Sponsored Insurance ("ESI"). The Proof of coverage from the Appellant's Employer indicated there was employer sponsored Insurance from April 1, 2020, through July 1, 2020. (Exhibit 4). Thus, the Appellant did have access to affordable ESI" for the months from July through December. After applying the three (3) month waiver from July 2020 through September 2020, the months left for consideration of a from October through December 2020. The Appellant should have obtained insurance from October through December 2020.

Where the Appellant did have access affordable coverage through ESI from April through July but did not have health insurance from October through December 2020, I find that the penalty should be upheld in part and waived in part.

Appellant should note that any waiver granted here is for 2020 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: 8 Number of Months Assessed: 2

The Connector has notified the Department of Revenue that pursuant to its decision, you should be assessed a penalty for Tax Year 2020 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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, he 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.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA20-541

Appeal Decision: The penalty is overturned in full.
Hearing Issue: Appeal of the 2020 Tax Year Penalty
Hearing Date: September 21, 2021
Decision Date: September 29, 2021

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant, who are married, appeared at the hearing, which was held by telephone on September 21, 2021. 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. The 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. (1 page).
- Exhibit 2: Statement of Grounds for Appeal 2020 Signed by Appellant on 4/6/2021. (2 PP).
- Exhibit 2(a): Statement of Grounds Submitted with Appeal (1P).
- Exhibit 2(b): Documentation Submitted by the Appellant (Health Connector Eligibility Details and 2018 and 2019 1040's, C. 7 Bankruptcy Filing documentation.) (6PP).
- Exhibit 3: Health Connector's Notice of Hearing dated 8/5/2021 (2 PP).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2020 Massachusetts tax return filed married joint with a family size of 5, were both age 50 in 2020, lived in Norfolk County, and have three (3) dependents. (Exhibit 1).
2. Appellant's Federal Adjusted Gross Income for 2020 was \$89,674. (Exhibit 1).
3. Appellant Husband was self-employed and could not afford the cost of private health insurance. (Appellant's Testimony).

4. Appellant Spouse was employed for an employer with a handful of employees and did not have access to Employer Sponsored Insurance. (“ESI”). (Appellant’s Testimony).
5. Appellant has three (3) children two (2) of whom were in college. (Appellant’s Testimony).
6. Appellant had been experiencing financial hardship since 2010, had been carrying substantial accrued debts and Appellant Husband filed for bankruptcy in 2019. (Appellant’s Testimony, Exhibit 2(a)).
7. Appellant had overestimated their income and did not realize it had dropped when they had applied for health coverage through the Connector. (Appellant’s Testimony Exhibit 2(a), (b)).
8. Appellant completed an eligibility application through the Connector in November 2019, and they were not eligible for subsidized insurance. (Appellant’s Testimony Exhibit 2(a), (b)).
9. Appellant and their family have foregone necessary health care checkups because of being uninsured. (Appellant’s Testimony Exhibit 2(a), (b)).
10. Appellant testified they have been delinquent on their mortgage and entered into Covid forbearance on their mortgage in 2020. (Appellant Testimony).
11. Appellant testified they do not have any savings or retirement and may have to sell their home to avoid foreclosure. (Appellant Testimony).
12. Appellant re-applied for coverage through the Connector in 2021 and are now insured due to the substantial reduction in their Adjusted Gross Income in 2020 and qualified for a substantial advance premium tax credit. (Appellant’s Testimony Exhibit 2(a), (b)).
13. Appellant has been assessed a tax penalty for twelve (12) months in 2020. The Appellant has appealed this assessment (Exhibits 1, 2).
14. Appellant had the following average monthly living expenses in 2020: Mortgage and Tax/Insurance escrow: \$2,192, Homeowner’s Association: \$131, Maintenance and Repair: \$ 20, Trash: \$85, Utilities: \$200, Cell Phone \$200, Food: \$800, Car Payment: \$150; Car Insurance: \$75, Gas and Transportation Costs: \$700, Internet/Cable: \$200, Clothing and Incidentals: \$ 90, Medicals out of pocket: \$150, Child Care Education \$140, Tax Payment arrears: \$70, totaling: \$5,203. (Appellant’s Testimony).
15. Appellant testified his self-employment income was minimal and their net take home pay was not enough to purchase health insurance. (Appellant’s Testimony Exhibit 2(a), (b)).
16. According to Table 3 Appellant could have afforded \$597.82 per month for health insurance in 2020. According to Table 4 Appellant could have purchased insurance for \$999.00 per month.
17. The Appellant would have been eligible for ConnectorCare coverage in 2020 because the Appellant’s income was less than 300% of the poverty level, which was \$90,510.00. (See Table 2 of Schedule HC 2020, Appellant’s Testimony).

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

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2020 should be waived, either in whole or in part. Appellant has been assessed a tax penalty for twelve (12) months in 2020. Appellant has appealed the penalty. (See Exhibits 1 and 2).

The Appellant submitted a statement of grounds for appeal (Ex. 2) with the appeal, claiming that the individual mandate did not apply to them during 2020 because the expense of purchasing health insurance would have caused them to experience a serious deprivation of food, shelter, clothing or other necessities and that during 2020. See 956 CMR 6.08. The Appellant did not have insurance from January through December. (See Exhibit 1).

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’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.

The evidence provided by the Appellant established that their income for 2020, \$89,674.00 was less than 300% of the federal poverty level, which for 2020 was \$90,510.00 for a family size of five (5). According to Table 3 of Schedule HC for 2020, the Appellant had an adjusted gross income of \$89,674 in 2020 and could have afforded \$597.82 per month. According to Table 4, Appellant, ages 50 and living in Norfolk County during the time they were being penalized for not having insurance, could have purchased insurance for \$999.00 per month. Individual coverage was not affordable through the individual market for the Appellant in 2020 (Schedule HC for 2020).

The next issue to consider is whether the Appellant had access to affordable employer health insurance in 2020. The Appellant credibly testified that he was self-employed and could not afford the cost of health insurance. The Appellant also testified that his Spouse did not have access to Employer Sponsored Insurance (“ESI”) because of the small number of employees. Thus, the Appellant did not have access to affordable ESI” for the months they were penalized. (Appellant’s Testimony).

Where the Appellant did not have access affordable coverage through ESI and did not have access to affordable coverage through the individual market, we need to determine if the Appellant experienced a financial hardship such the coverage would have been unaffordable for him. See 956 CMR 6.08. et. seq. The Appellant may 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 2020. Examples of hardships include being homeless or overdue in rent or mortgage payments, receiving a shut-off notice for utilities, or incurring unexpected increases in basic living expenses due to domestic violence, death of a family member, sudden responsibility for providing care for a family member or fire, flood or natural disaster. In addition, the Appellants’ tax penalty for 2020 could be waived if he experienced financial circumstances such that the expense of purchasing health insurance would have caused her to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08.

The Appellant had the following average monthly living expenses in 2020: Mortgage and Tax/Insurance escrow: \$2,192, Homeowner’s Association: \$131, Maintenance and Repair: \$ 20, Trash: \$85, Utilities: \$200, Cell Phone \$200, Food: \$800, Car Payment: \$150; Car Insurance: \$75, Gas and Transportation Costs: \$700, Internet/Cable: \$200, Clothing and Incidentals: \$ 90, Medicals out of pocket: \$150, Child Care Education \$140, Tax Payment arrears: \$70, totaling: \$5,203. (Appellant’s Testimony, Exhibits 2(a), (b)).

The evidence presented by the Appellant 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 credibly testified that their family has experienced financial hardship since 2010 and the Appellant Husband had to file for bankruptcy in 2019. Appellant also credibly testified that they have been delinquent on their mortgage and entered Covid Forbearance. The Appellant’s did not have adequate income to pay their monthly expenses of \$5,203 and were unable to afford the cost of purchasing private insurance for \$597.82 per month. I find this would have caused the Appellant to experience a serious deprivation of food, shelter clothing, or other necessities. (Exhibits 2(a)(b), Appellant Testimony).

Appellant should note that any waiver granted here is for 2020 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

The Connector has notified the Department of Revenue that pursuant to its decision, you should be assessed a penalty for Tax Year 2020 for the amount equal to one half of the lowest cost health insurance

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

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, he 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.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA20-552

Appeal Decision: The penalty is overturned in full.

Hearing Issue: Appeal of the 2020 Tax Year Penalty

Hearing Date: September 24, 2021

Decision Date: September 29, 2021

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on September 24, 2021. 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. The 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. | (1 page). |
| Exhibit 2: | Statement of Grounds for Appeal 2020 Signed by Appellant on 4/9/2021. | (2 PP). |
| Exhibit 2(a): | Documentation Submitted by the Appellant with the Appeal | (1 P). |
| Exhibit 3: | Health Connector's Notice of Hearing dated 8/6/2021 | (2 PP). |

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2020 Massachusetts tax return filed single with a family size of 1, was age 46 in 2020, lived in Bristol County, and had zero (0) dependents. (Exhibit 1).
2. Appellant's Federal Adjusted Gross Income for 2020 was \$29,283. (Exhibit 1).
3. Appellant was employed full time at 40 hours and was paid \$15/hour. (Appellant's Testimony).
4. Appellant's Employer was a company with a small number of employees and did not offer employer health insurance. ("ESI"). (Appellant's Testimony).

5. Appellant's Bi-Weekly net take home pay was approximately \$535 per pay period. (Appellant's Testimony).
6. Appellant's hours were reduced to 20 hours as a result of a result of Covid. (Appellant's Testimony).
7. Appellant collected partial unemployment during the time her hours were reduced. (Appellant's Testimony).
8. Appellant's Employer closed in June and the Appellant collected Unemployment in the amount of approximately \$900 in July 2020. (Appellant's Testimony).
9. Appellant investigated Connectorcare but could not afford the premium of approximately \$250 or more. (Appellant's Testimony).
10. Appellant obtained new full-time employment in August 2020 where she was compensated at \$16/hour. (Appellant's Testimony).
11. Appellant's Bi-Weekly net take home pay was approximately \$600 per pay period. (Appellant's Testimony).
12. Appellant had a waiting period to obtain insurance through her new employer and was not eligible for health insurance until January 2021. (Appellant's Testimony).
13. Appellant obtained ESI in January 2021 and is currently insured. (Appellant's Testimony).
14. Appellant has been assessed a tax penalty for twelve (12) months in 2020. The Appellant has appealed this assessment (Exhibits 1, 2).
15. Appellant had the following average monthly living expenses in 2020: Rent/utilities contribution: \$250, Cell Phone \$180, Food: \$300, Car Insurance: \$190, Gas and Transportation Costs: \$160, Incidentals-clothing-co-pays and activities for her daughter: \$350, totaling: \$1,430. (Appellant's Testimony, Exhibit 2(a)).
16. According to Table 3 Appellant could have afforded \$102.49 per month for health insurance in 2020. According to Table 4 Appellant could have purchased insurance for \$361.00 per month.
17. The Appellant would have been eligible for ConnectorCare coverage in 2020 because the Appellant's income was less than 300% of the poverty level, which was \$37,470.00. (See Table 2 of Schedule HC 2020, Appellant's Testimony).
18. In addition to the foregoing, I take administrative notice of the 2020 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov/dor/docs/dor/health-care/2020>, and in particular, Tables 1-6 which, as discussed below, include the Affordability Schedule and other financial information used in making 2020 individual mandate tax penalty determinations.

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2020 should be waived, either in whole or in part. Appellant has been assessed a tax penalty for twelve (12) months in 2020. Appellant has appealed the penalty. (See Exhibits 1 and 2).

The Appellant submitted a statement of grounds for appeal (Ex. 2) with the appeal, claiming that the individual mandate did not apply to her during 2020 because the expense of purchasing health insurance would have caused her to experience a serious deprivation of food, shelter, clothing or other necessities and that during 2020. See 956 CMR 6.08. The Appellant did not have insurance from January through December. (See Exhibit 1).

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’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.

The evidence provided by the Appellant established that her income for 2020, \$29,283.00 was less than 300% of the federal poverty level, which for 2020 was \$37,470.00 for a single person. According to Table 3 of Schedule HC for 2020, the Appellant had an adjusted gross income of \$29,283 in 2020 and could have afforded \$155.55 per month. According to Table 4, Appellant, age 46 and living in Bristol County during the time she was being penalized for not having insurance, could have purchased insurance for \$102.49.00 per month. Individual coverage was not affordable through the individual market for the Appellant in 2020 (Schedule HC for 2020).

The next issue to consider is whether the Appellant had access to affordable employer health insurance in 2020. The Appellant credibly testified her Employer did not offer health insurance during the time she worked full time, that she was unemployed during other months for which she is being penalized, and then upon obtaining new full-time employment in August, was not eligible for employer insurance because of a waiting period until January 2021. Thus, the Appellant did not have access to Employer Sponsored Insurance (“ESI”). (Appellant’s Testimony).

Where the Appellant did not have access affordable coverage through ESI and did not have access through the individual market, we need to determine if the Appellant experienced a financial hardship such the coverage would have been unaffordable for her. See 956 CMR 6.08. et. seq. The Appellant may

not be subject to a penalty for failing to get health insurance for the months in question if she can show that she experienced a hardship during 2020. Examples of hardships include being homeless or overdue in rent or mortgage payments, receiving a shut-off notice for utilities, or incurring unexpected increases in basic living expenses due to domestic violence, death of a family member, sudden responsibility for providing care for a family member or fire, flood or natural disaster. In addition, the Appellants' tax penalty for 2020 could be waived if she experienced financial circumstances such that the expense of purchasing health insurance would have caused her to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08.

The Appellant had the following average monthly living expenses in 2020: Rent/utilities contribution: \$250, Cell Phone \$180, Food: \$300, Car Insurance: \$190, Gas and Transportation Costs: \$160, Incidentals-clothing-co-pays and activities for her daughter: \$350, totaling: \$1,430. (Appellant's Testimony).

The evidence presented by the Appellant in this case is sufficient to establish that she experienced a financial hardship as defined by law so as to waive her penalty for the months in question. Given the Appellant's hours were reduced because of Covid, she was on unemployment for a period during some months she was being penalized, and had to wait until January 2021 to obtain ESI, she did not have adequate income (net biweekly of \$535 and \$600 after she regained employment) to pay her monthly expenses of \$1,430 and was unable to afford the cost of purchasing private insurance for \$102.49 per month. I find this would have caused the Appellant to experience a serious deprivation of food, shelter clothing, or other necessities. (Exhibits 2(a), Appellant Testimony). The mandate has not been lost on the Appellant as she obtained ESI through her new employer after a waiting period in January 2021.

Appellant should note that any waiver granted here is for 2020 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

The Connector has notified the Department of Revenue that pursuant to its decision, you should be assessed a penalty for Tax Year 2020 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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 her income and employment have not changed, she is advised to investigate her eligibility for subsidized health insurance through the Health Connector at www.mahealthconnector.org or by contacting customer service at 1-877-623-6765.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA20-556

Appeal Decision: The penalty is overturned in full.

Hearing Issue: Appeal of the 2020 Tax Year Penalty

Hearing Date: September 24, 2021

Decision Date: September 29, 2021

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on September 24, 2021. 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. The 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. (1 page).
- Exhibit 2: Statement of Grounds for Appeal 2020 Signed by Appellant on 4/9/2021. (2 PP).
- Exhibit 2(a): Documentation from Employer Submitted by the Appellant with the Appeal (13 PP).
- Exhibit 2(b): Documentation Submitted by the Appellant with the Appeal (13 P).
(Loan payment schedules, auto loan statement balance, 2020, Internet Invoice, Loan Payment).
- Exhibit 2(c): Documentation Submitted by the Appellant with the Appeal (13 P).
(Out of Pocket Dental Expenses.
- Exhibit 2(d): Documentation Submitted by the Appellant with the Appeal (13 P).
(Utility Payment Plan
- Exhibit 3: Health Connector's Notice of Hearing dated 8/6/2021 (2 PP).

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2020 Massachusetts tax return filed single with a family size of 1, was age 39 in 2020, lived in Hampden County, and had zero (0) dependents. (Exhibit 1).

2. Appellant's Federal Adjusted Gross Income for 2020 was \$48,374. (Exhibit 1).
3. Appellant was employed full time at 40 hours and was paid \$21/hour. (Appellant's Testimony).
4. Appellant's Employer offered health insurance, but the Appellant was not able to enroll during the open enrollment period in late 2019 because of a miscommunication error with the employer and health insurer. ("ESI"). (Appellant's Testimony, Exhibit 2(a)).
5. Appellant was not able to enroll in health insurance with her employer until October 2020 where she is now currently enrolled and paying \$62 per week. (Appellant's Testimony).
6. Appellant's Weekly net take home pay was approximately \$630 per pay period. (Appellant's Testimony).
7. Appellant worked less hours during Covid because of child-care issues which resulted in reduced weekly earnings. (Appellant's Testimony).
8. Appellant investigated Connectorcare in January 2020 but was not able to obtain insurance due to missing the enrollment period. (Appellant's Testimony).
9. Appellant obtained ESI in October 2020 and is currently insured. (Appellant's Testimony).
10. Appellant has been assessed a tax penalty for 6 months (6) months in 2020. The Appellant has appealed this assessment (Exhibits 1, 2).
11. Appellant had the following average monthly living expenses in 2020: Mortgage and Escrows: \$1,530, Utilities: \$460, Water: \$20; Cable Internet: \$200, Food: \$600, Car Insurance: \$140, Gas and Transportation Costs: \$50, Incidentals-\$30, Dental Out of Pocket: \$75, RX Out of Pocket: \$40; Loan-House Maintenance: \$ 138; Student Loan: \$106, Loan: \$230, 2 Loans for partial mos. Sept.-Dec.-average \$250; Credit Cards: \$235, totaling: \$4,104. (Appellant's Testimony, Exhibit 2(a)-(d)).
12. According to Table 3 Appellant could have afforded \$306.37 per month for health insurance in 2020. According to Table 4 Appellant could have purchased insurance for \$298.00 per month.
13. The Appellant would not have been eligible for ConnectorCare coverage in 2020 because the Appellant's income was more than 300% of the poverty level, which was \$37,470.00. (See Table 2 of Schedule HC 2020, Appellant's Testimony).
14. In addition to the foregoing, I take administrative notice of the 2020 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov.dor/docs/dor/health-care/2020>, and in particular, Tables 1-6 which, as discussed below, include the Affordability Schedule and other financial information used in making 2020 individual mandate tax penalty determinations.

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2020 should be waived, either in whole or in part. Appellant has been assessed a tax penalty for six (6) months in 2020. Appellant has appealed the penalty. (See Exhibits 1 and 2).

The Appellant submitted a statement of grounds for appeal (Ex. 2) with the appeal, claiming that the individual mandate did not apply to her during 2020 because the expense of purchasing health insurance would have caused her to experience a serious deprivation of food, shelter, clothing or other necessities and that during 2020. See 956 CMR 6.08.

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’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.

The evidence provided by the Appellant established that her income for 2020, \$48,374.00 was more than 300% of the federal poverty level, which for 2020 was \$37,470.00 for a single person. According to Table 3 of Schedule HC for 2020, the Appellant had an adjusted gross income of \$48,374 in 2020 and could have afforded \$306.37 per month. According to Table 4, Appellant, age 39 and living in Hampden County during the time she was being penalized for not having insurance, could have purchased insurance for \$361 per month. Individual coverage was affordable through the individual market for the Appellant in 2020 (Schedule HC for 2020).

The next issue to consider is whether the Appellant had access to affordable employer health insurance in 2020. The Appellant credibly testified her Employer did not offer health insurance during the time she worked full time due to a miscommunication error which precluded her from obtaining ESI until October 2020. The Appellant attempted to enroll in October 2019 but due to miscommunication issues with the employer and insurer, missed the open enrollment period. Thus, the Appellant did not have access to Employer Sponsored Insurance (“ESI”). (Appellant’s Testimony).

Where the Appellant did not have access affordable coverage through ESI but did have access through the individual market, we need to determine if the Appellant experienced a financial hardship such the coverage would have been unaffordable for her. See 956 CMR 6.08. et. seq. The Appellant may not be

subject to a penalty for failing to get health insurance for the months in question if she can show that she experienced a hardship during 2020. Examples of hardships include being homeless or overdue in rent or mortgage payments, receiving a shut-off notice for utilities, or incurring unexpected increases in basic living expenses due to domestic violence, death of a family member, sudden responsibility for providing care for a family member or fire, flood or natural disaster. In addition, the Appellants' tax penalty for 2020 could be waived if she experienced financial circumstances such that the expense of purchasing health insurance would have caused her to experience a serious deprivation of food, shelter, clothing or other necessities. See 956 CMR 6.08.

The Appellant had the following average monthly living expenses in 2020: Mortgage and Escrows: \$1,530, Utilities: \$460, Water: \$20; Cable Internet: \$200, Food: \$600, Car Insurance: \$140, Gas and Transportation Costs: \$50, Incidentals-\$30, Dental Out of Pocket: \$75, RX Out of Pocket: \$40; Loan-House Maintenance: \$ 138; Student Loan: \$106, Loan: \$230, 2 Loans for partial mos. Sept.-Dec.-average \$250; Credit Cards: \$235, totaling: \$4,104. (Appellant's Testimony, Exhibit 2(a)-(d)).

The evidence presented by the Appellant in this case is sufficient to establish that she experienced a financial hardship as defined by law so as to waive her penalty for the months in question. Given the Appellant's \$4,104 in monthly expenses, she did not have adequate weekly income of \$630, or \$2,709 a month to afford the cost of purchasing private insurance for \$306.37 per month. I find this would have caused the Appellant to experience a serious deprivation of food, shelter clothing, or other necessities. (Exhibits 2(a), Appellant Testimony). The mandate has not been lost on the Appellant as she obtained ESI through her new employer in October 2020.

Appellant should note that any waiver granted here is for 2020 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

The Connector has notified the Department of Revenue that pursuant to its decision, you should be assessed a penalty for Tax Year 2020 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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 her income and employment have not changed, she 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.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA 20-566

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

Hearing Issue: Appeal of the 2020 Tax Year Penalty

Hearing Date: September 15, 2021

Decision Date: September 20, 2021

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone, on September 15, 2021. The hearing record consists of the testimony of Appellant, and the following documents, which were admitted into evidence:

- Exhibit 1: Health Connector Hearing Notice (3 pages)
- Exhibit 2: Appeal Case Information sheet¹ (1 page)
- Exhibit 3: Statement of Grounds with attachment (15 pages)

FINDINGS OF FACT

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

1. Appellant was 27 years old at the end of 2020.
2. During 2020, Appellant lived in Suffolk County.
3. Appellant filed his 2020 Massachusetts taxes as single with no dependents.
4. Appellant reported on his Massachusetts tax return and confirmed at the hearing that he had adjusted gross income in 2020 of \$35,960. See Exhibit 2.
5. Appellant reported in the Schedule HC that he filed with his 2020 state income taxes and confirmed at the hearing that in 2020 he did not have health insurance meeting minimum

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

creditable (MCC) standards from January through September but did have such insurance from October through December. Exhibit 2.

6. At the start of 2020, Appellant was a full-time student at an out-of-state university. Therefore, he was not living in the Commonwealth.
7. Appellant returned to Massachusetts in March and took up residence in Suffolk County.
8. When he returned to the Commonwealth, he began working at a full-time job. However, shortly after he started, the shutdowns due to the Covid-19 pandemic began and Appellant's work stopped. On March 26, he signed up for and obtained unemployment insurance. See record of application (Exhibit 3).
9. Appellant continued to collect unemployment insurance through June 2020. Exhibit 3. At that point, he went back to work as a waiter. However, because the restaurant where he worked was required to limit the number of customers served at any time, Appellant's income was lower than he had expected pre-pandemic.
10. Appellant's job as a waiter was part-time and so he was not eligible for health insurance.
11. Appellant lived on that limited income until later in the year, when the restaurant expanded the numbers of clients it could serve and his income increased.
12. At that point, he enrolled in Connector Care and so was insured for the last three months of the year. He was insured as of the date of the hearing.

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

ANALYSIS AND CONCLUSIONS OF LAW

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

Further, according to M.G.L. c. 111M, § 2, residents are permitted a 63-day gap between periods of insurance. The Health Connector's "Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00", which can be found at <https://betterhealthconnector.com/wp-content/uploads/rules-and-regulations/AdminBulletin03-10.pdf>, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. In Appellant's case, he reported on his Schedule HC that he was without insurance for nine months in 2020. Because he was entitled to a three-month gap without penalty, he has been assessed a penalty for only six months.

Additionally, Appellant was living out-of-state for the first two months of the year. As such, during that period of time, he was not a Commonwealth resident required to obtain insurance. Accordingly, I will only consider the period from March through September when Appellant was uninsured.

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

During 2020, Appellant was either unemployed or working at a part-time job that did not offer him employer-subsidized insurance. Thus, Appellant did not have access to affordable employment-based insurance during 2020.

Further, Appellant could not have afforded unsubsidized insurance purchased on the non-group market under state affordability standards set by the Health Connector board pursuant to M.G.L. c. 111M. Under those standards, a person like Appellant who had income of \$35,960 for a tax household based of one person was deemed able to afford 5 percent of income for health insurance. (I obtain that percentage figure from Table 3 to the instructions for the 2020 Schedule HC.) In Appellant's case, that amounts to \$1,798 annually or \$149 a month. During 2020, a person like Appellant who lived in Suffolk County and was 27 years of age would have had to pay a monthly premium of \$269 for health insurance. (I obtain the premium figure from Table 4 to the instructions for the 2020 Schedule HC). Thus, under state standards, this amount would not have been affordable for Appellant.

However, based on the annual income that Appellant provided on his 2020 state tax return, he would have been eligible for Connector Care, which is government-subsidized insurance. His annual income in 2020 of \$35,960 was below \$37,470, which is 300 percent of the federal poverty limit for a household of one person like Appellant's. (I obtain the figure of \$37,470 from Table 2 to the instructions for the 2020 Schedule HC.) Persons with household incomes below 300 percent of the federal poverty limit are not eligible for Connector Care, which is government-subsidized insurance, provided they meet the other eligibility requirements, which include citizenship or legal permanent residence in the United States and lack of access to employer subsidized insurance. 956 CMR 12.04 (Connector Care eligibility requirements.) I conclude that Appellant would have met those requirements between March and September, based on his testimony about his work situation and based on the fact that he was deemed eligible for Connector Care when he applied in October. Connector Care would have been affordable health insurance.

Because Appellant could have obtained affordable insurance, but didn't, I must determine whether he has stated grounds to waive the penalty under the Health Connector's regulations. See 956 C.M.R. § 6.08(1). I conclude that he has. Starting in March, shortly after he returned to the Commonwealth, Appellant's income situation was uncertain. Initially he expected to be working full-time, but he quickly lost that job due to the pandemic. For the next several months, he lived on unemployment. When he returned to work, his income was lower than he had hoped because of the capacity restrictions at the restaurant where he was working. Given that uncertainty, he deferred applying for health insurance. However, in October when his income situation improved somewhat, he did apply for health insurance and he was insured at the time of the hearing.

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

PENALTY ASSESSED

Number of Months Appealed: 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 2020.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA19669

Appeal Decision: The penalty is overturned in full.

Hearing Issue: Appeal of the 2019 Tax Year Penalty

Hearing Date: July 14, 2021

Decision Date: August 31, 2021

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on July 14, 2021. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

- Exhibit 1: Statement of Grounds for Appeal 2019 signed and dated by Appellant on May 10, 2020 with letter in support, Appellant's 1095-C, 1095-A, and 1099HC for 2019 attached
- Exhibit 2: Appeal Case Information from Schedule HC 2019
- Exhibit 2a: Appeal Case Information from Schedule HC 2019 showing dismissal of appeal on October 8, 2020
- Exhibit 2b: Appellant's letter to Connector dated November 7, 2020 requesting vacating of dismissal
- Exhibit 2c: Appeal Case Information from Schedule HC 2019 showing vacating of dismissal of appeal on November 20, 2020
- Exhibit 2d: Appeal Case Information from Schedule HC 2019 showing dismissal of appeal on April 1, 2021
- Exhibit 2e: Appellant's letter to Connector dated April 19, 2021 requesting vacating of dismissal
- Exhibit 3: Notice of Hearing sent to Appellant dated September 2, 2020 for October 7, 2020 hearing
- Exhibit 3a: Notice of Hearing sent to Appellant dated March 4, 2021 for March 31, 2021 hearing
- Exhibit 3b: Notice of Hearing sent to Appellant dated June 9, 2021 for July 14, 2021 hearing

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2019 Massachusetts tax return as a single person with no dependents claimed, was 36 years old in 2019 (Exhibit 2, Testimony of Appellant).
2. Appellant resided in Middlesex County in 2019 (Testimony of Appellant, Exhibit 2).
3. Appellant had a Federal Adjusted Income of \$52,119 in 2019 (Testimony of Appellant, Exhibit 2).

4. Appellant worked full time until some time in February, 2019 when he was let go. He received \$3,000 in severance pay. Appellant also had a part-time job working about 8 hours a month for \$23 an hour. He kept this part-time job until September when he again worked full time. He then worked 30 to 40 hours a week (Testimony of Appellant).
5. Appellant collected \$500 a week in unemployment compensation starting in May until he started working full time again in September (Testimony of Appellant).
6. Appellant had health insurance which met the Commonwealth's minimum creditable coverage standards from May through July. Appellant also had coverage through employment in November and December. That coverage did not meet the Commonwealth's standards (Testimony of Appellant, Exhibit 1, attachments, and Exhibit 2).
7. Appellant had health insurance all of 2020 and still had coverage as of the date of this hearing (Testimony of Appellant).
8. Appellant has been assessed a penalty for three months during 2019. Appellant has appealed this assessment; the appellant claims that the cost of purchasing health insurance would have caused him to experience a serious deprivation of basic necessities (Testimony of Appellant, Exhibits 1 and 2).
9. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2019 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 2019. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2019.
10. According to Table 3 of Schedule HC for 2019, the appellant with no dependents claimed with an adjusted gross income of \$52,119 could afford to pay \$347 per month for health insurance. According to Table 4, Appellant, 36 years old and living in Middlesex County, could have purchased insurance for \$286 per month for a plan for an individual. Insurance on the individual market was affordable for the appellant (Schedule HC for 2019 Tables 3 and 4, Exhibit 2).
11. According to Table 2 of Schedule HC for 2019, Appellant earning more than \$36,420 per year, would have been ineligible for the ConnectorCare program based upon income (Table 2 of Schedule HC-2019, and Exhibit 2).
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 2019 (Testimony of Appellant).
13. Appellant did not fall more than thirty days behind in rent payments in 2019 (Testimony of Appellant).
12. Appellant had his telephone service shut off three times in 2019 (Testimony of Appellant).
14. Appellant had the following monthly expenses for basic necessities in 2019: rent including heat-\$1,850; electricity-\$50; telephone and internet-\$135; food-\$645; car insurance-\$135; gas-\$130; car payment- \$315; car repairs-\$25; clothing-\$85; student loans payments-\$50; old credit card debt-\$450. Appellant also gave his mother \$200 a month to help her pay for her expenses, and during the year he spent \$2,000 on a job training program and classes. Appellant also contributed \$700 for funeral expenses for a family member (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 2019 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.

Appellant had health insurance which met the Commonwealth’s standards from May through July. He also had coverage in November and December, but there is no evidence that this coverage met the Commonwealth standards. The appellant has been assessed for a penalty for three months in 2019. 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 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 2019, the appellant with no dependents claimed with an adjusted gross income of \$52,119 could afford to pay \$347 per month for health insurance. According to Table 4, Appellant, 36 years old and living in Middlesex County, could have purchased insurance for \$286 per month for a plan for an individual. Insurance on the individual market was affordable for the appellant. See Schedule HC for 2019, Tables 3 and 4, Exhibit 2.

There is no evidence in the record that Appellant had access to health insurance which met the Commonwealth’s minimum creditable coverage standards through employment in 2019. See the testimony of the appellant which I find to be credible, and Exhibit 1 attachments.

Appellant was not eligible for the ConnectorCare program. His annual Federal Adjusted Income was \$52,119, more than the income limit for one person (\$36,420). See 956 CMR 12.00 et. seq.

Since Appellant had access to affordable insurance through the individual market, 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.

Appellant had the following monthly expenses for basic necessities in 2019: rent including heat-\$1,850; electricity-\$50; telephone and internet-\$135; food-\$645; car insurance-\$135; gas-\$130; car payment- \$315; car repairs-\$25; clothing-\$85; student loans payments-\$50; old credit card debt-\$450. Appellant also gave his mother \$200 a month to help her pay for her expenses and during the year, and he spent \$2,000 on a job training program and classes, and \$700 for funeral expenses for a family member. See the testimony of the appellant which I find to be credible.

Appellant's expenses for basic necessities came to about \$4,00 a month. If we consider the amount Appellant sent to his mother, and the amounts he spent for job training and funeral expenses, Appellant's expenses were approximately \$4,500 a month. His income before taxes was approximately \$4,300 a month. Even without the cost of purchasing health insurance, at least \$286 a month, he would have run a deficit every month. I find that health insurance was unaffordable for the appellant because the cost of the premium would have caused the appellant to experience a serious deprivation of basic necessities. See 956 CMR 6.08(1)(e) and 6.08(3) which allows the consideration of other financial issues raised by the appellant. See also Exhibit 2, and Schedule HC, Tables 3 and 4.

In addition, Appellant had his telephone service shut off three times during 2019. See the testimony of the appellant which I find to be credible. Pursuant to 956 CMR 6.08(1) (b), the cost of health insurance would have been unaffordable for the appellant.

Based upon these facts summarized above, I determine that the appellant's penalty should be waived in its entirety because of financial hardships. I note that Appellant had health insurance all of 2020 and had coverage as of the date of this hearing.

Appellant should note that any waiver granted here is for 2019 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: 3 Number of Months Assessed: 0

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2019.

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: PA19780

Appeal Decision: The penalty is overturned in full.

Hearing Issue: Appeal of the 2019 Tax Year Penalty

Hearing Date: July 14, 2021

Decision Date: August 27, 2021

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

One of the appellants appeared at the hearing which was held by telephone on July 14, 2021. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

- Exhibit 1: Statement of Grounds for Appeal 2019 signed and dated by Appellants on June 15, 2020 with letter in from mortgage company attached
- Exhibit 2: Appeal Case Information from Schedule HC 2019
- Exhibit 2a: Appeal Case Information from Schedule HC 2019 showing dismissal of appeal on April 1, 2021
- Exhibit 2b: Appellants' request for a new hearing dated April 16, 2021 with April 1, 2019 mortgage statement
- Exhibit 2c: Letter to Appellants from mortgage company dated May 15, 2019
- Exhibit 2d: Past due notices sent to Appellants from mortgage company dated December 2nd and 31st, 2019
- Exhibit 3: Notice of Hearing sent to Appellant dated October 1, 2020 for October 29, 2020 hearing
- Exhibit 3a: Notice of Hearing sent to Appellant dated March 4, 2021 for March 31, 2021 hearing
- Exhibit 3b: Notice of Hearing sent to Appellant dated June 9, 2021 for July 14, 2021 hearing

FINDINGS OF FACT

The record shows, and I so find:

1. Appellants, who filed a 2019 Massachusetts tax return jointly with two dependents, their minor children, claimed, were both 55 years old in 2019 (Exhibit 2, Testimony of Appellant).
2. Appellants lived in Middlesex County in 2019 (Exhibit 2, Testimony of Appellant).
3. Appellants' Federal Adjusted Gross Income for 2019 was \$111,331. \$50,000 of this amount came from the appellants' 401K which they liquidated in order to pay bills. They had to pay a tax penalty for the early withdrawal of the funds (Exhibit 2, Testimony of Appellant).

4. One of the appellants had worked at the same job for 18 years and had health insurance through work. At the end of April, 2019 Appellant left her job in order to stay home and provide care to one of her children who had medical and educational issues. When she left her job, she did not collect unemployment benefits because she left voluntarily. She also lost the health insurance which she had had. This coverage had met the Commonwealth's minimum creditable coverage standards (Testimony of Appellant, Exhibit 2).
5. The other appellant had a part-time job at a school until mid-June, 2019. When his job ended in June, he was unemployed until October 1, 2019 when he obtained a full-time job (Testimony of Appellant).
6. The appellant who worked part-time until June had health insurance through the Veteran's Administration. When he obtained a full-time job, he was offered health insurance for him and his spouse starting November 1, 2019. Both appellants were then covered by insurance which met the Commonwealth's minimum creditable coverage standards through the end of the year (Testimony of Appellant, Exhibit 2).
7. One appellant had health insurance coverage all year. The other had coverage from January through April and from November to December. Only one has been assessed a tax penalty for three months, August through October 2019 (Testimony of Appellant, Exhibit 2).
8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2019 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 2019. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2019.
9. According to Table 3 of Schedule HC for 2019, the appellants with two dependents claimed with an adjusted gross income of \$111,331 could afford to pay \$742 per month for health insurance. According to Table 4, Appellants, both 55 years old and living in Middlesex County, could have purchased insurance for \$992 per month for a plan for a family. Coverage through the individual market was unaffordable for the appellants in 2019 (Schedule HC for 2019, Exhibit 2).
10. According to Table 2 of Schedule HC for 2019, Appellants, with two dependents, earning more than \$75,300, the income limit for a family of four, would have been ineligible for the ConnectorCare program based upon income (Exhibit 2, Table 2 of Schedule HC-2019, 956 CMR 12.00 et. seq.).
11. Appellants did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2019 (Testimony of Appellant).
12. Appellants fell more than thirty days behind in mortgage payments in 2019 (Testimony of Appellant, Exhibit 1 attachment, Exhibits 2b, 2c, and 2d).
13. Appellants received shut-off notices for basic utilities during 2019. Their telephone service was cut off once or twice during the year (Testimony of Appellant).
14. Appellants had the following monthly expenses for basic necessities in 2019: mortgage, including property taxes and condo fee- \$1,323; electricity, heat-\$160; telephone and internet-\$315; food and household and personal items-\$600; car insurance-\$200; gas-\$190; car payment-\$631; clothing-\$120. In addition, Appellants paid \$350 for student loans and about \$400 a month for their son's medical needs, including weekly therapy which cost \$50 a week. The therapy went from weekly to monthly in late summer. Some of the medical expenses were paid all 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 2019 should be waived, either in whole or in part. One of the appellants has been assessed a tax penalty for August through October, 2019. Appellant had insurance which met the Commonwealth's standards from January through April and in November and December. Appellant is entitled to a three-month grace period after losing her coverage at the end of April. The other appellant had health insurance which met the Commonwealth's standards all year. Appellants have appealed the penalty. See Exhibits 1 and 2, and Massachusetts General Laws Chapter 111M, Section 2.

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

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

According to Table 3 of Schedule HC for 2019, the appellants with two dependents claimed with an adjusted gross income of \$111,331 could afford to pay \$742 per month for health insurance. According to Table 4, Appellants, both 55 years old and living in Middlesex County, could have purchased insurance for \$992 per month for a plan for a family. Coverage through the individual market was unaffordable for the appellants in 2019. See Schedule HC for 2019, Tables 3 and 4, and Exhibit 2.

The appellant who was insured all year had coverage through the VA's administration until he obtained full-time work. Until October, he was either employed part-time or was unemployed. He had no access to insurance through employment. In October, he obtained full-time work and as of November, he had health insurance through his new job. The other appellant was also covered by the plan. The other appellant was employed January through April and had insurance through her job. She was unemployed the rest of the year because she had to stay home and provide care for one of her children who had special medical and educational needs. Once she left her job, she had no access to insurance through employment until her spouse was able to get her coverage as of November 1st. See the testimony of the appellant which I find to be credible.

According to Table 2 of Schedule HC for 2019, Appellants, with two dependents, earning more than \$75,300, the income limit for a family of four, would have been ineligible for the ConnectorCare program based upon income. See Exhibit 2, Table 2 of Schedule HC-2019, 956 CMR 12.00 et. seq.

There is no evidence in the record that the appellant who was uninsured part of the year was eligible for any other government-sponsored health insurance coverage.

Since affordable coverage was unavailable to the appellants through employment, the individual market, and any government-sponsored program, the penalty assessed must be waived.

I also note that the appellant's penalty would be waived under a hardship exception pursuant to 956 CMR 6.08 (1). The appellants fell behind in their mortgage payments multiple times during 2019 and also had their telephone service turned off at least once. Based upon these facts, I determine that pursuant to 956 CMR 6.08(1)(a) and (b), the appellants had financial hardships so that the cost of coverage would have been unaffordable for them. See the testimony of the appellant and Exhibit 1 attachment, Exhibits 2b, 2c, and 2d.

Appellants' penalty is waived because because there was no affordable health insurance available to them and because of financial hardship.

Appellants should note that any waiver granted here is for 2019 only and is based upon the specific facts I have found to be true; they should not assume that the same determination will be made should Appellants be assessed a penalty in the future.

PENALTY ASSESSED

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

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2019.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Hearing Officer

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA20-251

Appeal Decision: Appeal Approved.

Hearing Issue: Appeal of the 2020 Tax Year Penalty

Hearing Date: August 6, 2021

Decision Date: September 21, 2021

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on August 6, 2021. 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 14, 2021.
- Exhibit 2: Appeal Case Information from Schedule HC 2020.
- Exhibit 3: The Statement of Grounds for Appeal signed by the Appellant on March 3, 2021.
- Exhibit 4: The Appellant's letter in support of this appeal, with attachments.
- Exhibit 5: Health Connector Appeals Unit Record Open form dated August 6, 2021.
- Exhibit 6: Information submitted by the Health Connector on August 9, 2021.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant, age 41 in 2020 filed their Federal Income Tax return as a single person with no dependents claimed (Exhibit 2).
2. The Appellant lived in Middlesex County, MA in 2020 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2020 was \$26,550 (Exhibit 2).
4. According to the information on the Appellant's Schedule HC 2020, the Appellant did not have health insurance for any months of tax year 2020 (Exhibit 2).
5. The Appellant has been assessed a twelve-month tax penalty for 2020. The Appellant filed an appeal of the assessment in March 2021 (Exhibits 2, 3, 4).

6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2020 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2020. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2020.
7. In accordance with Table 3 of Schedule HC for 2020, the Appellant filing the Federal tax return as a single person with no dependents claimed, with an annual adjusted gross income of \$26,550 could afford to pay \$93 per month for health insurance. In accordance with Table 4, the Appellant, age 41, living in Middlesex County, could have purchased private insurance for \$316 per month for a plan (Schedule HC for 2020). Private insurance was not affordable for the Appellant in 2020.
8. The Appellant would have been eligible for ConnectorCare coverage in 2020 because the Appellant's income was less than 300% of the federal poverty level, which was \$37,470 for a household of one in 2020. (See Table 2 of Schedule HC-2020 and 956 CMR 12.04).
9. The Appellant testified that they did have health insurance through the Health Connector for half of tax year 2020. The Appellant did not have access to employer sponsored insurance. The Appellant said that their tax preparer told them to claim a religious exemption. The Appellant said that they had very bad experiences with health care providers in the past and is reluctant to obtain treatment. The Appellant explained that they were out of work for about one month in February/March 2020. The Appellant stated that they were unable to keep up with their monthly rent payments of \$768 and was facing eviction. The Appellant said that they went to Court to stop the eviction and struggled in 2020 to meet their living expenses. The Appellant said that paying a health insurance premium was not affordable. I found the Appellant's testimony to be credible (Appellant Testimony).
10. The record was left open until August 20, 2021 to allow the Health Connector to verify the Appellant's health insurance enrollment, if any, during tax year 2020 (Exhibit 5).
11. On August 9, 2021 Health Connector submitted a copy of the Appellant's 1095-A for filing 2020 taxes. This document verifies that the Appellant did have health insurance that met Massachusetts requirements for the period of January 1, 2020- June 30, 2020. A copy was forwarded to the Appellant who was advised that the record would be kept open until September 3, 2020 to allow the Appellant to submit a written response if they chose (Exhibit 6).
12. On or about September 3, 2020 the Appellant contacted the Health Connector Appeals Unit to request additional time to submit additional information. The record was left open until September 17, 2021.
13. As of September 21, 2021 the Appellant did not submit any additional information.

ANALYSIS AND CONCLUSIONS OF LAW

The tax penalty was enacted by the Massachusetts Legislature to encourage compliance with G.L.c. 111M, § 2, also called the "individual mandate". The mandate requires every adult resident of Massachusetts to obtain insurance coverage "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a

tax penalty for each of the months that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies See G.L. C. 111M, sec. 2(b) and for Tax Year 2010, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c.176Q as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of financial hardship. See 956 CMR 6.08.

According to the information reported on the Appellant's Schedule HC 2020, the Appellant did not have health insurance for any months of tax year 2020 and consequently has been assessed a twelve-month penalty. The Appellant disputes this information and asserts that the penalty should not apply in this case because of financial hardship and religious beliefs.

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. Although a religious exemption may be requested when filing taxes, this is not a valid ground for appeal under 956 CMR 6.08.

In accordance with Table 3 of Schedule HC for 2020, the Appellant filing the Federal tax return as a single person with no dependents claimed with an adjusted gross income of \$26,550 could afford to pay \$93 per month for health insurance. According to Table 4, the Appellant, age 41, living in Middlesex County, could have purchased a private insurance plan for \$316 month. See Schedule HC for 2020. Private insurance was not affordable for the Appellant in tax year 2020.

The Appellant did not have access to employer sponsored health insurance in tax year 2020. The Appellant was eligible for ConnectorCare coverage based upon the Appellant's income which was less than \$37,470 for their household of one. See Table 2 of Schedule HC 2020 and 956 CMR 12.04 for eligibility criteria. Information submitted during the Record Open period following the hearing verified that the Appellant was in fact enrolled in ConnectorCare for the period of January 1, 2020 through June 30, 2020. The Appellant was insured for six months. Under the regulations, the Appellant is given a three-month grace period to obtain health insurance. The Appellant is therefore potentially subject to a three-month penalty. Since affordable insurance was available to the Appellant in 2020, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08(1).

The Appellant testified that they had a very difficult time in tax year 2020 due to Covid-19. The Appellant said that they were out of work for about one month with a fever. The Appellant explained that they were unable to pay their monthly rent of \$768 and was facing eviction. The Appellant said that since they were having such a difficult time meeting their living expenses, they could not afford to pay the monthly health insurance premium. Appellant indicated that they went to Court and the eviction process was suspended due to the pandemic. The Appellant has demonstrated that the cost of purchasing health insurance would have caused the Appellant to experience a significant financial hardship. The Appellant's twelve-month penalty is waived. See 956 CMR 6.08(1)(a).

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2020. The Appellant should not assume that a similar determination will be made for subsequent tax years should they again be assessed a 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 2020.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA20-332

Appeal Decision: Penalty Overturned in Full
Hearing Issue: Appeal of the 2020 Tax Year Penalty
Hearing Date: July 27, 2021
Decision Date: September 21, 2021

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone, on July 27, 2021. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified. At the end of the hearing, the record was left open so that Appellant could submit information regarding health insurance coverage. Appellant submitted documents, and they have been marked as Exhibit 4.

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

- Exhibit 1: Tax Information sheet from DOR, Schedule HC
- Exhibit 2: Statement of Grounds for Appeal, dated March 15, 2021 and supporting documents
- Exhibit 3: Notice from Appeals Unit, dated June 28, 2021
- Exhibit 4: Documents regarding coverage

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 26 years old in 2020. Appellant filed a Massachusetts 2020 tax return as single with no dependents claimed (Exhibit 1).
2. Appellant resided in Essex County, MA in 2020 (Exhibit 1).
3. Appellant had an Adjusted Gross Income of \$56,089 in 2020 (Exhibit 1).
4. Employer sponsored health insurance was not available to Appellant in 2020 (Testimony of Appellant).
5. Prior to 2020, Appellant had been covered by a parent's health insurance coverage (Testimony of Appellant).
6. Appellant was unclear as to where to get health insurance, and Appellant chose to enroll in a Health Care Sharing Ministry at a cost of \$262 per month (Testimony of Appellant).
7. Appellant's doctor did not accept the plan as health insurance (Testimony of Appellant).
8. The Health Care Sharing Ministry was not health insurance (Exhibit 4).
9. The Health Care Sharing Ministry plan may have been ACA compliant (Exhibit 4).
10. Appellant's enrollment in the Health Care Sharing Ministry ended in March 2020 (Testimony of Appellant).

11. Appellant lost employment in March 2020, due to the Covid 19 pandemic (Testimony of Appellant).
12. Appellant worked on a part-time basis beginning in the late summer of 2020 (Testimony of Appellant).
13. Appellant received unemployment compensation for part of 2020 (Testimony of Appellant).
14. Appellant struggled to pay for basic expenses during the time of unemployment and when Appellant was working part time (Testimony of Appellant).
15. Appellant was concerned about paying for necessary expenses due to the uncertain times and the loss of employment (Testimony of Appellant).
16. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2020 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2020. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2020.
17. According to Table 3 of Schedule HC for 2020 a person filing as single with no dependents claimed with an adjusted gross income of \$56,089 could afford to pay \$374 per month for private insurance. According to Table 4, Appellant, age 26 and living in Essex County could have purchased private insurance for \$269 per month.
18. Private insurance was considered to be affordable for Appellant in 2020 (Schedule HC for 2020).
19. According to Table 2 of Schedule HC for 2020, Appellant, earning more than \$37,470 was not income eligible for government subsidized health insurance.
20. Appellant has been assessed a penalty for twelve months for 2020 (Exhibit 1).
21. Appellant filed a hardship appeal on March 15, 2021 (Exhibit 2).

ANALYSIS AND CONCLUSIONS OF LAW

G.L.c. 111M, § 2, also called the “individual mandate,” requires every adult resident of Massachusetts to obtain health insurance that meets minimum creditable coverage standards “[s]o long as it is deemed affordable” under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance or who do not obtain insurance that meets the minimum creditable coverage standard are subject to a tax penalty for “each of the months” that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2020, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector’s regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

Appellant has been assessed a tax penalty for 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 financial hardship. See 956 CMR 6.

According to Tables 2, 3 and 4 of Massachusetts Schedule HC 2020, Appellant was considered able to afford private health insurance. Since Appellant potentially had access to affordable insurance, we need to consider whether Appellant experienced a financial hardship as defined by 956 CMR 6.08.

In early 2020, Appellant was a member of a Health Care Sharing Ministry which was not health insurance and therefore did not meet the Massachusetts Creditable coverage standards. Due to the Covid 19 pandemic, Appellant was laid off in March 2020. Appellant began part-time work beginning in late summer of 2020. Appellant was concerned about paying the necessary expenses due to the uncertain times and the loss of

employment. Purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. See Exhibits 1, 2, Testimony of Appellant, which I find to be credible and 956 CMR 6.08 (1) (e).

I find the penalty assessed against Appellant for 2020 should be waived in its entirety.

PENALTY ASSESSED

Number of Months Appealed: 12

Number of Months Assessed: 0

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2020 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

ADDENDUM

Appellant is advised that this decision is based upon the facts as I have found them in 2020 and Appellant should not assume that a similar decision will be reached if Appellant fails to have health insurance in future years. Appellant should inquire about available employer sponsored insurance, and if it is not available, Appellant should call the Health Connector at 1 877 623-6765 for information about options for purchasing health insurance.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA20-344

Appeal Decision: Appeal Denied

Hearing Issue: Appeal of the 2020 Tax Year Penalty

Hearing Date: July 29, 2021

Decision Date: September 20, 2021

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on July 29, 2021. 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 2020 Schedule HC (1 page)
- Exhibit 2: 3/22/21 Appeal (3 pages)
- Exhibit 3: 6/28/21 Hearing Notice (2 pages)

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant's filing status for 2020 was Single with no dependents. The Appellant's federal AGI in 2020 was \$22,947. The Appellant turned twenty-nine years old in 2020. The Appellant lived in Worcester County in 2020. (Exhibit 1)
2. On March 22, 2021, the Appellant appealed from the assessment of a twelve-month penalty on his 2020 income tax return checking off, "During 2020, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities." (Exhibit 2)
3. According to Table 2 of the 2020 Schedule HC, the Appellant was eligible for government-subsidized health insurance in 2020, since his 2020 AGI was less than \$37,47 for a family size of one.
4. According to Table 3, Affordability, of the 2020 Schedule HC, based on his 2020 AGI and Single with no dependent tax filing status, the Appellant could have afforded to pay up to 2.9% of his 2020 federal AGI, or \$55/monthly, for health insurance coverage in 2020.
5. The Appellant had health insurance coverage through MassHealth in years prior to 2019. (Appellant's testimony)

6. The Appellant did not apply to MassHealth for health insurance coverage in 2020. (Appellant’s testimony)
7. The Appellant worked for a landscaping company on an as-needed basis in 2019, until he was laid off in December 2019. (Appellant’s testimony)
8. The Appellant applied for unemployment benefits at the beginning of 2020, but was denied because he had not worked enough hours to qualify. (Appellant’s testimony)
9. The Appellant did not receive any income in 2020 until late April or May 2020, when the PUA program began sending out payments to those who qualified, including the Appellant. (Appellant’s testimony)
10. All of the Appellant’s income in 2020 came from PUA payments. (Appellant’s testimony)
11. The Appellant has lived in Massachusetts for nine years. (Appellant’s testimony)
12. The Appellant could have afforded to pay \$55 for health insurance coverage during the last six months of 2020 and would have purchased the coverage had he known it was available. (Appellant’s testimony)

ANALYSIS AND CONCLUSIONS OF LAW

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

In this case, as the Appellant did not receive any income in 2020 until May, through the PUA program. As even then he had to figure out his spending priorities for his basic necessities before seeking health insurance, I find that the Appellant did not have access to affordable health insurance coverage in 2020 not until July 2020.

Therefore, I conclude that the Appellant has established grounds for a hardship appeal for the first six months of 2020, under 956 CMR 6.08(1).

Accordingly, the Appellant’s twelve-month penalty for 2020 shall be reduced to a six-month penalty.

PENALTY ASSESSED

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2020 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 20120

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: PA20-398

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

Hearing Issue: Appeal of the 2020 Tax Year Penalty

Hearing Date: August 6, 2021

Decision Date: August 24, 2021

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on August 6, 2021. 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 June 10, 2021.
- Exhibit 2: Appeal Case Information from Schedule HC 2020.
- Exhibit 3: Statement of Grounds for Appeal signed by the Appellant on March 23, 2021.
- Exhibit 4: Appellant's letter in support of this appeal, with attachments.
- Exhibit 5: Health Connector Appeals Unit Open Record Form dated August 6, 2021.
- Exhibit 6: Additional information submitted by the Appellant on August 12, 2021.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant turned 61 years old in October 2020. The Appellant filed their Federal Income Tax return as a single person with no dependents claimed (Exhibit 2).
2. The Appellant lived in Middlesex County in 2020 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2020 was \$120,341 (Exhibit 2).
4. The Appellant did not have health insurance that met Massachusetts minimum creditable coverage (MCC) standards for any months in tax year 2020 (Exhibits 2, 4, 6 and Appellant Testimony).
5. The Appellant has been assessed a twelve-month tax penalty for 2020. The Appellant filed an appeal of the assessment in March 2021 (Exhibits 2, 3, 4).

6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2020 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2020. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2020.
7. In accordance with Table 3 of Schedule HC for 2020, the Appellant filing the Federal tax return as a single person, with no dependents claimed, with an annual adjusted gross income of \$120,341 could afford to pay \$802 per month for health insurance. In accordance with Table 4, the Appellant, age 61, living in Middlesex County, could have purchased private insurance for \$432 per month for a single plan (Schedule HC for 2020). Private insurance was affordable for the Appellant.
8. The Appellant's income was greater than 300% of the federal poverty level, which was \$37,470 in 2020. The Appellant was not eligible for ConnectorCare in tax year 2020 (See Table 2 of Schedule HC-2020 and 956 CMR 12.04).
9. The Appellant testified that they were employed as a contractor in tax year 2020. The Appellant said that their three-month contract that began in November 2019 was terminated January 17, 2020. The Appellant said that the company they worked for offered two health insurance plans. One plan was comprehensive but the cost of the plan was about \$880. The Appellant enrolled in an Oxford Global Plan at a cost of \$160 per month. The Appellant said that the Plan was not comprehensive but was affordable. The Appellant explained that they obtained another contract job at Verizon effective February 26, 2021 but did not become eligible for the employer's health insurance plan until June 1, 2021. Because they are paid monthly, the Appellant's first paycheck was issued on April 1, 2020. The Appellant said that the Avira Plan available effective June 1, 2020 was too expensive and the Appellant opted to stay enrolled in Oxford Global Plan through COBRA. The Appellant said that they were concerned that their employment was not stable and thought it best to keep the less expensive plan (Exhibit 4, doc 1 and Appellant Testimony).
10. The Appellant verified that they had health insurance through Oxford Global for the period of January 1, 2020- December 31, 2020. The Oxford Benefit Guide clearly states that this is not major medical insurance (Exhibit 6).
11. The Appellant had access to comprehensive employer sponsored health insurance through Verizon for the period of June 1, 2020 through December 31, 2020 at a monthly cost of \$383.32. The premium was to be deducted as a pre-tax payroll deduction. The Appellant initially accepted the offer of insurance and then declined the coverage. The cost of the insurance was less than the \$802.00 deemed affordable to the Appellant in accordance with Table 3 of Schedule HC 2020 (Exhibit 4, docs 1, 3, 4, 5).¹
12. The Appellant's 2020 monthly living expenses of \$3,713 included: mortgage, taxes, and insurance-\$1,800; gas heat-\$200; electricity-\$70-100; car insurance-\$75; gasoline-\$303; food and dietary supplements-\$1,000; cell phone-\$75; and land line with internet-\$160. In addition to these expenses the Appellant testified that they pay their son's student loan of \$206 a month, \$140 monthly for

¹ The Appellant's submissions were entered in the file as docs 1-10)

housecleaning and pays a lawn service to mow their lawn. The Appellant reports having health issues that make these services a necessity (Exhibit 4, doc 1 and Appellant Testimony).

13. The Appellant testified that they remained employed at Verizon and are enrolled in the company's health plan (Appellant Testimony).

ANALYSIS AND CONCLUSIONS OF LAW

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

Any health insurance policy must also satisfy the Massachusetts "minimum creditable coverage standards" (MCC) to avoid the tax penalty. Mass. Gen. Laws c. 111M, sec. 2(b). In addition to financial hardship, the Connector may also consider the extent to which insurance obtained deviated from or substantially met minimum creditable coverage standards when determining if a penalty should be waived. See 956 CMR 6.08(2)(d).

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 2020, the Appellant filing the Federal tax return as a single person with no dependents claimed, with an adjusted gross income of \$120,341 could afford to pay \$802 per month for health insurance. In accordance with Table 4, the Appellant, age 61 living in Middlesex County, could have purchased private insurance for \$432 per month for a plan (Schedule HC for 2020). Private insurance was affordable for the Appellant in 2020.

The Appellant was not financially eligible for ConnectorCare coverage in 2020 because the Appellant's income of \$120,341 was greater than 300% of the federal poverty level, which was \$37,470 for a household of one in 2020.

The Appellant was employed as a contractor in tax year 2020. The contract in effect since November 2019 was cancelled effective January 17, 2020. The Appellant testified that the cost of a full health plan with this employer was \$880. This is more than the \$802 deemed affordable to the Appellant in accordance with Table 3 of Schedule HC 2020. The Appellant elected to enroll in the Oxford Global health plan at a cost of \$160 per month. The Appellant was aware that this was not a major medical plan. It did not substantially meet Massachusetts MCC requirements. 956 CMR 6.08(2)(d).

The Appellant was unemployed from January 17, 2020 until February 26, 2020. Because the Appellant was paid monthly, the Appellant did not receive their first paycheck from their job at Verizon until April 1, 2020. The

Appellant planned to enroll in the company's health insurance plan effective June 1 when they became eligible. Under these circumstances, the Appellant has demonstrated that purchasing health insurance that met MCC requirements for the period of January through May 2020 would have caused the Appellant to experience a financial hardship. 956 CMR 6.08.

The Appellant was employed at Verizon and receiving a steady income for the period of April through December in tax year 2020. As of the date of the hearing, August 6, 2021, the Appellant remains employed at Verizon. The Appellant was made aware when hired in February that they would not be eligible for the company's health insurance program until June 1, 2020. The Appellant and the employer exchanged a series of e-mails and the Appellant was informed that they could be enrolled in the health insurance plan effective June 1, 2020 with a pre-[[tax monthly premium deduction of \$383.32. This plan was also less than the \$802 deemed affordable to the Appellant in accordance with Table 3 of Schedule HC 2020. The Appellant initially requested to be enrolled and then declined the insurance opting to keep their non-compliant Oxford plan at a cost of \$160.

The Appellant testified to monthly living expenses of \$3,717. The Appellant identified additional non-essential living expenses for housecleaning and lawn services as well as financial support provided to a non- household member. Given the Appellant's annual income of \$120,341 and the fact that the Appellant could have enrolled in their employer sponsored health insurance at a monthly cost of \$383.32 effective June 1, 2020, the Appellant has failed to demonstrate that the cost of purchasing health insurance for the period of June through December 2020 would have caused the Appellant to experience a serious financial hardship even if the non-essential expenses are given consideration. 956 CMR 6.08.

The Appellant should note that the partial waiver of their penalty is based upon the facts that I have determined to be true in 2020. The Appellant should not assume that a similar determination will be made for subsequent tax years should they again be assessed a penalty for failure to have health insurance for all months as required.

PENALTY ASSESSED

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2020 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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: PA20-412

Appeal Decision: Penalty Overturned in Full
Hearing Issue: Appeal of the 2020 Tax Year Penalty
Hearing Date: August 16, 2021
Decision Date: September 22, 2021

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone, on August 16, 2021. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified. The hearing record consists of the testimony of Appellant, and the following documents which were admitted in evidence:

- Exhibit 1: Schedule HC for Healthcare from DOR
- Exhibit 2: Notice of Appeal, dated March 20, 2021
- Exhibit 3: Correspondence from Health Connector, dated July 20, 2021

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 39 years old in 2020 and resided in Hampden County (Exhibit 1).
2. Appellant filed a Massachusetts 2020 tax return as single with no dependents claimed (Exhibit 1).
3. Appellant had an Adjusted Gross Income for 2020 of \$58,622 (Exhibit 1).
4. Appellant worked during January through May 2020 and was laid off beginning in June due to the Covid 19 pandemic (Testimony of Appellant).
5. Appellant was covered by employer sponsored health insurance during January through May (Exhibit 1 and Testimony of Appellant).
6. Appellant lost the employer sponsored health insurance after the lay-off (Testimony of Appellant).
7. Appellant applied for government subsidized health insurance in May 2020 and was found not to be eligible (Testimony of Appellant).
8. Appellant struggled to pay for basic necessities after losing the job in May 2020 (Testimony of Appellant).
9. Appellant was unsure if Appellant would be employed again due to the pandemic (Testimony of Appellant).
10. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2020 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector

Authority for 2020. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2020.

11. According to Table 3 of Schedule HC for 2020 a person filing as single with no dependents claimed with an adjusted gross income of \$58,622 could afford to pay \$391 per month for private insurance. According to Table 4, Appellant, who was 39 years old and lived in Hampden county could have purchased private insurance for a cost of \$265 per month.
12. Private insurance was considered affordable for Appellant in 2020 (Schedule HC for 2020).
13. Appellant, earning more than \$37,470 would not have been income eligible for government subsidized health insurance (Schedule HC for 2020).
14. Appellant began a new job in January 2021 and had a waiting period before health insurance benefits began (Testimony of Appellant).
15. Appellant did not have health insurance for seven months of 2020 (Testimony of Appellant and Exhibit 1).
16. Appellant has been assessed a penalty for four months for 2020 (Exhibit 1).
17. Appellant filed a hardship Appeal on March 20, 2021 (Exhibit 2).

ANALYSIS AND CONCLUSIONS OF LAW

G.L.c. 111M, § 2, also called the “individual mandate,” requires every adult resident of Massachusetts to obtain health insurance that meets minimum creditable coverage standards “[s]o long as it is deemed affordable” under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance or who do not obtain insurance that meets the minimum creditable coverage standard are subject to a tax penalty for “each of the months” that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2020, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector’s regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

Appellant has been assessed a tax penalty for four months. To determine if the penalty should be waived in whole or in part, we must consider whether affordable insurance was available to Appellant, before we consider whether Appellant suffered a financial hardship See 956 CMR 6.

Private insurance was considered affordable for Appellant so we must consider whether the purchase of insurance would have caused Appellant to experience deprivation of basic necessities. Appellant struggled to pay for necessities after being laid off due to the pandemic. Appellant was unsure of when Appellant would be employed again and concerned about being able to afford living expenses. I find that purchasing health insurance would have caused Appellant to experience a serious deprivation of food, shelter, clothing and other necessities. See Schedule HC for 2020, 956 CMR 6.08 (1)(e), Exhibits 1, 2 and Testimony of Appellant, which I find to be credible.

I find the penalty assessed against Appellant for 2020 should be waived in its entirety.

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 2020 for the amount equal to one half of the lowest cost health insurance plan available to

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

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA20-413

Appeal Decision: Penalty Overturned in Full
Hearing Issue: Appeal of the 2020 Tax Year Penalty
Hearing Date: August 16, 2021
Decision Date: September 23, 2021

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

Appellant appeared at the hearing, which was held by telephone, on August 16, 2021. The procedures to be followed during the hearing were reviewed with Appellant. Appellant was sworn in. Exhibits were marked and admitted in evidence with no objection from Appellant. Appellant testified. The hearing record consists of the testimony of Appellant, and the following documents which were admitted in evidence:

- Exhibit 1: Schedule HC for Healthcare from DOR
- Exhibit 2: Notice of Appeal, dated March 20, 2021
- Exhibit 3: Correspondence from Health Connector, dated July 20, 2021

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant was 45 years old in 2020 and resided in Middlesex County (Exhibit 1).
2. Appellant filed a Massachusetts 2020 tax return as Head of Household with one dependent claimed (Exhibit 1).
3. Appellant had an Adjusted Gross Income for 2020 of \$38,321 (Exhibit 1).
4. Appellant had been covered by employer sponsored health insurance until December 2019 (Testimony of Appellant).
5. Appellant was laid off by the employer when the employer closed in January 2020 (Testimony of Appellant).
6. Appellant lost the employer sponsored health insurance beginning in January 2020 (Testimony of Appellant).
7. Appellant was unemployed for all of 2020 (Testimony of Appellant).
8. Appellant had worked for a religious organization and received a small amount of assistance after the job loss (Testimony of Appellant).
9. Appellant was not aware that Appellant would be eligible for unemployment compensation until later in the year (Testimony of Appellant).
10. Appellant struggled to pay for basic expenses during 2020 (Testimony of Appellant).
11. Appellant was more than thirty days behind in rent during 2020 (Testimony of Appellant).
12. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2020 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability

and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2020. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2020.

13. According to Table 3 of Schedule HC for 2020 a person filing as head of household with one dependent with an adjusted gross income of \$38,321 could afford to pay \$198 per month for private insurance. According to Table 4, Appellant, who 45 with one dependent and lived in Middlesex county could have purchased private insurance for a cost of \$883 per month.
14. Private insurance was not considered affordable for Appellant in 2020 (Schedule HC for 2020).
15. Appellant, earning less than \$50,730 would have been income eligible for government subsidized health insurance (Schedule HC for 2020).
16. Appellants began health insurance coverage in 2021 (Testimony of Appellant).
17. Appellant did not have health insurance for twelve months of 2020 (Testimony of Appellant and Exhibit 1).
18. Appellant has been assessed a penalty for twelve months for 2020 (Exhibit 1).
19. Appellant filed a hardship Appeal on March 20, 2021 (Exhibit 3).

ANALYSIS AND CONCLUSIONS OF LAW

G.L.c. 111M, § 2, also called the “individual mandate,” requires every adult resident of Massachusetts to obtain health insurance that meets minimum creditable coverage standards “[s]o long as it is deemed affordable” under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance or who do not obtain insurance that meets the minimum creditable coverage standard are subject to a tax penalty for “each of the months” that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2020, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector’s regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

Appellant has been assessed a tax penalty for 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. See 956 CMR 6.

Appellant was income eligible for government subsidized health insurance in 2020, so we must consider whether the purchase of insurance would have caused Appellant to experience deprivation of basic necessities. Appellant struggled to pay for necessities and fell more than thirty days behind in rent. I find that Appellant suffered a hardship and health insurance was not affordable for 2020. See Schedule HC for 2020, 956 CMR 6.08 (1)(a), Exhibits 1, 2 and Testimony of Appellant, which I find to be credible.

I find the penalty assessed against Appellant for 2020 should be waived in its entirety.

PENALTY ASSESSED

Number of Months Appealed: 12

Number of Months Assessed: 0

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2020 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA20439

Appeal Decision: The penalty is waived.

Hearing Issue: Appeal of the 2020 Tax Year Penalty

Hearing Date: August 16, 2021

Decision Date: September 23, 2021

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on August 16, 2021. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified.

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

- Exhibit 1: Statement of Grounds for Appeal 2020 signed and dated by Appellant on March 30, 2021 with letter in support attached
- Exhibit 2: Appeal Information sheet Schedule HC, 2020
- Exhibit 3: Connector notice of hearing sent to Appellant, dated July 21, 2021 for August 16, 2021 hearing
- Exhibit 4: Appellant's 1095C- 2020

FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2020 Massachusetts tax return as a single person with no dependents claimed, was 47 years old in 2020. Appellant came to the United States on a visa in 2018. The visa expired and the appellant applied for asylum status (Exhibit 2, Testimony of Appellant).
2. Appellant lived in Middlesex County in 2020 (Exhibit 2, Testimony of Appellant).
3. Appellant's Federal Adjusted Gross Income for 2020 was \$71,394 (Exhibit 2, Testimony of Appellant).
4. Appellant worked as a health care aide. From January through April, 2020, Appellant worked about two days a week for \$13.00 an hour. Starting in May, Appellant worked for another employer doing the same kind of work. From May through August, the appellant worked four to five days a week. In August, Appellant started earning

\$14.00 an hour. From September through December, Appellant again worked only two days a week (Testimony of Appellant).

5. In September, Appellant was offered health insurance through employment. Appellant enrolled in the offered plan from September through November. Appellant did not know he was legally required to have coverage and he did not understand exactly what he was being offered. He paid \$138.56 a month for the coverage (Testimony of Appellant).

6. Appellant has been assessed a tax penalty for all of 2020. Appellant has appealed this assessment. The appellant had some sort of coverage for three months, but Appellant did not know what the coverage included. By the date of this hearing, the appellant no longer worked for the same employer (Testimony of Appellant, Exhibits 1 and 2).

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

8. According to Table 3 of Schedule HC for 2020, the appellant with no dependents claimed with an adjusted gross income of \$71,439 could afford to pay \$475 per month for health insurance. According to Table 4, Appellant, age 47 and living in Middlesex County, could have purchased insurance for \$361 per month. Individual coverage was affordable for the appellant in 2020 (Schedule HC for 20120 Exhibit 2).

9. According to Table 2 of Schedule HC for 2020, Appellant earning more than \$37,470 per year would have been ineligible for the ConnectorCare program based upon income (Table 2 of Schedule HC-2020, Exhibit 2).

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 2020 (Testimony of Appellant).

11. Appellant fell more than thirty days behind in rent payments in 2020. At one point, Appellant had to take out a personal loan to make the payments (Testimony of Appellant).

12. Appellant had his phone service shut off several times in 2020 (Testimony of Appellant).

13. Appellant had the following monthly expenses for basic necessities in 2020: rent-\$1,000; heat and electricity-\$100; telephone -\$60; food, household and personal care items-\$710; clothing-\$90; car insurance-\$100; gas-\$400; car repairs-\$125. In addition, Appellant, who had a large extended family including his mother and his wife in his country of origin, sent his family over \$15,000 during 2020 for support. The money Appellant sent was used for rent, utilities, medical bills, and other support. Because his visa expired, Appellant also had to pay an attorney \$2,000 to help with his application for asylum status (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

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

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

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2020 should be waived, either in whole or in part. Appellant had no health insurance that met the Commonwealth's minimum creditable coverage standards all year. He did have coverage from September through November, but the coverage did not meet the standards. Appellant did not know what the coverage included so he could not testify about the extent of the coverage. Appellant has been assessed a penalty for twelve months. Appellant has appealed the penalty. See Exhibits 1 and 2, and the testimony of the appellant which I find to be credible.

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 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.

According to Table 3 of Schedule HC for 2020, the appellant with no dependents claimed with an adjusted gross income of \$71,439 could afford to pay \$475 per month for health insurance. According to Table 4, Appellant, age 47 and living in Middlesex County, could have purchased insurance for \$361 per month. Individual coverage was affordable for the appellant in 2020 See Schedule HC for 2020, Exhibit 2.

Appellant was not offered health insurance through employment until September, 2020. The coverage offered did not meet the Commonwealth's minimum creditable coverage standards. The appellant did not know what was covered by the plan he had from September through November, so we cannot determine if the coverage substantially met the Commonwealth's standards. See 956 CMR 6.08(2)(d).

Appellant was not eligible for ConnectorCare coverage. The appellant earned more than the \$37,470 income limit for an individual. See Schedule HC, Table 2 for 2020 and Exhibit 2. There is no evidence in the record that Appellant was eligible for any other government-sponsored program.

Since Appellant had access to affordable insurance through the individual market, 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.

Appellant had the following monthly expenses for basic necessities in 2020: rent-\$1,000; heat and electricity-\$100; telephone -\$60; food, household and personal care items-\$710; clothing-\$90; car insurance-\$100; gas-\$400; car repairs-\$125. From September through November, Appellant paid \$138 for health insurance. In addition, Appellant, who had a large extended family including his mother and his wife in his country of origin, sent his family over \$15,000 during 2020 for support. The money Appellant sent was used for rent, utilities, medical bills, and other support. Because his visa expired, Appellant also had to pay an attorney \$2,000 to help with his application for asylum status. See the testimony of the appellant which I find to be credible.

Appellant's income varied from week to week and month to month. From January through April, Appellant only had work two days a week, earning \$13 an hour. In May, Appellant's hours increased, but he was still paid \$13 an hour. He earned the most probably in August when Appellant worked four to five days a week and earned \$14 per hour. By September, Appellant's hours were cut significantly since he was again only working two days a week. Taking into account that Appellant's income was inconsistent and that a significant portion of Appellant's earnings was sent to his family in his country of origin or went to attorney's fees, I determine that the Appellant could not afford the cost of purchasing health insurance that met the Commonwealth's standards (at least \$361 a month)

without experiencing a serious deprivation of basic necessities. See 956 CMR 6.08(1)(e), 956 CMR 6.08(3), Table 4 of Schedule HC 2020, and the testimony of the appellant which I find to be credible.

I also note that in 2020, Appellant fell more than 30 days behind in his rent payments. At some point, Appellant had to take out a personal loan in order to pay his rent. His telephone service was shut off several times during the year. See 956 CMR 6.08(1)(a) and (b). Appellant experienced a financial hardship such that health insurance was unaffordable for him.

Because of financial hardship, I determine that Appellant's penalty should be waived in its entirety.

Appellant should note that any waiver granted here is for 2020 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 2020.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Hearing Officer

Addendum: As of the date of this hearing, Appellant had no health insurance. The open enrollment period for 2022 coverage starts November 1, 2021. In order to have coverage by January 1st, 2022, an individual must apply and enroll by December 15th. Appellant can apply for coverage on line at MAhealthconnector.org or by calling Customer Service at 1877-623-6765. If Appellant collected unemployment benefits for at least one week so far this year, he may be eligible for a ConnectorCare plan and may apply now.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA20-452

Appeal Decision: Appeal Approved.

Hearing Issue: Appeal of the 2020 Tax Year Penalty

Hearing Date: August 20, 2021

Decision Date: August 27, 2021

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on August 20, 2021. 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 22, 2021.
- Exhibit 2: Appeal Case Information from Schedule HC 2020.
- Exhibit 3: The Statement of Grounds for Appeal signed by the Appellant on March 27, 2021.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant, age 56 in October, 2020 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 2020 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2020 was \$30,514 (Exhibit 2).
4. The Appellant did not have insurance for any months in tax year 2020 (Exhibit 2 and Appellant Testimony).
5. The Appellant has been assessed a twelve-month tax penalty for 2020. The Appellant filed an appeal of the assessment in March 2021 (Exhibits 2, 3).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2020 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4

incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2020. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2020.

7. In accordance with Table 3 of Schedule HC for 2020, the Appellant filing the Federal tax return as a single person with no dependents claimed, with an annual adjusted gross income of \$30,514 could afford to pay \$107 per month for health insurance. In accordance with Table 4, the Appellant, age 56, living in Plymouth County, could have purchased private insurance for \$432 per month for a plan (Schedule HC for 2020). Private insurance was not affordable for the Appellant in 2020.
8. The Appellant would have been eligible for ConnectorCare coverage in 2020 because the Appellant's income was less than 300% of the federal poverty level, which was \$37,470 for a household of one in 2020. (See Table 2 of Schedule HC-2020 and 956 CMR 12.04).
9. The Appellant testified that they had MassHealth until late 2019 when they became employed. The Appellant said that their employer did not provide health insurance and that due to Covid-19 they lost their job in March. The Appellant said that their only source of income was unemployment compensation (Appellant Testimony).
10. The Appellant testified that they did not have a home of their own in tax year 2020 but was able to stay with friends and family. The Appellant said that they paid \$150 weekly for rent, \$50 monthly for a telephone and \$217 per month for food. The Appellant explained that they have not had a driver's license for years and had to rely on their friends and family members for transportation. The Appellant indicated that they were in a bad way for several years and did not know anything about obtaining health insurance once their MassHealth ended. The Appellant said that they could not afford to pay a health insurance premium while unemployed. I found the Appellant's testimony credible (Appellant Testimony).
11. The ConnectorCare program was explained to the Appellant.

ANALYSIS AND CONCLUSIONS OF LAW

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

The Appellant did not have health insurance for any months in tax year 2020 and consequently 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 2020, the Appellant filing the Federal tax return as a single person with no dependents claimed with an adjusted gross income of \$30,514 could afford to pay \$107 per month for health insurance. According to Table 4, the Appellant, age 56, living in Plymouth County, could have purchased a private insurance plan for \$432 month. See Schedule HC for 2020. Private insurance was not affordable for the Appellant in tax year 2020.

The Appellant did not have access to employer sponsored health insurance in tax year 2020. The Appellant would have been eligible for ConnectorCare coverage based upon the Appellant's income which was less than \$37,470 for their household of one. See Table 2 of Schedule HC 2020 and 956 CMR 12.04 for eligibility criteria. Since affordable insurance was available to the Appellant in 2020, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1).

The Appellant testified that they were in a bad way for several years prior to the end of tax year 2019 when they found employment. The Appellant was receiving MassHealth during this time but their coverage ended because of their employment income. Due to Covid-19 the Appellant lost their job in March. The Appellant's only source of income for the remainder of the year was unemployment compensation. The Appellant testified that they did not have their own home and lived with a family member and a friend for various periods of time in 2020. The Appellant paid their friends and relative \$150 week for rent and had additional monthly expenses for telephone and food. The Appellant explained that they have not had a driver's license for years and had to rely on friends and family for transportation. The Appellant said that when their MassHealth ended they had no idea where to obtain health insurance that they could afford and after losing their job they were not able to afford to pay for health insurance.

The Appellant has demonstrated that the cost of purchasing health insurance would have caused the Appellant to experience a significant financial hardship. The Appellant's twelve-month penalty is waived. See 956 CMR 6.08(1)(a),(e).

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2020. The Appellant should not assume that a similar determination will be made for subsequent tax years should they again be assessed a 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 2020.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA20-455

Appeal Decision: Appeal Approved.

Hearing Issue: Appeal of the 2020 Tax Year Penalty

Hearing Date: August 20, 2021

Decision Date: August 27, 2021

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on August 20, 2021. 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 22, 2021.
- Exhibit 2: Appeal Case Information from Schedule HC 2020.
- Exhibit 3: The Statement of Grounds for Appeal signed by the Appellant on March 21, 2021.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant, age 56 in June, 2020 filed their Federal Income Tax return as a single person with no dependents claimed (Exhibit 2).
2. The Appellant lived in Essex County, MA in 2020 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2020 was \$28,484 (Exhibit 2).
4. The Appellant did not have insurance for any months of tax year 2020 (Exhibit 2 and Appellant Testimony).
5. The Appellant has been assessed a twelve-month tax penalty for 2020. The Appellant filed an appeal of the assessment in March 2021 (Exhibits 2, 3).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2020 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4

incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2020. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2020.

7. In accordance with Table 3 of Schedule HC for 2020, the Appellant filing the Federal tax return as a single person with no dependents claimed, with an annual adjusted gross income of \$28,484 could afford to pay \$100 per month for health insurance. In accordance with Table 4, the Appellant, age 56, living in Essex County, could have purchased private insurance for \$432 per month for a plan (Schedule HC for 2020). Private insurance was not affordable for the Appellant in 2020.
8. The Appellant testified that they did not have access to employer sponsored health insurance in 2020. The Appellant would have been eligible for ConnectorCare coverage in 2020 because the Appellant's income was less than 300% of the federal poverty level, which was \$37,470 for a household of one in 2020 (See Table 2 of Schedule HC-2020 and 956 CMR 12.04) (Appellant Testimony).
9. The Appellant testified that they had health insurance through the Health Connector in 2019. The Appellant said that they were paying about \$70 monthly until they received a bill stating that they owed \$732. The Appellant said that they could not afford to pay the bill and had to let their insurance lapse (Appellant Testimony).
10. The Appellant testified to monthly living expenses of \$1,792 including: rent with heat and electricity-\$895; telephone-\$70; car insurance-\$90; gasoline-\$130 and food-\$607. The Appellant said that their adult son moved in with them and as a result their expenses were higher. The Appellant said that they struggled due to Covid and could not afford to pay the \$732 they owed to the Health Connector or buy private health insurance. I found the Appellant's testimony 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 of tax year 2020 and consequently 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 2020, the Appellant filing the Federal tax return as a single person with no dependents claimed with an adjusted gross income of \$28,484 could afford to pay \$100 per month for health insurance. According to Table 4, the Appellant, age 56, living in Essex County, could have purchased a private insurance plan for \$432 month. See Schedule HC for 2020. Private insurance was not affordable for the Appellant in tax year 2020.

The Appellant did not have access to employer sponsored health insurance in tax year 2020. The Appellant would have been eligible for ConnectorCare coverage based upon the Appellant's income which was less than \$37,470 for their household of one. See Table 2 of Schedule HC 2020 and 956 CMR 12.04 for eligibility criteria. Since affordable insurance was available to the Appellant in 2020, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1).

The Appellant testified that they did have subsidized health insurance through the Health Connector in tax year 2019 and was paying about \$70 for the monthly premium. The Appellant said that toward the end of the year they received a bill for \$732 and they could not afford to pay the bill so they were forced to allow the insurance to be cancelled. The Appellant explained that their adult son was living with them and consequently they were paying more for food and other household items. The Appellant testified to significant monthly living expenses and said that they could not afford to pay a monthly health insurance premium given their limited income. The Appellant has demonstrated that the cost of purchasing health insurance would have caused the Appellant to experience a significant financial hardship. The Appellant's twelve-month penalty is waived. See 956 CMR 6.08(1)(e).

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2020. The Appellant should not assume that a similar determination will be made for subsequent tax years should they again be assessed a 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 2020.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA20-457

Appeal Decision: Appeal Approved.

Hearing Issue: Appeal of the 2020 Tax Year Penalty

Hearing Date: August 20, 2021

Decision Date: August 27, 2021

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on August 20, 2021. 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 22, 2021.
- Exhibit 2: Appeal Case Information from Schedule HC 2020.
- Exhibit 3: The Statement of Grounds for Appeal signed by the Appellant on March 30, 2021.
- Exhibit 4: The Appellant's letter in support of the appeal, with attachments.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant, age 33 in May, 2020 filed their Federal Income Tax return as a single person with no dependents claimed (Exhibit 2).
2. The Appellant lived in Middlesex County, MA in 2020 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2020 was \$56,901 (Exhibit 2).
4. The Appellant did not have insurance that met Massachusetts minimum creditable coverage requirements (MCC) for any months in tax year 2020 (Exhibits 2, 4 and Appellant Testimony).
5. The Appellant has been assessed a twelve-month tax penalty for 2020. The Appellant filed an appeal of the assessment in March 2021 (Exhibits 2, 3, 4).

6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2020 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2020. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2020.
7. In accordance with Table 3 of Schedule HC for 2020, the Appellant filing the Federal tax return as a single person with no dependents claimed, with an annual adjusted gross income of \$56,901 could afford to pay \$379 per month for health insurance. In accordance with Table 4, the Appellant, age 33, living in Middlesex County, could have purchased private insurance for \$288 per month for a plan (Schedule HC for 2020). Private insurance was affordable for the Appellant in 2020.
8. The Appellant would not have been eligible for ConnectorCare coverage in 2020 because the Appellant's income was greater than 300% of the federal poverty level, which was \$37,470 for a household of one in 2020. (See Table 2 of Schedule HC-2020 and 956 CMR 12.04).
9. The Appellant testified that they met with someone in their Human Resources Department (HR) at the end of 2019 to enroll in the employer sponsored health insurance for tax year 2020. The HR person initially quoted a price of \$350-\$375 for coverage. Since this was not affordable, the Appellant asked for less expensive options. The Appellant said that they enrolled in coverage and thought that they were all set. The Appellant said that they did not find out until they went to file their tax return that the coverage was only supplemental and was not a comprehensive health plan. The Appellant said that they did not have any medical treatment in tax year 2020 and had no reason to know they did not have appropriate health insurance (Exhibit 4 and Appellant Testimony).
10. The Appellant submitted documentation verifying that they paid approximately \$109 monthly for insurance through their employer. The policies covered short term disability, cancer, and accidents (Exhibit 4).
11. In accordance with Table 3 of HC 2020, the Appellant was determined financially able to pay \$379 monthly for health care. The Appellant paid \$109 monthly for employer sponsored health coverage that did not meet MCC requirements. Under Table 4 of HC 2020, private insurance was available at a cost of \$288. Given the Appellant's monthly premiums of \$109, purchasing private insurance would have raised the Appellant's monthly premiums to \$397. This is more than the \$379 deemed affordable to the Appellant (Schedule HC-200 and Exhibit 4).

ANALYSIS AND CONCLUSIONS OF LAW

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

Any health insurance policy must also satisfy the Massachusetts “minimum creditable coverage standards” (MCC) to avoid the tax penalty. Mass. Gen. Laws c. 111M, sec. 2(b). In addition to financial hardship, the Connector may also consider the extent to which insurance obtained deviated from or substantially met minimum creditable coverage standards when determining if a penalty should be waived. See 956 CMR 6.08(2)(d).

The Appellant did not have health insurance that met MCC requirements for any months in tax year 2020 and consequently 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 2020, the Appellant filing the Federal tax return as a single person with no dependents claimed with an adjusted gross income of \$56,901 could afford to pay \$379 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 \$288 month. See Schedule HC for 2020. Private insurance was affordable for the Appellant in tax year 2020.

The Appellant testified that they met with someone in the HR department of their employer at the end of tax year 2019 in order to obtain employer sponsored health insurance for tax year 2020. The Appellant explained that they were initially told about plans that cost between \$350-\$375 per month. The Appellant said that they asked about less expensive plans because they could not afford the premiums quoted. The Appellant said that they signed up for less expensive insurance and did not realize until they filed their 2020 income tax return that they did not have comprehensive health insurance and had only supplemental coverage. The Appellant said that they did not receive medical treatment in tax year 2020 and had no reason to know about their lack of coverage.

The Appellant submitted documentation verifying that they paid premiums totaling \$109 monthly through their employer for coverage that included short term disability, cancer, and accidents. This insurance did not substantially meet MCC requirements. 956CMR 6.08(2)(d).

The Appellant would not have been eligible for ConnectorCare coverage based upon the Appellant’s income which was greater than \$37,470 for their household of one. See Table 2 of Schedule HC 2020 and 956 CMR 12.04 for eligibility criteria. Since affordable insurance was available to the Appellant in 2020, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1).

In accordance with Table 3 of HC 2020, the Appellant was determined financially able to pay \$379 monthly for health care. The Appellant paid \$109 monthly for employer sponsored health coverage that did not meet MCC requirements. Under Table 4 of HC 2020 private insurance was available at a cost of \$288. Given the Appellant’s monthly premiums of \$109, purchasing private insurance would have raised the Appellant’s monthly premiums to \$397. This is more than the \$379 deemed affordable to the Appellant and would have caused the Appellant to experience a significant financial hardship. The Appellant’s twelve-month penalty is waived. See 956 CMR 6.08(1)(e).

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2020. The Appellant should not assume that a similar determination will be made for subsequent tax years should they again be assessed a 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 2020.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA20-472

Appeal Decision: Appeal Approved

Hearing Issue: Appeal of the 2020 Tax Year Penalty

Hearing Date: September 1, 2021

Decision Date: September 29, 2021

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellants appeared at the hearing, along with their designated representative. The hearing was held by telephone, on September 1, 2021. The Appellants 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 2020 Schedule HC (1 page)
- Exhibit 2: 8/24/21 Authorized Rep Form (4 pages)
- Exhibit 3: 4/2/21 Appeal (5 pages)
- Exhibit 4: 8/4/21 Hearing Notice (2 pages)

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellants' tax filing status for 2020 was Married Filing Joint with one dependent. The Appellants' federal AGI in 2020 was \$489,675. The Appellants turned forty-two years old and forty years old in 2020.
2. The Appellants resided in Massachusetts from January 1, 2020, through July 20, 2020. (Exhibit 1)
3. The Appellants appealed from the assessment of two three-month penalties on their 2020 income tax return, checking off on the appeal form, "Other," as the basis for their appeal. (Exhibit 2)
4. Both Appellants had employer-sponsored health insurance coverage that met MCC standards during every month of 2020. (Exhibit 3)

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 Appellants submitted compelling documentary evidence that both Appellants had health insurance coverage that met MCC standards through their respective employers in all twelve months of 2020, the Appellants should not be assessed any tax penalty under the individual mandate.

Accordingly, the Appellants' two three-month penalties for 2020 shall be canceled 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 2020 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 20120

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: PA20-501

Appeal Decision: Penalty Overturned in Full

Hearing Issue: Appeal of the 2020 Tax Year Penalty

Hearing Date: September 3, 2021

Decision Date: September 22, 2021

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on September 3, 2021 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—2020

Ex. 2—Appeal Case Information from Schedule HC ¹

Ex. 3—Notice of Hearing

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is 64-years-old, is single, and has adult children. He did not have health insurance in 2020. (Testimony, Ex. 2)
2. The appellant had employer provided health insurance for approximately twenty years until 2019. In that year, he purchased insurance through the Health Connector for which he paid approximately \$687.00/month. Unbeknownst to the appellant, the insurance was terminated after approximately six months, and he was advised of the cancellation at a doctor's appointment. He called the Connector and was told to go to the local office in Worcester for assistance. He could not make any headway there and went to the Boston office where he was unable to resolve the matter. He concluded that his identity may have been compromised and that is why he could not reinstate his insurance. (Testimony, Ex. 1)

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

3. The appellant moved his residence once in 2018 and once in 2019. He does not believe that he updated his application or informed the Connector of his new address. (Testimony)
4. The appellant had a large tumor on his face which had been growing since 2016. In 2018, he investigated having it removed in the U.S. and determined that the cost was unaffordable, particularly with a \$7000.00 deductible under his plan. He took a leave of absence from work for two months in 2019 and went to Portugal to have the surgery. He purchased health insurance there and has remained enrolled since then. He pays approximately \$38.00 Euros (\$44.61 U.S.)/month for coverage. Since returning to the U.S., he has not had any health issues which necessitated a doctor's visit save for follow up by video conferencing with the doctor in Portugal who performed the surgery. (Testimony, Ex. 1)
5. The appellant turns 65 in February, 2022, and is planning to enroll in health insurance with Medicare. (Testimony)
6. The appellant reported an adjusted gross income of \$68,314.00 on his 2020 federal tax return, and reported that he was single with no dependents. (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 2020 because the cost of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities. He also submitted a letter with his statement in which he stated in part that the tumor on his face had become disfiguring and he could not afford to take care of it in the U.S. He further stated that he continues to remain enrolled in insurance in Portugal, is relatively healthy, and would rather fly to Portugal for his medical needs than go into debt in the U.S.

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 2020, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Since the appellant was uninsured for the entire year, he was assessed and is appealing a penalty of twelve months.

The appellant testified credibly that he had employer provided health insurance for approximately twenty years until 2019. He testified that he enrolled in insurance through the Health Connector in that year and it was terminated approximately six months later for a reason that he was unable to ascertain. He testified that he moved his residence once in 2018 and once in 2019 and did not notify the Connector of the change in address.² He testified that he had a tumor on his face that had been growing since 2016, and investigated having it removed in 2018. He testified that the cost was unaffordable and he went to Portugal for two months in 2019 to undergo

² It appears from the appellant's testimony that his insurance may have been terminated in 2019 because he changed his address without notifying the Connector. Members are advised that any changes to information in their application must be updated withing 30 days.

surgery. He testified that he purchased insurance in Portugal and has remained enrolled since then. Finally, he testified that he turns 65 in February, 2022, and plans to enroll in insurance through Medicare.

Although the appellant filed his appeal on the ground that the expense of purchasing health insurance would have caused a serious deprivation of food, clothing, shelter and other necessities, his primary claim was that he enrolled in a health insurance plan in Portugal which should satisfy the individual mandate in the Massachusetts. No plan or summary of benefits was submitted in order to ascertain whether the coverage complied with state minimum creditable coverage (MCC) requirements. Accordingly, it is not possible to determine whether the plan provided a broad range of medical benefits as defined in 956 CMR 5.03. Under the circumstances, the appellant will be given the benefit of the doubt that his insurance complied with state requirements at least in spirit. In reaching this conclusion, the fact that the appellant had employer sponsored insurance for many years and undertook a diligent effort to reinstate his insurance with the Connector after termination was taken into consideration. In addition, he plans to enroll in Medicare in 2022 thereby demonstrating that he appreciates the necessity of insurance.

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

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

ADDENDUM

The appellant is advised that he should not rely on a similar grant of leniency should he be assessed and appeal a penalty for failure to obtain MCC health insurance in the future.

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA20-503

Appeal Decision: Penalty Overturned in Full

Hearing Issue: Appeal of the 2020 Tax Year Penalty

Hearing Date: September 3, 2021

Decision Date: September 23, 2021

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on September 3, 2021 and testified under oath. The hearing record consists of her testimony and the following documents which were admitted into evidence without her objection:

- Ex. 1—Statement of Grounds for Appeal—2020
- 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 manner and was marked as follows:

- Ex. 4—2020 Form 1095-B

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 2020, she had health insurance from January through September. (Testimony, Ex. 4)
2. The appellant had employer sponsored health insurance from January through September, 2020, at which time she left her job. The employer offered a continuation of insurance through COBRA, but she declined because the monthly premium was approximately \$900.00/month which she could not afford. (Testimony, Ex. 4)

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

3. The appellant enrolled in health insurance through the Health Connector for the month of January, 2021. Thereafter, she got a job and enrolled in employer health insurance. (Testimony)
4. The appellant prepared her 2020 taxes using TurboTax, and did not have a copy of her 2020 1099-HC on hand because it had been sent to another address. As a result, she indicated on her Schedule HC that she was uninsured for the entire year. (Testimony, Ex. 2)
5. The appellant reported an adjusted gross income of \$39,523.00 on her 2020 federal tax return, and reported that she was single with no dependents. (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 her during 2020 because the cost of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities.

Although the appellant was insured from January through September, she indicated on her Schedule HC that she 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 2020, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, interprets the 63-day gap in coverage to be three months. As a result, gaps of three months are not subject to penalty. Since the appellant indicated that she was uninsured for the entire year, she was assessed and is appealing a penalty of twelve months.

The appellant testified credibly that she was employed from January through September and had employer health insurance during that period. She testified that the employer offered to continue the insurance through COBRA, but she declined because she could not afford the cost. She testified that she prepared her 2020 tax returns with TurboTax and indicated on her Schedule HC that she was uninsured for the entire year because she did not have her Form 1099-HC on hand as it had been sent to another address. Finally, she testified that she began 2021 with insurance through the Health Connector and then got a new job and enrolled in employer health insurance.

Although the appellant’s appeal was filed on the ground of serious deprivation, she offered credible testimony that she had employer health insurance from January through September. In response to an Open Record Request, she submitted a Form 1095-B which indicated coverage for those months issued by Blue Cross and Blue Shield of Massachusetts. The form also indicated that she worked for a Massachusetts-based employer. The form in question is used to report certain information to the Internal Revenue Service (IRS) and to taxpayers about individuals who are covered by minimum essential coverage (MEC). On its own, the form does not establish that the appellant was enrolled in minimum creditable coverage (MCC) insurance, the standard required by the state for all residents who obtain health insurance. Insurance that meets MEC standards under the Affordable Care Act does not necessarily meet with MCC standards. However, information on the form established that the insurance was issued by Blue Cross and Blue Shield of Massachusetts and that the employer was based in the state. As such, since most state insurers issue plans in compliance with MCC standards, it is almost certain that her insurance complied with state requirements. Hence, it is concluded that the appellant provided substantial and credible

evidence which established that she was enrolled in MCC health insurance for the months of January through September.

In light of the foregoing conclusion, the appellant is entitled to the application of the aforementioned three-month gap for the months of October through December, in which case she is not subject to a penalty for any part of 2020.

Based on the totality of the evidence, 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 2020, 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 2020 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA20-543

Appeal Decision Appeal Allowed

Hearing Issue: Appeal of the 2020 Tax Year Penalty

Hearing Date: September 22, 2021

Decision Date: September 28, 2021

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on September 22, 2021. 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: Notice of Hearing dated August 5, 2021
- Exhibit 2: Appeal Case Information from form Schedule HC
- Exhibit 3: Statement of Grounds for Appeal, dated March 15, 2021
- Exhibit 4: Written Statement of Appeal Dated April 5, 2021

FINDINGS OF FACT

The record shows, and I so find:

1. The appellant is thirty-seven years old and is married. She lives in Norfolk County, Massachusetts. Appellant's husband works as furniture technician.
2. Appellant's husband was laid off from his job in 2020 due to Covid 19. Appellant's husband's could have obtained health insurance through his wife in 2020. Appellants suffered economic hardship in 2020 and received a foreclosure notice in 2020 but were able to save their house.
3. Appellants do have health insurance in 2021.
4. The Appellant's monthly expenses totaled \$5,765.00, consisting of mortgage \$2,300.00, heat & light \$200.00, internet & cable \$200.00, cell phone \$150.00, car payment \$400.00 car insurance \$180.00. car gas \$225.00, food \$800.00, credit card \$200.000, clothing \$50.00, toiletries \$100.00, child support \$960.00.
5. The Appellant did submit a Statement of Grounds for Appeal-2020 under "During 2020, you were homeless, more than 30 days arrears in rent or mortgage payments, or received an eviction or foreclosure notice" But should have also appealed under "During 2020, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities" . I will hear her appeal under both these 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 2020. 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 2020.
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 \$116,4280.00 was more than \$50,730.00. The monthly premium for health insurance available on the private market in Norfolk County for a 39 year old married person was \$591.00. The tables reflect that Appellant could afford 776.18 This is less than what the appellant is deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions)

ANALYSIS AND CONCLUSIONS OF LAW

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

Appellant’s husband was laid off from his job in 2020 due to Covid 19. Appellants in 2020 received a foreclosure notice but were able to save their home.

The Appellant did submit a Statement of Grounds for Appeal-2020 under “During 2020, you were homeless, more than 30 days arrears in rent or mortgage payments, or received an eviction or foreclosure notice” But should have also appealed under “During 2020, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities” I will hear her appeal under both these 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 2020, 150 percent of the FPL was \$25,365.00 for a married person . *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf>; see also 830 Mass. Code Regs. 111M.2.1(5)(c) (2008). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months. *Id.*

Since Appellant’s 2020 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 2020. 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 2020 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$116,428.00 in 2020, and Appellant’s filing status was married . EX 2. According to the Affordability Schedule established by the Connector’s board and included in the Instructions and Worksheets of the 2020 Massachusetts Schedule HC, Appellant could afford to pay \$776.18 monthly for health insurance. See 2020 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 \$591.00 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’s husband was laid off in 2020 and they received a foreclosure notice in 2020

Appellant is deemed to afford \$776.18 for health insurance coverage because of her income. Private insurance in the market place was \$591.00 per month, which is less than she could afford. On these facts, I find that Appellant has shown that she was partially precluded from purchasing affordable health insurance during 2020. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that she is partially exempt from a tax penalty for her non-compliance with the individual mandate.

Accordingly, Appellant’s appeal is **PARTIALLY ALLOWED**, and the 2020 penalty assessed is **PARTIALLY OVERTURNED**.

PENALTY ASSESSED

Number of Months Appealed: ____12____ Number of Months Assessed: ____6____

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2020 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

OR

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

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

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

Hearing Officer

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA19-1066

Appeal Decision: Appeal Denied.

Hearing Issue: Appeal of the 2019 Tax Year Penalty

Hearing Date: July 16, 2021

Decision Date: August 24, 2021

AUTHORITY

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

JURISDICTION

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

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone, on July 16, 2021. 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 June 10, 2021.
- Exhibit 2: Appeal Case Information from Schedule HC 2019.
- Exhibit 3: A letter requesting an appeal signed by the Appellant on September 8, 2020.
- Exhibit 4: Appellant's letter of request to vacate a prior dismissal entered on January 31, 2021 after the Appellant failed to attend a hearing scheduled for January 14, 2021.
- Exhibit 5: Health Connector Appeals Unit Open Record Form dated July 16, 2021.
- Exhibit 5: Additional information submitted by the Health Connector on July 16, 2021.

FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant turned 41 years old in April 2019. The Appellant filed their Federal Income Tax return as a single person with no dependents claimed (Exhibit 2).
2. The Appellant filed their Return as a full year resident of MA who lived in Hampden County in 2019 (Exhibit 2).
3. The Appellant's Federal Adjusted Gross Income for 2019 was \$62,308 (Exhibit 2).
4. The Appellant did not have health insurance for any months in tax year 2019 (Exhibit 2).

5. The Appellant has been assessed a twelve-month tax penalty for 2019. The Appellant filed an appeal of the assessment in September 2020 (Exhibits 2, 3).
6. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2019 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 2019. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2019.
7. In accordance with Table 3 of Schedule HC for 2019, the Appellant filing the Federal tax return as a single person, with no dependents claimed, with an annual adjusted gross income of \$62,308 could afford to pay \$415 per month for health insurance. In accordance with Table 4, the Appellant, age 41, living in Hampden County, could have purchased private insurance for \$306 per month for a single plan (Schedule HC for 2019). Private insurance was affordable for the Appellant.
8. The Appellant testified that they worked as a truck driver for the Post Office but the employer did offer health insurance (Appellant Testimony).
9. The Appellant's income was greater than 300% of the federal poverty level, which was \$36,420 in 2019. The Appellant was not eligible for ConnectorCare in tax year 2019 (See Table 2 of Schedule HC-2019 and 956 CMR 12.04).
10. The Appellant filed an appeal in September 2020 and stated that they did not purchase health insurance in 2020 because they traveled to Africa to visit a sick relative. The Appellant wrote that they were struggling financially and cannot afford to pay a penalty. The Appellant did not submit any supporting documentation with the Appeal request (Exhibit 3).
11. The Appellant testified after learning their grandparent was not doing well, they made plans to travel to Africa to visit. The Appellant said that they left Massachusetts in June and returned in October. When asked why they did not have health insurance for the period of January through May, the Appellant said that they contacted the Health Connector about their travel plans and were told not to bother applying for health insurance for tax year 2019. I did not find the Appellant's testimony credible as advising someone not to obtain health insurance while living in Massachusetts is against Health Connector regulations (Appellant Testimony).
12. The Appellant was advised that the record would be left open until August 2, 2021 to allow the Health Connector to submit requested information regarding any contact with the Appellant for 2019 eligibility (Exhibit 5).
13. Health Connector submitted additional information on July 16, 2021. Customer Service records verify that the Appellant logged onto their Health Connector account on December 18, 2018 at 9:13 am. At 9:19 am the Appellant telephoned Customer Service and requested their policy be cancelled (Exhibit 6).
14. A copy of the information submitted by the Health Connector on July 16, 2021 was forwarded to the Appellant. The record remained open until August 23, 2021 to allow the Appellant to file a written response (Exhibit 6).

15. The Appellant did not submit any evidence or testimony regarding financial hardship in tax year 2019 and did not submit any additional information during the record open period.

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 2019 and consequently has been assessed a twelve-month penalty. The Appellant submitted a statement on September 8, 2020 requesting an Appeal. The Appellant indicated that the reason they did not have health insurance in 2019 was because they were out of the country.

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 2019, the Appellant filing the Federal tax return as a single person with no dependents claimed, with an adjusted gross income of \$62,308 could afford to pay \$415 per month for health insurance. In accordance with Table 4, the Appellant, age 41 living in Hampden County, could have purchased private insurance for \$306 per month for a plan (Schedule HC for 2019). Private insurance was affordable for the Appellant in 2019.

The Appellant indicated that they did not have access to affordable employer sponsored health insurance in tax year 2019. The Appellant’s income of \$62,308 was greater than 300% of the federal poverty level, which was \$36,420 in 2019. The Appellant was not eligible for ConnectorCare in tax year 2019 (See Table 2 of Schedule HC-2018 and 956 CMR 12.04). Since affordable insurance was available to the Appellant in 2019, it must be determined whether the Appellant experienced a financial hardship pursuant to 956 CMR 6.08 (1).

The Appellant testified that they planned to visit a sick grandparent in Africa and this is the reason they did not have health insurance. The Appellant said that they left Massachusetts in June and returned in October. When asked why they did not have insurance at least for the period of January through May, the Appellant said that they were advised by someone at the Health Connector not to bother with insurance until 2020. I did not find the Appellant’s testimony to be credible. Since this testimony was inconsistent with Health Connector policy, the Record was left open to have Health Connector submit information regarding the Appellant’s contact with Health Connector regarding eligibility for tax year 2019. Health Connector researched the Appellant’s claim and verified that on December 18, 2018 the Appellant logged on to their Health Connector account at 9:13 am. At 9:19 am the same day, the Appellant contacted Customer Service and requested their existing policy be cancelled. The

additional information was forwarded to the Appellant and the Appellant was given until August 23, 2021 to file a written response. No additional information was submitted by the Appellant.

The Appellant filed their 2019 income tax return as a full year resident of Massachusetts. Given the Appellant's income of \$62,308 and the fact that the Appellant could have purchased private insurance at a cost of \$306 per month, considering all the Appellant's monthly expenditures, the Appellant has failed to demonstrate that the cost of purchasing health insurance for 2019 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 2019 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