

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION: PA 22-725

**Appeal Decision:** The penalty is overturned in full.

**Hearing Issue:** Appeal of the 2022 Tax Year Penalty

**Hearing Date:** August 14, 2023

**Decision Date:** August 30, 2023

**AUTHORITY**

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

**JURISDICTION**

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

**HEARING RECORD**

The Appellant Husband appeared at the hearing, which was held by telephone on August 14, 2023. The Appellant's Spouse was not present. 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 P).
Exhibit 2:	Statement of Grounds for Appeal 2022 Signed by Appellant on 3/ 8/2023.	(2 PP).
Exhibit 2(a):	Letter Submitted by the Appellant with Appeal 3/8/2023	(1P).
Exhibit 3:	Health Connector's Notice of Hearing dated 7/12/2023	(2 PP).

The record was left open until September 15, 2023, for the Appellant to submit proof of Proof of Italian Residency, National Insurance, Travel Insurance for time spent in Massachusetts. The Appellant submitted the following documents on August 29, 2023.

Exhibit 4:	Supplemental Letter Submitted by the Appellant with Documents below	(60 PP).
Exhibit 5:	Certificate of Residency	
Exhibit 5:	Italian Passport	
Exhibit 6:	ESTA Authorization to Travel to US	
Exhibit 7:	Italian Health Insurance Card	
Exhibit 8:	Documentation regarding the Italian Health Insurance System	
Exhibit 9:	Travel Itinerary showing August, 2022 travel to US	

Exhibit 10: Allianz Global Assistance Travel Insurance Coverage for time in the US.

Exhibit 11: Travel Itinerary showing December, 2022 travel to US.

Exhibit 12: Allianz Global Assistance Travel Insurance Coverage for time in the US.

The record shows, and I so find:

1. Appellants, married filing jointly filed a 2022 Massachusetts tax return filed with a family size of 4, were ages 49 and 51 in 2022, lived in Middlesex County, and had two (2) dependents. (Exhibit 1).
2. Appellants' Federal Adjusted Gross Income for 2022 was \$171,663. (Exhibit 1).
3. Appellant Spouse testified that Appellant spouse who was being penalized is not a Massachusetts resident, is from Italy, is a resident of Italy, and only spent 1 month in the Summer and 1 week in December in the United States. (Appellant's Testimony, Exhibits 4-12).
4. Appellants were married in 2002 and Appellant Spouse has lived in Italy since 2009. (Appellant Testimony).
5. Appellants' children are ages 19 and 17 and reside in Italy. (Appellant Testimony).
6. Appellant Spouse is covered by the national Italian Health Coverage and Travel Insurance when she visits the United States. (Appellant Testimony, Exhibits 1, 4-12).
7. Appellant Husband has Employer Sponsored Insurance ("ESI"). (Appellant Testimony, Exhibit 1).
8. According to Table 3 Appellant could have afforded \$1,144.22 per month for health insurance in 2022. According to Table 4 Appellant's Spouse could have purchased an individual plan insurance for \$422.00 per month. (See Tables 3 and 4 of Schedule HC 2022).
9. The Appellant would not have been eligible for ConnectorCare coverage in 2022 because the Appellant's income was more than 300% of the poverty level, which was \$79,500.00 for a family of four (4). (See Table 2 of Schedule HC 2022).
10. In addition to the foregoing, I take administrative notice of the 2022 Schedule HC Instructions and Worksheets, available at <http://www.mass.gov.dor/docs/dor/health-care/2022>, and in particular, Tables 1-6 which, as discussed below, include the Affordability Schedule and other financial information used in making 2022 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 2022 should be waived, either in whole or in part. Appellant Spouse has been assessed a tax penalty for twelve (12) months in 2022. Appellant has appealed the penalty. (See Exhibits 1 and 2).

The Appellant adduced evidence at the hearing submitted a statement of grounds for appeal (Ex. 2) with the appeal and checked that during 2022 that the individual mandate did not apply to his spouse

because Other: that she didn't reside in Massachusetts during the period of uninsurance. (Exhibits 2,4-12 and Appellants' Testimony).

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 2022, \$171,663 was more than 300% of the federal poverty level, which for 2022 was \$79,500.00 for a family of four (4). According to Table 3 of Schedule HC for 2022, the Appellant could have afforded \$1,144.42 per month. According to Table 4, Appellant, ages and living 49 and 51 living in Middlesex County during the time she was being penalized for not having insurance, could have purchased an individual insurance plan for \$422 per month. Individual coverage was affordable through the individual market for the Appellant in 2022 (Schedule HC for 2022).

The next issue to consider is whether the Appellant had access to affordable employer health insurance("ESI") in 2022. The Appellant testified that his Spouse was not a resident of Massachusetts and had coverage through the Italian National Health Insurance Program. (Appellant's Testimony, Exs. 2-4-12). Pursuant to 26 IRC section 36B and 45 CFR section 155.305(f), applicants are eligible for an Advanced Premium Tax Credit (APTC) if they meet qualifying income levels and other eligibility requirements. Massachusetts residents may also be eligible for additional state premium assistance through the Health Connector's ConnectorCare program if: a) their household income does not exceed 300 percent of the Federal Poverty Level (FPL) and b) they are eligible for an APTC. 956 CMR 12.09(1) An applicant who has access to other qualifying health insurance, including insurance through an employer, will be blocked from eligibility for an APTC if the coverage is affordable and meets minimum value standards, as those terms are defined by the law. See 26 CFR section 1.36B-2(c)(3). Coverage for plan year 2022 is considered to be affordable if the employee's contribution for an individual plan is 9.61 percent or less of the employee's projected household modified adjusted income (MAGI). The coverage is considered to meet minimum value standards if it has an actuarial value of at least 60 percent. In this case, as referenced above, the Appellant was covered through ESI and his spouse who was being

penalized had coverage through the Italian National Health Insurance Program. (Appellant's Testimony, Exhibits 4-12).

Based upon the facts summarized and on the totality of the evidence, I find that the Appellant Spouse was not a resident of Massachusetts for the period she was being penalized for not having insurance, had insurance through the Italian National Health Insurance Program, and that mandate has not been lost on the Appellant as she obtained travel health insurance during the brief periods she enters the United States. Therefore, it is concluded that the Appellant's request for a waiver from the penalty is **approved**.

Appellant should note that any waiver granted here is for 2022 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 2022 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, she is advised to investigate his eligibility for subsidized health insurance through the Health Connector at [www.mahealthconnector.org](http://www.mahealthconnector.org) or by contacting customer service at 1-877-623-6765.

## Massachusetts Health Connector Appeals Unit

### Tax Penalty Appeal Decision—Docket No. PA22-744

**Appeal Decision:** Appeal Approved -- 2022 tax penalty overturned.

**Hearing Issue:** Appeal of the 2022 Tax Year Penalty

**Hearing Date:** September 6, 2023

**Decision Date:** September 11, 2023

### **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 – 2022);
3. Health Connector's Notice of Hearing (2 pages); and
4. Landlord's Eviction Notice (1 page, dated 9/20/23).

### **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 2022. The basis for the penalty was that the Appellant was not insured at any time in 2022. Exhibits 1 and 2. Based on Exhibit 1 and the Appellant's hearing testimony, I find that the penalty assessment is accurate.
2. In the pre-printed appeal form that the Appellant filed to initiate the appeal the Appellant checked the first ground as the basis for his appeal: "received an eviction or foreclosure notice." Exhibit 2.
3. I find that the Appellant was subject to an eviction from his rental unit by means of an eviction notice dated September 20, 2022, that he received from the landlord and filed in support of his appeal. See Exhibit 4. The landlord wished to evict the Appellant (along with the other tenants) to renovate and sell the property. Testimony and Exhibit 4.
4. The Appellant was unable to find a new place to live before he vacated the rental unit. The Appellant (along with the other tenants) resided in a friend's basement and a brother's sofa for several months. Ultimately, the Appellant found a more permanent residence sharing expenses with a relative. Testimony. The Appellant's post-eviction address is set forth in Exhibits 2 and 3, and the original address is set forth in the eviction notice (Exhibit 4).
5. The Appellant did not have health insurance in 2022, but he more recently was insured as a dependent on his spouse's employer-sponsored health plan. Previously, the spouse and their child were insured under MassHealth. Testimony. (I note that there is no verification in the hearing record of the information recited in this paragraph and that the information is beyond the 2022 tax year that is the subject of this appeal.)
6. The Appellant's financial situation in 2022 was weaker than it appears from Exhibit 1 because the Appellant supported a child (now five years old) that the Appellant did not claim as a dependent on his state income tax return that he filed as a single person with no dependents. Exhibit 1 and Testimony. Without adjusting the income reported to the Department of Revenue in Exhibit 1 the Appellant could afford to pay \$292 per month for health insurance under DOR Table 3 for individual health insurance coverage that would cost \$268 per month under DOR Table 4 at the Appellant's age and location. The difference would not suffice to

cover living expenses, such as \$380 per month for car lease and \$110 per month for car insurance that the Appellant needed to get to his job as a cook, or child care expenses. Testimony.

7. 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 2022 Massachusetts income tax return.
8. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2022 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2021. 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 2022. (The DOR instructions are published online at <http://www.mass.gov/dor/2022ScheduleHCInstructions> 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 2022.)

## **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 12month tax penalty because the Appellant did not have health insurance coverage in 2022. 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 – 2022 that the Appellant signed and filed in this case. See Exhibit 2.

The appeal in this case is resolved favorably to the Appellant under the provision in the Health Connector’s regulations that provides relief where the Appellant has been subject to an eviction. See 956 Code Mass. Regs. 6.08(1) (a) (“was homeless, or was more than 30 days in arrears in rent or mortgage payment, ***or received an eviction or foreclosure notice***”) (emphasis added). The Appellant established the eviction by providing a copy of the eviction notice that he received from his landlord (Exhibit 4) and by his extensive testimony concerning his search for a new place to live in 2022 and 2023. See also Findings of Fact, Nos. 2 and 3, above.

The other information in the hearing record, such as the Appellant’s income under DOR Tables 3 and 4, bolsters the Appellant’s claim that he was not able to afford health insurance in 2022. The Health Connector will, of course, expect the Appellant to obtain health insurance in subsequent years, as required by the individual mandate summarized above.

#### **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 2022 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 2022.

**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: Massachusetts Health Connector Appeals Unit



## Massachusetts Health Connector Appeals Unit

### Tax Penalty Appeal Decision—Docket No. PA22-745

**Appeal Decision:** Appeal Approved -- 2022 tax penalty overturned.

**Hearing Issue:** Appeal of the 2022 Tax Year Penalty

**Hearing Date:** September July 6, 2023

**Decision Date:** September 11, 2023

### **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 – 2022);
3. Health Connector's Notice of Hearing (2 pages);
4. Appellant's Letter in Support of Appeal (1 page);
5. Aetna Membership Card (1 page);
6. Appellant's monthly bank statement (3 pages); and
7. Aetna health insurance options (1 page).

## **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 Husband and Wife filed a Massachusetts personal income tax return for 2022 as a married couple filing jointly with no dependents. They reported \$152,283 federal adjusted gross income (AGI). Exhibit 1.
2. The Appellant (Husband) appealed from the state Department of Revenue's assessment of a 12 month penalty for 2022. The basis for the penalty assessment was that the Appellant's employer-sponsored health insurance did not satisfy the Massachusetts minimum creditable coverage standards ("MCC"). Testimony and Exhibit 2 and 4. See also Exhibit 5.
3. The Wife did not join the appeal. The Wife was insured for all 12 months in 2022 through a health plan provided by her employer as a job benefit. No penalty was assessed against the Wife. Testimony and Exhibit 2. See also Exhibit 1.
4. The Appellant began a new job on January 1, 2022. The employer is located in New York, but the Appellant worked remotely from his residence in Massachusetts. Testimony and Exhibit 4.
5. The Appellant's new employer offered the Appellant health insurance as a job benefit. The Appellant enrolled in the employer's health plan that took effect on his hiring date. The Appellant was insured under his New York employer's health plan for all 12 months in 2022. Testimony and Exhibit 4. See also Exhibit 5.
6. The employer offered the Appellant several options of Aetna health insurance plans. All of the Aetna plans provided comprehensive coverage, including personal care physicians and specialists, emergency room, urgent care and hospital coverage, and prescription drugs coverage. Testimony, Exhibit 4 and Exhibit 7.
7. The Aetna policies also offered the Appellant a choice of deductibles with different premiums that would be deducted from the Appellant's pay check every pay period. The Appellant, who was enrolling in individual coverage since his Wife had her own health insurance plan and they had no children or dependents, elected to enroll in

the plan with a \$4,000 annual deductible. Exhibit 7 (Aetna EPO 4000). The premium for this plan was \$25.93 per pay period. See also Testimony, Exhibit 4, and Exhibit 7.

8. The Appellant made a financial and health use judgment not to enroll in either the Aetna EPO 2000 plan with a \$2,000 deductible and \$97.02 premium payment per pay period or the Aetna EPO 1000 plan with \$1,000 deductible and \$143.36 premium per pay period. Testimony, Exhibit 4, and Exhibit 7.
9. When he enrolled in his employer's health plan in January 2022 the Appellant was not aware that New York and Massachusetts had different requirements for deductible coverage. The Appellant did not learn until he prepared his 2022 state income tax return in early 2023 that Massachusetts required a \$2,000 deductible to satisfy the Massachusetts minimum creditable coverage standard ("MCC").
10. The Appellant's appeal testimony and documentation supported his belief that the Aetna EPO 4000 plan with the \$4,000 deductible with a lower premium made more sense in his situation than a lower deductible with a higher premium. The Appellant bolstered his position by demonstrating that he had sufficient funds in the bank to cover the deductible should that become necessary. See Exhibit 6. See also Exhibit 1 (\$152,283 federal adjusted gross income in 2022).
11. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2022 Massachusetts income tax return.
12. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2022 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2021. 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 2022.

(The DOR instructions are published online at <http://www.mass.gov/dor/2022ScheduleHCInstructions> 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 2022.)

## **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 health insurance plan that the Appellant obtained through his New York employer as a job benefit did not satisfy all the Massachusetts minimum creditable coverage standards ("MCC"). 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 – 2022 that the Appellant signed and filed in this case. See Exhibit 2.

In this appeal it is undisputed that the Appellant (Husband) was insured for all 12 months in 2022. Instead, the state Department of Revenue assessed a 12 month penalty because the health plan that the Appellant obtained through his New York employer did not satisfy all of the Massachusetts minimum creditable coverage standards (“MCC”).

The Health Connector’s regulations describe in some detail the minimum coverage that must be provided under the MCC standards. See 956 Code Mass. Reg. 503. See also Mass. Gen. Laws, c. IIIIM, sec. 2(b). The Aetna EPO 4000 health plan that the Appellant obtained through his New York employer provides comprehensive coverage, as summarized at Findings of Fact, No. 6.

The health plan deductible is the issue in this appeal. The Appellant enrolled in an Aetna EPO 4000 Plan that has a non-compliant \$4,000 deductible, whereas the state MCC requirement is that a deductible cannot “exceed \$2,000 for an individual.” 956 Code Mass. Regs. 5.03 (2) (b) par. 2. The Appellant did not know about this requirement when he elected to enroll in the \$4,000 deductible with a \$25.93 premium (Aetna EPO 4000) versus a \$2,000 deductible with a \$97.02 premium (Aetna EPO 2000). Where the information was not known to the Appellant (and almost surely not to the employer either) there is reason to respect the Appellant’s analysis and to avoid imposing a tax penalty on top of the health plan premium that the Appellant has already paid.

After considering all the circumstances, I conclude that it is appropriate to waive the entire penalty assessed against the Appellant for 2022

#### **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 2022 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 2022.

**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: Massachusetts Health Connector Appeals Unit





## Massachusetts Health Connector Appeals Unit

### Tax Penalty Appeal Decision—Docket No. PA22-768

**Appeal Decision:** Appeal Approved -- 2022 tax penalty overturned.

**Hearing Issue:** Appeal of the 2022 Tax Year Penalty

**Hearing Date:** September 13, 2023

**Decision Date:** September 20, 2023

### **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 – 2022); 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 (DOR) assessment of a 3 month penalty for 2022. The basis for the penalty assessment was that the Appellant

was not insured for a 6 month period reduced by a 3 month administrative grace period. See Exhibit 1. As set forth in more detail below, I find that the Appellant was insured during the period in 2022 that she was a Massachusetts resident.

2. The evidence in the hearing record supports the DOR and the Appellant's agreement that the Appellant was a part-year resident in 2022: the Appellant resided in Massachusetts January – June (6 months) and then she returned to a southern state where the Appellant resided for the remainder of 2022 (July – December) with her parents. Exhibit 1 and Testimony. See also Exhibits 1, 2 and 3 (listing non-Massachusetts address).
3. The Appellant entered her first year of college in the southern state where she resided with her parents. For her second year of college in 2021 – 2022 the Appellant transferred to a college in Massachusetts. The Appellant completed her second year of college in January – June 2022 while she was a part-year Massachusetts resident. Exhibit 2 (January – June 2022) and Testimony. The Appellant then returned to the southern state after she completed her second year of college, and she no longer resided in Massachusetts. Testimony. See also Exhibits 1, 2 and 3 (addresses outside Massachusetts).
4. I credit the Appellant's hearing testimony that she was insured under her father's Blue Cross/Blue Shield health insurance policy while she attended college in Massachusetts at ages 20 – 21. See also Exhibit 1 (recording date of birth). I also credit the Appellant's testimony that she successfully made use of her father's health insurance while she attended college in Massachusetts.
5. 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 2022 Massachusetts income tax return.
6. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2022 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2021. 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 2022. (The DOR instructions are published online at <http://www.mass.gov/dor/2022ScheduleHCInstructions> 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 2022.)

## **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 three month tax penalty because the Appellant did not have health insurance coverage for the months of January through June 2022 while she was a part-year resident of Massachusetts. 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 – 2022 that the Appellant signed and filed in this case. See Exhibit 2.

To begin, the decision in this appeal turns on the provision in Massachusetts law summarized above that the individual mandate applies to Massachusetts residents who are 18 years old or older. Accordingly, the individual mandate applies to the Appellant for the six months in 2022 that she resided in Massachusetts while she attended college (January – June). The individual mandate did not, however, apply to the Appellant for the second half of 2022 (July – December) when she had returned to the southern state and was no longer a Massachusetts resident. See Exhibit 1.

The second step in this appeal decision is to determine whether the Appellant was insured during the period in 2022 when she resided in Massachusetts. The Appellant appealed from the DOR’s determination that Appellant was subject to a penalty because the Appellant was not insured while she resided in Massachusetts. See Exhibit 1. On appeal, however, I found the Appellant’s testimony under oath that she was insured under her father’s Blue Cross/Blue Shield policy to be persuasive.

Because the Appellant was covered under her father’s health insurance policy I conclude that the three month penalty assessed against the Appellant should be vacated.

#### **PENALTY ASSESSED**

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2022 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 2022.

#### **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: Massachusetts Health Connector Appeals Unit



## Massachusetts Health Connector Appeals Unit

### Tax Penalty Appeal Decision—Docket No. PA22-771

**Appeal Decision:** Appeal Approved -- 2022 tax penalty overturned.

**Hearing Issue:** Appeal of the 2022 Tax Year Penalty

**Hearing Date:** September 13, 2023

**Decision Date:** September 30, 2023

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant Husband appeared for the hearing, which I conducted by telephone, on behalf of himself and his Wife, the Co-Appellant, who was not present. A document was submitted on behalf of the Massachusetts Department of Revenue (DOR) prior to the hearing (Exhibit 1). The hearing record consists of the Appellant's (Husband) 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. Appellants' Statement of Grounds for Appeal – 2022);
3. Health Connector's Notice of Hearing (2 pages);
4. Appellants' Letter in Support of Appeal (1 page);
5. Employer's Summary of Health Insurance Benefits;
6. 2022 Form MA 1099 for Husband; and
7. 2022 Form MA 1099 for Wife.



## **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 Appellants (Husband and Wife) appealed from the Department of Revenue's assessment of a 24 month penalty for 2022 (12 months for Husband and 12 months for Wife). Exhibits 1 and 2.
2. In early 2023 both the Husband and the Wife received an official form from Aetna (the insurer) that informed them that they did not have health insurance that satisfied the Massachusetts minimum creditable coverage standards ("MCC") for any month in 2022. Exhibits 6 and 7 (2022 Forms MA 1099-HC). This was the Appellants' first notice that they were not insured in 2022. Testimony. See also Exhibits 4 and 5.
3. I find, based on all the evidence in the hearing record, that both Husband and Wife had health insurance through their Employer for all 12 months in 2022. Both the Husband and Wife worked for the same Employer in 2022, as well as in years prior to 2022. The Appellants had not previously been assessed a penalty by the DOR because the health insurance that they obtained through their Employer did not meet MCC standards.
4. The Appellants were each enrolled in the comprehensive coverage summarized in the multi-page document (Exhibit 5) provided by their Employer from Aetna, the insurer. The Husband paid a \$50 per week premium by payroll deduction to insure himself; the Wife paid \$130 per week by payroll deduction to insure herself and their child. Testimony. See also Exhibits 4 and 5.
5. The Appellants were not informed that the health insurance policies that they purchased through their Employer did not satisfy the MCC standards. Testimony. The multipage summary of their insurance coverage did not inform the Appellants that their coverage did not meet MCC standards, and the Appellants do not know why their coverage did not meet MCC standards. Exhibits 4 and 5 and Testimony. The 2022 Forms MA 1099-HC that the Appellants received from Aetna in early 2023 does not provide any statement about MCC coverage; they simply check the box that the Appellants were not insured any month in 2022.. See Exhibits 6 and 7.

6. The Husband did not use his health insurance in 2022. The Wife made limited use of her coverage, principally for their child, and did not encounter any difficulty using the health insurance policy. Testimony
7. The Appellants filed a Massachusetts personal income tax return for 2022 as a married couple filing jointly with 1 dependent. The Appellants' federal adjusted gross income (AGI) for 2022 was \$108,049. Exhibit 1.
8. The Appellants lived in Middlesex County and were 35 years old. Exhibit 1.
9. Under the objective standards set forth in DOR Table 3 the Appellants could afford to pay \$720 per month for health insurance coverage. (The calculation is \$108,049 AGI multiplied by 8.00% = \$8,643.92 per year divided by 12 = \$720.32 per month.)
10. Under DOR Table 4 (Region 2) the Appellants could expect to pay \$756 per month for family coverage.
11. The Husband asserted that the Appellants purchased coverage through the Employer because that was what they could afford, and he pointed to the cost of his mortgage (\$1,600 per month) and day care (\$900 per month) as a reason that the Appellants could not afford to pay the 24 month penalty assessed by the DOR on top of the health insurance premiums that the Appellants had already paid in 2022. Testimony. See also Exhibits 4 and 5.
12. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2022 Massachusetts income tax return.
13. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2022 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2021. 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 2022. (The DOR instructions are published online at <http://www.mass.gov/dor/2022ScheduleHCInstructions> 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 2022.)

## **ANALYSIS AND CONCLUSIONS OF LAW**

The case is before me on the Appellants' (Husband and Wife) appeal from the state Department of Revenue's (DOR) assessment of a 24 month tax penalty because health insurance that both of the Appellants purchased through their mutual Employer in 2022 did not satisfy the Massachusetts minimum creditable coverage standards (MCC) in 2022. 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.

This appeal, as the foregoing Findings of Fact make clear, is based on compliance with the Massachusetts minimum creditable coverage standards (“MCC”). Simply stated, Massachusetts residents must enroll in a health insurance policy that meets the fairly detailed requirements set forth in the Health Connector’s regulations. If they do not, the DOR will assess a penalty because the person has not complied with the individual mandate summarized above. See Mass. Gen. L. 111M, sec. 2(b), and 956 Code Mass. Regs. 5.01 and 5.03, above.

In this case, however, the reason(s) that the Appellants’ insurance coverage fell below the MCC standards is not clear. At the beginning of the year (2022) the Appellant was not informed that the health insurance policy offered by the Employer did not meet MCC standards. Even the 2022 Form MA 1099-HC forms that the Appellants received from the insurer (Aetna) early the next year (2023) – when it was far too late to take any corrective action – did not give any reason. See Exhibits 6 and 7.

Under these circumstances I conclude that it is appropriate to waive the entire penalty assessed by the DOR against both Husband and Wife.

The Appellants sought to obtain health insurance for 2022, as required by Massachusetts law. They were not informed that, despite all the premium payments that they made through payroll deductions, their insurance policies did not comply with the MCC standards. In addition, the objective affordability standards set forth in DOR Tables 3 and 4 illustrate that the Appellants did face an affordability problem so that it would be, as the Husband contended, unduly burdensome to impose a financial penalty on top of the premiums that the Appellants have already paid. See Findings of Fact, Nos. 9 and 10, above. See also 956 Code Mass. Regs. 6.07 and 6.08 (hardship appeal).

In lieu of a financial penalty for 2022 I will suggest what the Appellants might do now to avoid tax penalty assessments in the future. See my RECOMMENDATION below.

**PENALTY ASSESSED**

Number of Months Appealed: \_\_\_\_24\_\_\_\_ Number of Months Assessed: \_\_\_\_-0-\_\_\_\_

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2022 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 2022.

**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: Massachusetts Health Connector Appeals Unit

RECOMMENDATION. I will suggest some steps that the Appellants might take starting now so that they will not continue to be assessed tax penalties under the MCC standards. Don't wait – these steps may take some time, especially since the Health Connector will be increasing some of its subsidies and eligibility requirements this Fall.

1. Starting in October inform your Employer that the DOR assessed a penalty for 2022 under the MCC requirements. Ask why this happened – it is likely that your Employer will have to contact its insurer for this information. Ask the Employer to make changes in its health insurance policy before the policy is renewed (likely for January 2024) so that it meets the MCC requirements.

2. When the new open enrollment period begins in November, use the Health Connector to explore what health insurance policies will be available to you through the Health Connector and shop for a policy that is most affordable to you. Due to the open enrollment requirements you have to select an insurance policy and pay the first month's premium in late December in order to be insured in 2024. Use the website at [www.mahealthconnector.org](http://www.mahealthconnector.org) or call 1-800-841-2900. Decide whether it is better to insure yourselves through your Employer or through a Health Connector health insurance plan.
3. Seek help outside your employer and the Health Connector. I suggest contacting Health Care For All, a private, non-profit organization. Use the free consumer Help Line at 1-800-272-4232 or use the website at [www.hcfama.org](http://www.hcfama.org).



## Massachusetts Health Connector Appeals Unit

### Tax Penalty Appeal Decision—Docket No. PA22-772

**Appeal Decision:** Appeal Approved -- 2022 tax penalty overturned

**Hearing Issue:** Appeal of the 2022 Tax Year Penalty

**Hearing Date:** September 13, 2023

**Decision Date:** September 30, 2023

#### **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 – 2022);
3. Health Connector's Notice of Hearing (2 pages); and
4. Medical Doctor's Letter Re Son's Care for Mother (1 page).

#### **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 2022. The basis for the penalty was that the Appellant was not insured at any time in 2022. Exhibits 1 and 2. Based on Exhibit 1 and the Appellant's hearing testimony, I find that the penalty assessment is accurate.
2. The Appellant filed a Massachusetts personal income tax return for 2022 as a single person with no dependents. The Appellant's federal adjusted gross income (AGI) for 2022 was \$ 42,219. Exhibit 1.
3. The Appellant was 25 years old at the beginning of 2022 and resided in [name of city or town omitted] in Suffolk County, Massachusetts. Exhibit 1.
4. Based on DOR Table 3 the Appellant could afford to pay 7.45% of his income -- or \$262 per month -- for health insurance coverage in 2022. (The calculation is 7.45% multiplied by \$42,219 AGI = \$3,145.31 per year divided by 12 months = \$262.10 per month.)
5. Based on DOR Table 4 (Region 2) the Appellant could obtain individual health insurance coverage at his age and location for \$ 277 per month in 2022.
6. The Appellant takes care of his Mother, who lives with him and who has serious medical conditions. This is attested by the letter from the Mother's doctor that was submitted for this appeal. See Exhibit 4 and Testimony.
7. In 2022 the Appellant was an apprentice electrician who worked irregularly and who was not eligible for any health insurance benefits through his employment. In early 2023 the Appellant, who is not a union member, obtained his electrician's license, obtained a full-time job, and enrolled in the Employer's health insurance plan. Testimony.
8. The Appellant did not have health insurance in 2022 because he could not afford coverage. In addition to caring for his Mother the Appellant's monthly living expenses included \$1,500 for rent, \$100 for heat, \$150 for electricity, \$350 for gasoline (he must drive to jobs at different locations), \$350 for car insurance, and \$700-800 for groceries. The Appellant also must purchase tools and work clothes for his job. Testimony.

9. 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 2022 Massachusetts income tax return.
10. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2022 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2021. 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 2022. (The DOR instructions are published online at <http://www.mass.gov/dor/2022ScheduleHCInstructions> 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 2022.)

## **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 2022. 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 – 2022 that the Appellant signed and filed in this case. See Exhibit 2.

The young appellant in this case had borderline income while he was training as an electrician apprentice and concurrently caring for his chronically ill mother who lived with him. Under the objective affordability standards in DOR Tables 3 and 4 the Appellant could afford to pay \$262 per month for insurance that would cost \$277 per month at his age and location. See Findings of Fact, Nos. 4 and 5, above. The gap is actually greater because the DOR Tables do not treat the Mother as part of the household. See also Findings of Fact, Nos. 8, above (living expenses).

Things improved by the following year (2023). The Appellant became a licensed electrician, he obtained a new job, and he enrolled in a health plan offered by his Employer.

After considering all the circumstances, I conclude that it is appropriate to waive the entire penalty assessed against the Appellant for 2022. 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:   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 2022 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 2022.

**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: Massachusetts Health Connector Appeals Unit



## Massachusetts Health Connector Appeals Unit

### Tax Penalty Appeal Decision—Docket No. PA22-784

**Appeal Decision:** Appeal Approved -- 2022 tax penalty overturned.

**Hearing Issue:** Appeal of the 2022 Tax Year Penalty

**Hearing Date:** October 4, 2023

**Decision Date:** October 9, 2023

### **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 (Husband and Wife) both 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 Appellants' 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 – 2022);
3. Health Connector's Notice of Hearing (2 pages); and
4. Eversource Electric Utility Disconnect Notice.

### **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 Appellants appealed from the Department of Revenue's assessment of a three month penalty for 2022. For 2022 the Husband was insured for the months of January – June and was not insured for the months of July – December. The Wife was insured for all 12 months in 2022. Exhibits 1 and 2. Based on Exhibit 1 and the Appellants' hearing testimony, I find that the penalty assessment is accurate. (The calculation of the penalty that the DOR assessed against the Husband is 12 months minus 6 months insured = 6 months uninsured minus 3-month administrative grace period = 3 penalty months.)
2. The Appellants filed a Massachusetts personal income tax return for 2022 as a married couple filing jointly with 2 dependents. The Appellants' federal adjusted gross income (AGI) for 2022 was \$97,870. Exhibit 1.
3. The Husband was 36 years old at the beginning of 2022, and they resided in [name of city or town omitted] in Bristol County, Massachusetts. Exhibit 1.
4. The Appellant's 2022 AGI (\$97,870) was more than 300% of the federal poverty level (\$79,500 for a four person household). DOR Table 2. On this basis I infer that it is likely that the Husband and Wife would not satisfy the financial eligibility requirements for government-subsidized health insurance.
5. Based on DOR Table 3 the Appellants could afford to pay 8.00% of their income -- or \$652 per month -- for health insurance coverage in 2022. (The calculation is 8.00% multiplied by \$97,870 AGI = \$7,829.60 per year divided by 12 months = \$652.46 per month.)
6. Based on DOR Table 4 (Region 2) the Appellants could obtain family health insurance coverage at the Husband's age and location for \$756 per month in 2022.
7. At the outset of 2022 both Husband and Wife were insured under Health Connector health insurance plans. The Husband's coverage lapsed because, starting in July, he felt that he could no longer afford the monthly premium. The Wife's coverage continued for all of 2022. Testimony and Exhibit 1.
8. Though the Wife was covered for all of 2022 her job conditions contributed to the Husband's loss of coverage. The Wife did security work for a public school that did

not pay her for the summer months (part of June, all of July, and part of August).  
Testimony.

9. The Appellants' financial struggles are reflected in the difficulty they had maintaining electric service to their home in 2022 and 2023. The Appellants submitted a utility disconnect notice showing that \$816.81 was overdue. Though this document is dated in February 2023, it exemplifies difficulties they experienced in 2022, when they entered into payment plans to maintain service. Exhibit 4 and Testimony.
10. Credit cards also reflected financial problems. The credit card company discontinued the Wife's credit card because she was not able to maintain the minimum monthly payments, leaving her with a \$5,000 unpaid balance. The Husband has a \$9,500 unpaid balance on his credit card. Testimony.
11. The Appellants also had a \$8,000 car loan on which they still owe \$5,000. Testimony.
12. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2022 Massachusetts income tax return.
13. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2022 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2021. 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 2022. (The DOR instructions are published online at <http://www.mass.gov/dor/2022ScheduleHCInstructions> 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 2022.)

## **ANALYSIS AND CONCLUSIONS OF LAW**

The case is before me on the Appellants' appeal from the state Department of Revenue's (DOR) assessment of a 3 month tax penalty because the Husband did not have health insurance coverage for part of 2022 (July – December). 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 – 2022 that the Appellant signed and filed in this case. See Exhibit 2.

In this case, the Appellants (Husband and Wife) made a genuine effort to maintain health insurance coverage – through Health Connector plans – in 2022. The Wife was insured all 12 months even though her public school job docked her two months' pay in

the summer. The Husband had coverage through June 2022 when he could no longer afford to pay the monthly health insurance premium while his wife was not getting paid.

The Appellant's Eversource electric utility bill underscores their financial struggle. The Appellants entered into payment plans in an effort to stave off the loss of utility service, as illustrated by Exhibit 4. See Findings of Fact, No. 9, above. The Appellants were also behind in their credit card bills (\$5,000 balance for the Wife, \$9,500 balance for the Husband), and the credit card company cut off the Wife's service. See Findings of Fact, No. 10, above.

The objective affordability standards set forth in DOR Table 3 and Table 4 also support the Appellants' appeal. Under Table 3 the Appellants could afford to pay \$650 per month for health insurance for family insurance would cost \$756 per month under DOR Table 4. See Findings of Fact, Nos. 5 and 6, above. (A more detailed eligibility analysis by the Health Connector might modify these numbers due to health insurance coverage for the two children.)

After considering all the circumstances, I conclude that it is appropriate to waive the entire penalty assessed against the Appellants for 2022. See, e.g., 956 Code Mass. Regs. 6.08 (1) (b) [electric utility shut-off notice] and 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 [them] to experience a serious deprivation of food, shelter, clothing or other necessities.").

[NOTE: The Health Connector will be releasing new affordability standards when the open enrollment period begins in November 2023 which you may find advantageous for insurance coverage that takes effect in January 2024.]

## **PENALTY ASSESSED**

Number of Months Appealed: \_\_\_\_3\_\_\_\_ Number of Months Assessed: \_\_\_\_-0-\_\_\_\_

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2022 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 2022.

**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: Massachusetts Health Connector Appeals Unit



# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA22691

**Appeal Decision:** The penalty is overturned in full.

**Hearing Issue:** Appeal of the 2022 Tax Year Penalty

**Hearing Date:** July 17, 2023

**Decision Date:** August 29, 2023

### 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 17, 2023. 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 2022 signed and dated by Appellants on February 28, 2023 with letter attached

Exhibit 1a: Mortgage statement for March, 2022

Exhibit 2: Appeal Case Information from Schedule HC 2022

Exhibit 3: Notice of Hearing sent to Appellant dated June 21, 2023 for July 17, 2023 hearing

Exhibit 4: Appellant's Employment Separation Agreement dated February 3, 2022 for February 28, 2022 termination

### FINDINGS OF FACT

The record shows, and I so find:

1. Appellants, who filed a 2022 Massachusetts tax return jointly with two dependents claimed, were 46 years old in 2022. The dependents were the appellants' teenage children (Exhibit 2, Testimony of Appellant).
2. Appellants lived in Plymouth County in 2022 (Exhibit 2, Testimony of Appellant).
3. Appellants' Federal Adjusted Gross Income for 2022 was \$133,820 (Exhibit 2, Testimony of Appellant).
4. One of the appellants was self-employed in 2022. She earned \$3,000 gross each month (Testimony of Appellant).
5. The other appellant worked full-time in January and February, 2022. Appellant was laid off at the end of February. He was given severance pay for March and April. This appellant earned \$17,000 a month from January through April (Testimony of Appellant, Exhibit 4).

6. After the appellant lost his job, he collected unemployment compensation totaling \$31,000 for the year (\$1,000 a week). He did not receive his first payment until November, but payments were retroactive (Testimony of Appellant).
7. Appellants had health insurance which the Commonwealth's minimum creditable coverage standards in January and February. Their children were also covered. Once Appellant was laid off, the family lost its coverage (Testimony of Appellant, Exhibit 2).
8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2022 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 2022. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2022.
9. According to Table 3 of Schedule HC for 2022,, the appellants with two dependents claimed with an adjusted gross income of \$133,820 could afford to pay \$892 per month for health insurance. According to Table 4, Appellants, both 46 years old and living in Plymouth County, could have purchased insurance for \$798 per month for a family plan. Coverage through the individual market was, therefore, affordable for the appellants in 2022 (Schedule HC for 2022, Exhibit 2).
10. According to Table 2 of Schedule HC for 2022, Appellants, with two dependents, earning more than \$79,500, 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-2022, 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 2022 (Testimony of Appellant).
12. Appellants did not fall more than thirty days behind in mortgage payments in 2022 (Testimony of Appellant).
13. Appellants did not receive any shut-off notices for utilities during 2022 (Testimony of Appellant).
14. Appellants had the following monthly expenses for basic necessities in 2022: mortgage and property tax-\$3,196; home owners' insurance-\$130; electricity-\$200 on average; heat-\$250; telephone and internet-\$380; food, personal care items, household items-\$1,630; clothing-\$300; car insurance-\$208; gas-\$520; car payments-\$1,100 (Testimony of Appellant, Exhibit 1a)).

## **ANALYSIS AND CONCLUSIONS OF LAW**

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2022 should be waived, either in whole or in part. The appellants had health insurance which met the Commonwealth's minimum creditable coverage standards in January and February. They have each been assessed a penalty for seven months since both were entitled to a three-month grace period after losing coverage. Appellants have appealed the penalty. See Exhibits 1 and 2, and Massachusetts General Laws Chapter 111M, Section 2.

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

the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2010, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector's regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08. 45 CFR Section 155.305 and 26 CFR Section 1.36B-2 provide eligibility requirements for advance premium tax credits.

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

According to Table 3 of Schedule HC for 2022, the appellants with no dependents claimed with an adjusted gross income of \$133,820 could afford to pay \$892 per month for health insurance. According to Table 4, Appellants, both 46 years old and living in Plymouth County, could have purchased insurance for \$798 per month for a family plan. Coverage through the individual market was, therefore, affordable for the appellants in 2022. See Schedule HC for 2022, Tables 3 and 4, and Exhibit 2.

One of the appellants was self-employed and, therefore, had no access to health insurance through employment. The other had coverage for him and his family until he lost his job. He then had no access to health insurance through employment either. See the testimony of the appellant which I find to be credible and Exhibits 4. Health insurance through employment was unavailable to the appellants in 2022.

According to Table 2 of Schedule HC for 2022, Appellants, with two dependents, earning more than \$79,500, 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-2022, 956 CMR 12.00 et. seq. There is no evidence in the record that Appellants were eligible for any other government-sponsored plan.

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

In 2022, Appellants faced many financial problems. One appellant lost his job at the end of February and was unemployed the rest of the year. He collected unemployment compensation for some period during the year. The appellant went from earning \$17,000 a month, or about \$200,000 for the year, to earning less than half of his projected income. The other appellant earned just \$3,000 a month before taxes. Before taxes, the couple had an income of about \$7,000 a month from about June through December, though for several months, they did not receive unemployment compensation payments on time. See the testimony of the appellant which I find to be credible and Exhibit 4.

The appellants' expenses remained the same. For basic necessities, they paid the following: mortgage and property tax-\$3,196; home owners' insurance-\$130; electricity-\$200 on average; heat-\$250; telephone and internet-\$380; food, personal care items, household items-\$1,630; clothing-\$300; car insurance-\$208; gas-\$520; car payments-\$1,100. These expenses amounted to \$7,400 a month. If we add in the cost of health insurance, expenses amount to over \$8,000 a month, more than the couple was taking in. See Exhibit 4, the testimony of the appellant which I find to be credible, and Table 4 of Schedule HC for 2022.

Based upon the facts summarized above, I determine that the penalty assessed should be waived. Pursuant to 956 CMR 6.08(1)(e), I find that the cost of purchasing health insurance would have caused the appellants and their children to experience a serious deprivation of basic necessities. Expenses were greater than income, even before we consider the cost of insurance.

The penalty is waived.

Appellants should note that any waiver granted here is for 2022 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: \_\_\_\_14 \_\_\_\_      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 2022.

**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

### Tax Penalty Appeal Decision—Docket No. PA22-747

**Appeal Decision:** Appeal Approved -- 2022 tax penalty overturned.

**Hearing Issue:** Appeal of the 2022 Tax Year Penalty

**Hearing Date:** September 6, 2023

**Decision Date:** September 12, 2023

### **AUTHORITY**

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

### **JURISDICTION**

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

### **HEARING RECORD**

The Appellant (Husband) appeared 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 – 2022);
3. Health Connector's Notice of Hearing (2 pages); and
4. Appellant's Letter in Support of Appeal (1 page).

### **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 (Husband) appealed from the state Department of Revenue's assessment of a 3 month penalty for 2022. The basis for the penalty was that the Appellant was not insured for the months of January – June 2022 but was insured for the months of July – December 2022. Exhibits 1 and 2. Based on Exhibit 1 and the Appellant's hearing testimony, I find that the penalty assessment is accurate. (The calculation is 12 months minus 6 months insured = 6 months uninsured minus 3-month administrative grace period = 3 penalty months.)
2. The Appellant and his Wife filed a Massachusetts personal income tax return for 2022 as a married couple filing jointly with 4 dependents. Exhibit 1.
3. The Wife did not participate in the appeal as she was insured for all of 2022 under a health plan offered by her employer. The DOR did not assess a penalty against the Wife. Testimony, Exhibit 1, and Exhibit 2.
4. The Appellant's recent job history and health insurance history was disrupted by the coronavirus pandemic (COVID-19). Testimony and Exhibit 4.
5. The Appellant was employed in the athletic department of a local public school system. His employment, and the associated health insurance, was first suspended and then terminated due to Covid. The Appellant sought other employment, including as a trainer and physical therapist. At some point the Appellant returned to work for the public school system. Testimony and Exhibit 4.
6. In 2021 the Appellant was insured through the Health Connector, and he anticipated renewing the Health Connector coverage for 2022, beginning in January 2022. Testimony and Exhibit 4.
7. The Health Connector quoted the Appellant a 2022 renewal premium in the amount of approximately \$800 per month, a substantial increase from the \$132 per month that he had paid in 2021. The Appellant felt that he could not afford the Health Connector premium that he was quoted to continue his coverage in 2022. Testimony and Exhibit 4. (I note that I do not have any information from the Health Connector to verify the premium amounts or the reason for the 2022 increase. I found the Appellant's testimony to be credible.)

8. The Appellant had returned to work for the public school system after it reopened post-Covid. The Appellant sought to enroll in the health plan offered by the school system starting in January 2022 when his Health Connector coverage lapsed. He learned that the school system's open enrollment period was in July and that he would have to pay a substantial "catch up" fee to enroll late. Consequently, the Appellant was not insured for the months of January through June 2022 after his Health Connector coverage lapsed. Testimony and Exhibit 4.
9. The Appellant enrolled in the school system's health plan in July 2022, when the open enrollment period began. The Appellant was insured for the remainder of 2022 (July – December) on the school system's health plan, as verified by the state Department of Revenue in Exhibit 1. See Exhibit 4 and Testimony. The Appellant's health plan coverage continued into 2023. Testimony.
10. Except as set forth in the foregoing findings of fact, I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2022 Massachusetts income tax return.
11. I take administrative notice of the financial information set forth in Tables 1 through 6 of the DOR 2022 Massachusetts Schedule HC Health Care Instructions and Worksheet. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2021. 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 2022. (The DOR instructions are published online at <http://www.mass.gov/dor/2022ScheduleHCInstructions> 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 2022.)

## **ANALYSIS AND CONCLUSIONS OF LAW**

The case is before me on the Appellant's (Husband) appeal from the state Department of Revenue's (DOR) assessment of a 3 month tax penalty because the Appellant did not have health insurance coverage for part of 2022. 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 – 2022 that the Appellant signed and filed in this case. See Exhibit 2.

The Appellant in this case, like so many others in this time period, found that his employment and his associated health insurance coverage was disrupted by the coronavirus pandemic (COVID-19). In 2021 the Appellant obtained health insurance coverage through the Health Connector while he worked in different jobs. At some point the Appellant had returned to work for the public school system but he had continued to obtain his health insurance through the Health Connector.

The Appellant intended to renew his Health Connector coverage for 2022 – the year at issue in this appeal – but he confronted a major premium increase from the Health Connector (from \$132 per month to over \$800 per month). As a consequence the Appellant’s health insurance coverage did not continue in January 2022, which became the basis for the DOR penalty assessment for the first six months in 2022.. See Exhibit 1.

The Appellant sought to resume the public school system health insurance coverage for 2023 since he had returned to work for the public schools after the coronavirus pandemic abated. The Appellant’s effort to enroll at the beginning of 2023 was stymied by the school system’s open enrollment policy. Instead, the Appellant’s health insurance coverage was not restored until July 2022 under the school system’s open enrollment policy. The Appellant has continued his health insurance coverage since he returned to the public school system’s health plan in July 2022.

After considering all the circumstances, I conclude that it is appropriate to waive the entire penalty assessed against the Appellant for 2022.

#### **PENALTY ASSESSED**

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

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2022 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 2022.

#### **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: Massachusetts Health Connector Appeals Unit

# Massachusetts Health Connector Appeals Unit

## FINAL APPEAL DECISION: PA22-736

**Appeal Decision:** The tax penalty is overturned.

**Hearing Issue:** Appeal of the 2022 Tax Year Penalty

**Hearing Date:** September 5, 2023

**Decision Date:** September 11, 2023

### **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 Massachusetts General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

### **HEARING RECORD**

The Appellant is a single person with no dependents. The Appellant appeared at the hearing, which was held by telephone, on September 5, 2023. 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 that were admitted into evidence:

- Exhibit 1: Appeal Case Information from Schedule HC 2022 (1 page).
- Exhibit 2: The Statement of Grounds for Appeal and supplemental documentation provided by the Appellant (10 pages).
- Exhibit 3: Health Connector Appeals Unit Notice of Hearing on September 5, 2023 (2 pages).
- Exhibit 4: Final Appeal Decision PA 21-1973
- Exhibit 5: Final Appeal Decision PA 20-134
- Exhibit 6: Final Appeal Decision PA 19-538

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant filed their federal income tax return a single person with no dependents claimed. (Exhibit 1).
2. The Appellant turned 62 in July 2022. (Exhibit 1).

3. The Appellant lived in Hampden County throughout 2022. (Exhibit #1) and Appellant testimony.
4. According to the Appellant's Schedule HC, the Appellant's federal Adjusted Gross Income ("AGI") for 2022 was \$72,288. (Exhibit 1).
5. According to the Appellant's Schedule HC, the Appellant did not have health insurance that met Massachusetts' minimum creditable coverage (MCC) requirements in any month in 2022. The Appellant was assessed a twelve-month tax penalty for 2022. (Exhibit 1).
6. The Appellant filed an appeal of the twelve-month penalty assessment in March 2023. The Appellant checked off the following box on their Statement of Grounds for Appeal: "During 2022, you received a shut-off notice; were shut off; or were refused delivery of essential utilities (gas, electric, heating oil, water, primary telephone)." (Exhibit 2).
7. The Appellant submitted shut-off notices for gas and electricity that they received in June, July, August, September, October, and November 2022. (Exhibit 2).
8. The Appellant previously appealed a 12-month tax penalty for 2021. This penalty was waived in its entirety. (Exhibit 4).
9. The Appellant previously appealed a 12-month tax penalty for 2020. This penalty was reduced to one month. (Exhibit 5).
10. The Appellant previously appealed a two-month tax penalty for 2019. This penalty was waived in its entirety. (Exhibit 6).
11. A hearing on the Appellant's appeal took place telephonically on September 5, 2023. (Exhibit 3). The Appellant appeared at the hearing.
12. I take administrative notice of the financial information set forth in Tables 1 through 6 in the Department of Revenue ("DOR") 2022 Massachusetts Schedule HC Health Care Instruction 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 2022. Table 2 sets forth income at 300% of the federal poverty level, and Tables 5 and 6 set forth tax penalties in effect for 2022.
13. The Appellant's AGI of \$72,288 was greater than 300% of the Federal Poverty Level, which was \$38,640 for a single person in 2022. (See Table 2 of Schedule HC-2022 and 956 CMR 12.04).
14. According to Table 3 of Schedule HC for 2022, the Appellant, who filed their federal tax return as a single person with no dependents and claimed an adjusted gross income of \$72,288, could have afforded to pay \$481 per month for health insurance. The calculation is as follows: Table 3 states that a single person with no dependents whose 2022 AGI was between \$51,521 or more



could have spent 8% of their earnings on health insurance; 8% of \$72,288 is \$5,783, and one-twelfth of \$5,783 is \$481.

15. According to Table 4 of Schedule HC for 2022, the least expensive health insurance plan meeting Massachusetts' minimum creditable coverage requirements that a single person who was 61 and living in Hampden County in January 2022 could have purchased cost \$466 per month.
16. The Appellant testified that they worked full-time at a law office throughout 2022 and that their employer did not offer health insurance. The Appellant testified that in addition to the Appellant, an attorney and a part-time employee worked at the law office.
17. The Appellant testified that they were paid by the hour and that they consistently worked around 40 hours per week. The Appellant testified that their entire income from 2022 was from their work at the law office.
18. The Appellant testified that they estimated they had the following monthly expenses in 2022: \$1542 for a mortgage, property tax, and homeowner's insurance; \$400 per month in gas and electricity bills; \$75 for TV; \$70 for Internet; \$456 for car payment; \$90 for car insurance; \$33 for motorcycle insurance; \$140 for car/motorcycle gas; \$150 for phone; \$500 for food; \$40 for household supplies and toiletries; \$150 for clothing; \$15 for tolls; \$30 for oil changes; \$75 for water and sewer; \$400 for ongoing credit card debt; \$75 for dog food; \$67 for veterinary bills and dog medication. These expenses total \$4308.
19. The Appellant testified that they had money deducted from their paychecks for retirement, but they could not remember the amount. They testified that they might have had \$75 deducted from each biweekly paycheck for retirement.
20. The Appellant testified that their utility bills fluctuate and can be as high as \$600 in the winter.
21. The Appellant testified that their take-home pay in 2022 was \$1610 biweekly. This equals \$3488 per month.
22. The Appellant testified that they could not afford health insurance in 2022 because of the high cost of utilities and other necessities.

## **ANALYSIS AND CONCLUSIONS OF LAW**

The case is before me on the Appellant's appeal from the DOR's assessment of a twelve-month tax penalty because the Appellant's tax forms indicated that they did not have health insurance that met minimum creditable coverage ("MCC") standards during any month in 2022. The issue to be decided is whether the tax penalty should be waived in whole or in part.

I begin by summarizing the legal rules underlying this appeal. 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 health insurance coverage “[s]o long as it is deemed affordable” under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority (“Connector”). G.L. c. 111M, § 2(a). Any health insurance policy must also satisfy the Massachusetts MCC standards for a taxpayer to avoid the penalty.

If these requirements are not met, a tax penalty is assessed for each of the months that the individual did not have health insurance as required by the individual mandate. There is, however, 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, § 2(b) and Administrative Information Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00 (clarifying that for purposes of penalty calculation, taxpayers will not be subject to penalty if they had lapses in coverage consisting of three or fewer consecutive calendar months). The Connector’s regulations also provide for a waiver of the tax penalty in cases of hardship. See 956 CMR 6.07-08.

To determine if the penalty should be waived in whole or in part, there must be a determination as to whether affordable insurance that met MCC standards was available to the Appellant through employment, through a government-subsidized program, or through the private market. If affordable insurance was available, it must be determined whether such insurance was not in fact affordable to the Appellant because the Appellant experienced a hardship as defined in 956 CMR 6.08. These issues are all addressed below.

First, I conclude that affordable insurance meeting MCC requirements was not available to the Appellant through employment. The Appellant credibly testified that their employer did not offer health insurance. Finding of Fact No. 16.

Second, I conclude that the Appellant did not have access to affordable health insurance meeting MCC requirements through a government-subsidized program because their income exceeded 300% of the Federal Poverty Level. Finding of Fact No. 13.

Third, I conclude that the Appellant had access to affordable health insurance through the private market. Table 3 of the Schedule HC shows that the Appellant could have afforded to pay \$481 per month for health insurance, and Table 4 indicates that the least expensive plan available to the Appellant on the private market cost \$466 per month. Findings of Fact Nos. 14 and 15. However, the Appellant testified that they could not in fact afford health insurance because of the high cost of utilities and other necessities in 2022. Finding of Fact No. 22. The Appellant provided six utility shut-off notices from 2022. (Exhibit 7). The Appellant testified that their bi-weekly take-home pay was \$1610, which amounts to \$3488 per month, and they provided a list of basic monthly expenses totaling \$4308. Findings of Fact Nos. 18 and 21. I find the Appellant’s list of basic expenses to be credible, but their stated monthly take home pay seems low, even considering that Appellant might have had \$75 per paycheck deducted for retirement. Finding of Fact No. 19.

However, reviewing the totality of the evidence, I find that the Appellant suffered a hardship throughout 2022 such that the purchase of health insurance on the private market would likely have led to a serious deprivation of food, shelter, clothing, or other necessities. The Appellant submitted utility shut-off notices for six months in 2022, and their stated necessary expenses of \$4308 per month, which seem reasonable, likely exceeded their take home pay, particularly in months where heating costs were high. I therefore conclude that the Appellant's twelve-month penalty should be waived in its entirety. See G.L. c. 111M, § 2 and 956 CMR 6.07(8) and 6.08(1)(b) and (e).

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2022. 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 2022.

#### **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: PA22-738

**Appeal Decision:** The tax penalty is overturned.

**Hearing Issue:** Appeal of the 2022 Tax Year Penalty

**Hearing Date:** September 5, 2023

**Decision Date:** September 11, 2023

### **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 Massachusetts General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

### **HEARING RECORD**

The Appellant is a single person with no dependents. The Appellant appeared at the hearing, which was held by telephone, on September 5, 2023. 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 that were admitted into evidence:

- Exhibit 1: Appeal Case Information from Schedule HC 2022 (1 page).
- Exhibit 2: The Statement of Grounds for Appeal and supplemental documentation provided by the Appellant (12 pages).
- Exhibit 3: Health Connector Appeals Unit Notice of Hearing on September 5, 2023 (2 pages).

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant filed their federal income tax return a single person with no dependents claimed. (Exhibit 1).
2. The Appellant turned 60 in February 2022. (Exhibit 1).
3. The Appellant lived in Essex County throughout 2022. (Exhibit #1) and Appellant testimony.

4. According to the Appellant's Schedule HC, the Appellant's federal Adjusted Gross Income ("AGI") for 2022 was \$55,230. (Exhibit 1).
5. According to the Appellant's Schedule HC, the Appellant did not have health insurance that met Massachusetts' minimum creditable coverage (MCC) requirements in any month in 2022. The Appellant was assessed a twelve-month tax penalty for 2022. (Exhibit 1).
6. The Appellant filed an appeal of the twelve-month penalty assessment in March 2023. The Appellant checked off the following box on their Statement of Grounds for Appeal: "During 2022, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities." (Exhibit 2).
7. The Appellant submitted a letter stating that they quit their job in October 2021 due to a planned move out of Massachusetts. The Appellant stated that they delayed their move and that their income in 2022 came from a combination of temporary ("temp") jobs and cashing out retirement funds. The Appellant stated that they did not know health insurance was mandatory in Massachusetts and that purchasing health insurance through COBRA would have cost between \$740 and \$914 per month. (Exhibit 2).
8. The Appellant submitted tax documents providing proof of their retirement fund distribution and earnings from their temp job. (Exhibit 2). The documentation shows that they earned \$19,404 from their temp job and received a taxed distribution of \$35,825.64. In addition, the documents show that the Appellant received a nontaxable distribution of \$6153.73.
9. The Appellant provided a list of their monthly expenses in 2022: \$740 for rent; \$600-800 for food; \$72.10 for cellphone; \$99 for Internet; and \$54.77 for dental.
10. A hearing on the Appellant's appeal took place telephonically on September 5, 2023. (Exhibit 3). The Appellant appeared at the hearing.
11. I take administrative notice of the financial information set forth in Tables 1 through 6 in the Department of Revenue ("DOR") 2022 Massachusetts Schedule HC Health Care Instruction 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 2022. Table 2 sets forth income at 300% of the federal poverty level, and Tables 5 and 6 set forth tax penalties in effect for 2022.
12. The Appellant's AGI of \$55,230 was greater than 300% of the Federal Poverty Level, which was \$38,640 for a single person in 2022. (See Table 2 of Schedule HC-2022 and 956 CMR 12.04).
13. According to Table 3 of Schedule HC for 2022, the Appellant, who filed their federal tax return as a single person with no dependents and claimed an adjusted gross income of \$55,230, could have afforded to pay \$368 per month for health insurance. The calculation is as follows: Table 3 states that a single person with no dependents whose 2022 AGI was \$51,521 or more could have

spent 8% of their earnings on health insurance; 8% of \$55,230 is \$4,418, and one-twelfth of \$4,418 is \$368.

14. According to Table 4 of Schedule HC for 2022, the least expensive health insurance plan meeting Massachusetts' minimum creditable coverage requirements that a single person who was 59 and living in Essex County in January 2022 could have purchased cost \$435 per month.
15. The Appellant testified that they lived off income from their temp assignments for most of 2022 but cashed in retirement funds around November 2022.
16. The Appellant testified that they could have obtained health insurance through COBRA from the job they quit in October 2021, but the premium would have been between \$740 and \$914 per month.
17. The Appellant testified that they became eligible for health insurance through their temp agency in the middle of 2022, but the premium would have been around \$400-500 per month.
18. The Appellant testified that they are currently employed and have health insurance.
19. The Appellant testified that they did not know that Massachusetts required that they have health insurance.

## **ANALYSIS AND CONCLUSIONS OF LAW**

The case is before me on the Appellant's appeal from the DOR's assessment of a twelve-month tax penalty because the Appellant's tax forms indicated that they did not have health insurance that met Massachusetts' minimum creditable coverage ("MCC") standards during any month in 2022. The issue to be decided is whether the tax penalty should be waived in whole or in part.

I begin by summarizing the legal rules underlying this appeal. 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 health insurance coverage "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority ("Connector"). G.L. c. 111M, § 2(a). Any health insurance policy must also satisfy the Massachusetts MCC standards for a taxpayer to avoid the penalty.

If these requirements are not met, a tax penalty is assessed for each of the months that the individual did not have health insurance as required by the individual mandate. There is, however, 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, § 2(b) and Administrative Information Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00 (clarifying that for purposes of penalty calculation, taxpayers will not be subject to penalty if they had lapses in coverage consisting of three or fewer consecutive calendar months). The Connector's regulations also provide for a waiver of the tax penalty in cases of hardship. See 956 CMR 6.07-08.

To determine if the penalty should be waived in whole or in part, there must be a determination as to whether affordable insurance that met MCC standards was available to the Appellant through employment, through a government-subsidized program, or through the private market. If affordable insurance was available, it must be determined whether such insurance was not in fact affordable to the Appellant because the Appellant experienced a hardship as defined in 956 CMR 6.08. These issues are all addressed below.

First, I conclude that affordable insurance meeting MCC requirements was not available to the Appellant through employment. According to Table 3 of the Schedule HC, the Appellant could have afforded to pay \$368 per month for health insurance. Finding of Fact No. 13. The Appellant credibly testified that it would have cost them at least \$740 per month to obtain health insurance through COBRA from their former employer. Finding of Fact No. 16. The Appellant credibly testified that they could have obtained health insurance through their temp agency beginning in the middle of 2022, but that the insurance would have cost them between \$400 to \$500 per month. Finding of Fact No. 17. Thus, because both employer-based insurance options would have cost the Appellant more than \$368 per month, they were not affordable for the Appellant.

Second, I conclude that the Appellant did not have access to affordable health insurance meeting MCC requirements through a government-subsidized program because their income exceeded 300% of the Federal Poverty Level. Finding of Fact No. 12.

Third, I conclude that the Appellant did not have access to affordable health insurance through the private market. The least expensive plan the Appellant could have purchased on the private market cost \$435 per month. Finding of Fact No. 14. Because the Appellant could only have afforded to pay \$368 per month for insurance, this plan would not have been affordable for them. Finding of Fact No. 13.

Reviewing the totality of the evidence, I conclude that the Appellant's twelve-month penalty should be waived in its entirety because the Appellant did not have access to affordable health insurance meeting MCC requirements through employment, through a government-subsidized program, or through the private market. See G.L. c. 111M, § 2 and 956 CMR 6.07(8) and 6.08(3).

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2022. 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 2022.

**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: PA22-739

**Appeal Decision:** The tax penalty is overturned.

**Hearing Issue:** Appeal of the 2022 Tax Year Penalty

**Hearing Date:** September 5, 2023

**Decision Date:** September 18, 2023

### **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 Massachusetts General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

### **HEARING RECORD**

The Appellant is a single person with no dependents. The Appellant appeared at the hearing, which was held by telephone, on September 5, 2023. 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 that were admitted into evidence:

- Exhibit 1: Appeal Case Information from Schedule HC 2022 (1 page).
- Exhibit 2: The Statement of Grounds for Appeal and supplemental documentation provided by the Appellant (29 pages).
- Exhibit 3: Health Connector Appeals Unit Notice of Hearing on September 5, 2023 (2 pages).

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant filed their federal income tax return a single person with no dependents claimed. (Exhibit 1).
2. The Appellant turned 30 in July 2022. (Exhibit 1).
3. The Appellant lived in Norfolk County throughout 2022. (Exhibit 1) and Appellant testimony.

4. According to the Appellant's Schedule HC, the Appellant's federal Adjusted Gross Income ("AGI") for 2022 was \$69,331. (Exhibit 1).
5. According to the Appellant's Schedule HC, the Appellant did not have health insurance that met Massachusetts' minimum creditable coverage (MCC) requirements in any month in 2022. The Appellant was assessed a twelve-month tax penalty for 2022. (Exhibit 1).
6. The Appellant filed an appeal of the twelve-month penalty assessment in March 2023. The Appellant checked off the following box on their Statement of Grounds for Appeal: "During 2022, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities." (Exhibit 2).
7. The Appellant submitted a letter to the Department of Revenue asking for "a one-time pardon of my unintentional neglect of having full health coverage for 2022." The Appellant stated that they were employed by a staffing agency in 2022, were uncertain of their weekly hours, and dedicated 2022 to "having a roof over [their] head and food to eat." The Appellant further stated that they visited health clinics in 2022, were on an employee probation period in 2022, and that their employer's benefits did not meet Massachusetts requirements. The Appellant stated that they had health insurance in 2023 through the Health Connector. (Exhibit 2).
8. The Appellant submitted letters the Appellant sent to Boston Mayor Michelle Wu and President Joe Biden explaining why they did not have health insurance in 2022 . (Exhibit 2).
9. The Appellant submitted a document titled "Freelance Employee Benefits" from their staffing agency that describes the health plans the agency offered in 2023. The document states that one plan, in which an employee must enroll within 30 days of receiving their first paycheck, is a Minimum Essential Coverage (MEC) plan that does not meet Massachusetts Minimum Creditable Coverage standards. The document states that another plan that provides more extensive coverage than the MEC plan is available to freelance employees who work an average of 30 hours per week during a measured 12-month period. (Exhibit 2).
10. The Appellant submitted medical records showing health care they received in 2022. (Exhibit 2).
11. The Appellant submitted a copy of an Application for Temporary Hardship Waiver of MassHealth Income Deductible, dated December 22, 2022. (Exhibit 2).
12. A hearing on the Appellant's appeal took place telephonically on September 5, 2023. (Exhibit 3). The Appellant appeared at the hearing.
13. I take administrative notice of the financial information set forth in Tables 1 through 6 in the Department of Revenue ("DOR") 2022 Massachusetts Schedule HC Health Care Instruction 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 2022. Table

2 sets forth income at 300% of the federal poverty level, and Tables 5 and 6 set forth tax penalties in effect for 2022.

14. The Appellant's AGI of \$69,331 was greater than 300% of the Federal Poverty Level, which was \$38,640 for a single person in 2022. (See Table 2 of Schedule HC-2022 and 956 CMR 12.04).
15. According to Table 3 of Schedule HC for 2022, the Appellant, who filed their federal tax return as a single person with no dependents and claimed an adjusted gross income of \$69,331, could have afforded to pay \$462 per month for health insurance. The calculation is as follows: Table 3 states that a single person with no dependents whose 2022 AGI was \$69,331 or more could have spent 8% of their earnings on health insurance; 8% of \$69,331 is \$5,546, and one-twelfth of \$5,546 is \$462.
16. According to Table 4 of Schedule HC for 2022, the least expensive health insurance plan meeting Massachusetts' minimum creditable coverage requirements that a single person who was 29 and living in Norfolk County in January 2022 could have purchased cost \$277 per month.
17. The Appellant testified that they moved to Massachusetts in the winter of 2021 and did not find work until February 2022, when they began working for a staffing agency.
18. The Appellant testified that their entire income in 2022 came from their work at the staffing agency.
19. The Appellant testified that they did not have consistent hours at the staffing agency and did not know how many hours they would be assigned, or how much income they would earn, on a weekly basis.
20. The Appellant testified that they did not qualify for health insurance benefits at their employer in 2022 because there was a probationary period, and they also needed to work a certain number of hours before qualifying. The Appellant further testified that their employer offered them health insurance benefits in 2023 but made clear that such health insurance benefits did not meet Massachusetts' minimum creditable coverage requirements.
21. The Appellant testified that their focus in 2022 was on having a roof over their head and enough food to eat. The Appellant testified that some days, they went without food.
22. The Appellant testified that they did not become aware of Massachusetts' requirement that they have health insurance until December 2022.
23. The Appellant testified that when they became aware of Massachusetts' requirement that they have health insurance, they proactively let Mayor Wu, President Biden, and the state know they were not in compliance. The Appellant testified that they also immediately filed an Application for Temporary Hardship Waiver of MassHealth Income Deductible.

24. The Appellant testified that throughout 2023, they have had health insurance through a Tufts bronze plan that they purchased through the Health Connector.
25. The Appellant testified that they have been unable to find information about what elements a health insurance plan must contain in order to meet Massachusetts' minimum creditable coverage requirements and that they are concerned that if they take a new job, the plan offered by their employer will not meet Massachusetts' minimum credible coverage requirements.
26. The Appellant testified that they estimated that they had the following monthly expenses in 2022: \$3000 for rent; \$1000 for utilities, including gas, cellphone, and wifi; \$200 for food; and \$15 for household supplies.

## **ANALYSIS AND CONCLUSIONS OF LAW**

The case is before me on the Appellant's appeal from the DOR's assessment of a twelve-month tax penalty because the Appellant's tax forms indicated that they did not have health insurance that met Massachusetts' minimum creditable coverage ("MCC") standards during any month in 2022. The issue to be decided is whether the tax penalty should be waived in whole or in part.

I begin by summarizing the legal rules underlying this appeal. 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 health insurance coverage "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority ("Connector"). G.L. c. 111M, § 2(a). Any health insurance policy must also satisfy the Massachusetts MCC standards for a taxpayer to avoid the penalty.

If these requirements are not met, a tax penalty is assessed for each of the months that the individual did not have health insurance as required by the individual mandate. There is, however, 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, § 2(b) and Administrative Information Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00 (clarifying that for purposes of penalty calculation, taxpayers will not be subject to penalty if they had lapses in coverage consisting of three or fewer consecutive calendar months). The Connector's regulations also provide for a waiver of the tax penalty in cases of hardship. See 956 CMR 6.07-08.

To determine if the penalty should be waived in whole or in part, there must be a determination as to whether affordable insurance that met MCC standards was available to the Appellant through employment, through a government-subsidized program, or through the private market. If affordable insurance was available, it must be determined whether such insurance was not in fact affordable to the Appellant because the Appellant experienced a hardship as defined in 956 CMR 6.08. These issues are all addressed below.

First, I conclude that affordable insurance meeting MCC requirements was not available to the Appellant through employment. The Appellant submitted a document describing the health insurance benefits

offered by the staffing agency in 2023. (Exhibit 2). This document states that a Minimum Essential Coverage (“MEC”) plan, in which an employee must enroll within 30 days of receiving their first paycheck, does not meet MCC requirements. Finding of Fact No. 9. The document further states that a plan that provides more extensive coverage than the MEC plan is only available to freelancers who work an average of 30 hours per week during a measured 12-month period. Finding of Fact No. 9. Although the document relates to health insurance benefits provided in 2023, it seems likely that the benefits offered in 2022 were the same or similar, particularly given Appellant’s testimony that they were not eligible for health insurance until 2023. Finding of Fact No. 20. As a result, I find that the Appellant did not have access to affordable health insurance meeting MCC standards through employment in 2022 because the only plan that was likely available to them, the MEC plan, was not MCC-compliant.

Second, I conclude that the Appellant did not have access to affordable health insurance meeting MCC requirements through a government-subsidized program because their income exceeded 300% of the Federal Poverty Level. Finding of Fact No. 14.

Third, I conclude that the Appellant did not have access to affordable health insurance through the private market because the Appellant suffered a hardship. The least expensive plan the Appellant could have purchased on the private market cost \$277 per month. Finding of Fact No. 16. According to Table 3 of the Schedule HC, the Appellant could have afforded to pay \$462 per month for insurance. Finding of Fact No. 15. However, the Appellant credibly testified that their work at the staffing agency was sporadic and that they did not know on a week-to-week basis how much they would be earning. Finding of Fact No. 19. Because of these income fluctuations, the Appellant would likely have suffered a serious deprivation of food, shelter, clothing, or other necessities had they purchased health insurance in the months in which they had less income. As such, the Appellant did not have actual access to affordable health insurance meeting MCC standards through the private market.

Reviewing the totality of the evidence, I conclude that the Appellant’s twelve-month penalty should be waived in its entirety because the Appellant suffered a hardship. See G.L. c. 111M, § 2 and 956 CMR 6.07(8) and 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 2022. 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.

Finally, the Appellant requested information about the elements that a health insurance plan must contain in order to meet MCC requirements. That information is available here:  
<https://www.mahealthconnector.org/wp-content/uploads/MCCRequirements.pdf>

## **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 2022.

**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: PA22-740

**Appeal Decision:** The tax penalty is overturned.

**Hearing Issue:** Appeal of the 2022 Tax Year Penalty

**Hearing Date:** September 5, 2023

**Decision Date:** September 21, 2023

### **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 Massachusetts General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

### **HEARING RECORD**

The Appellants are a married couple filing jointly with one dependent. Appellant #1 appeared at the hearing, which was held by telephone, on September 5, 2023. The procedures to be followed during the hearing were reviewed with Appellant #1, who was then sworn in. Exhibits were marked and admitted into evidence with no objection from Appellant #1. The hearing record consists of Appellant #1's testimony and the following documents that were admitted into evidence:

Exhibit 1: Appeal Case Information from Schedule HC 2022 (1 page).

Exhibit 2: The Statement of Grounds for Appeal and supplemental documentation provided by the Appellant (7 pages).

Exhibit 3: Health Connector Appeals Unit Notice of Hearing on September 5, 2023 (2 pages).

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellants filed their federal income tax return as a married couple filing jointly with one dependent claimed. (Exhibit 1).
2. Appellant #1 turned 35 in October 2022, and Appellant #2 turned 31 in August 2022. (Exhibit 1).
3. The Appellants lived in Hampden County throughout 2022. (Exhibit 1) and Appellant #1 testimony.

4. According to the Appellants' Schedule HC, the Appellants' federal Adjusted Gross Income ("AGI") for 2022 was \$128,083. (Exhibit 1).
5. According to the Appellants' Schedule HC, Appellant #1 did not have health insurance meeting Massachusetts' minimum creditable coverage (MCC) requirements in the months of June through November and was assessed a three-month penalty, and Appellant #2 did not have health insurance meeting MCC requirements in the months of June through December and was assessed a four-month penalty. (Exhibit 1).
6. The Appellants filed an appeal of their penalty assessments in March 2023. The Appellants checked off the following boxes on their Statement of Grounds for Appeal: "During 2022, you received a shut-off notice; were shut off; or were refused delivery of essential utilities (gas, electric, heating, oil, water, primary telephone" and "During 2022, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities." (Exhibit 2).
7. The Appellants submitted a letter stating that they did not have health insurance in 2022 because of financial hardship caused by inflation. The Appellants stated in their letter that the Appellants fell behind on their mortgage payments and water bill, and they attached two letters from the Massachusetts Homeowners Assistance Fund. One letter, dated November 17, 2022, stated that the Appellant's application had been approved and that a payment of \$8662.88 would be made to the Appellants' mortgage company. The other letter, dated February 2, 2023, stated that a payment of \$2549.77 would be made to the Appellants' utility company.
8. A hearing on the Appellants' appeal took place telephonically on September 5, 2023. (Exhibit 3). Appellant #1 appeared at the hearing.
9. I take administrative notice of the financial information set forth in Tables 1 through 6 in the Department of Revenue ("DOR") 2022 Massachusetts Schedule HC Health Care Instruction 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 2022. Table 2 sets forth income at 300% of the federal poverty level, and Tables 5 and 6 set forth tax penalties in effect for 2022.
10. The Appellant's AGI of \$128,083 was greater than 300% of the Federal Poverty Level, which was \$65,880 for a family of three in 2022. (See Table 2 of Schedule HC-2022 and 956 CMR 12.04).
11. According to Table 3 of Schedule HC for 2022, the Appellants, who filed their federal tax return as a married couple filing jointly with one dependent and claimed an adjusted gross income of \$128,083, could have afforded to pay \$853 per month for health insurance. The calculation is as follows: Table 3 states that a married couple filing jointly with one or more dependents whose 2022 AGI was \$87,841 or more could have spent 8% of their earnings on health insurance; 8% of \$128,083 is \$10,246, and one-twelfth of \$10,246 is \$853.



12. According to Table 4 of Schedule HC for 2022, the least expensive health insurance plan meeting Massachusetts' minimum creditable coverage requirements for a family whose oldest member was 34 and living in Hampden County in June 2022 could have purchased cost \$794 per month.
13. Appellant #1 testified that from January to May 2022, the Appellants had health insurance through Appellant #2's employer and that it cost \$250-300 biweekly for a family plan.
14. Appellant #1 testified that Appellant #2 took a new job in June 2022 and was told that the job would provide health insurance. Appellant #1 testified that when Appellant #2 began working at this job, they learned that they would have to pay \$250 to \$300 per week for a family health insurance plan, which was too expensive for the Appellants.
15. Appellant #1 testified that when they learned that the Appellants could not afford to enroll in health insurance through Appellant #2's job, Appellant #1 called the Health Connector to explore their options and were told that a family plan would cost more than \$700 per month, which Appellant #1 testified they could not afford.
16. Appellant #1 testified that they were employed during this time and that their employer offered health insurance that would have cost them \$300 per week for a family plan, which Appellant #1 also testified they could not afford.
17. Appellant #1 testified that they found a better job that provided more affordable health insurance and began working at it in August 2022. Appellant #1 testified that there was a waiting period for the employer-sponsored health insurance and that they were not able to enroll in it until November 2022 and that it did not become effective until January 2023. Appellant #1 testified that the Appellants' entire family became enrolled in this health insurance in January 2023.
18. Appellant #1 testified that they estimated that the Appellants had the following monthly expenses in 2022: \$2038 for mortgage; \$500-\$550 for air conditioning in the summer months; \$500 for heat in the winter months; \$150 for water; \$140 for cable/Internet; \$320 for gas for two cars; \$520 for a car payment for one car and \$368 for a car payment for another car; \$200 for car insurance; \$300 for cellphone; \$500 for food; \$150-\$200 for clothing; \$150 for household supplies and toiletries; \$200 in informal child support for Appellant #1's son from a previous relationship; \$80 for haircuts; and \$280 biweekly for childcare during the summer.
19. Appellant #1 further testified that in the summer of 2022, they had to spend \$500 on a new car radiator and that they ultimately had to buy a new car, for which they had to make a \$700 down payment.
20. Appellant #1 testified that the Appellants' financial situation worsened during the pandemic. Appellant #1 testified that Appellant #2 had to work from home during the pandemic, and their child was home too, so they had increased utility and food costs. Appellant #1 testified that their

financial situation became more difficult when prices increased and that the Appellants filed for Chapter 7 bankruptcy at the end of 2021.

21. Appellant #1 testified that the Appellants continued to suffer a financial hardship during 2022 and almost had their house foreclosed on. Appellant #1 testified that they had to choose between health insurance and keeping their home and meeting basic needs. Appellant #1 testified that the Appellants received state assistance for their mortgage and utility bills.

## **ANALYSIS AND CONCLUSIONS OF LAW**

The case is before me on the Appellants' appeal from the DOR's assessment of a three-month tax penalty for Appellant #1 and a four-month tax penalty for Appellant #2. The issue to be decided is whether the tax penalty should be waived in whole or in part.

I begin by summarizing the legal rules underlying this appeal. 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 health insurance coverage "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority ("Connector"). G.L. c. 111M, § 2(a). Any health insurance policy must also satisfy the Massachusetts MCC standards for a taxpayer to avoid the penalty.

If these requirements are not met, a tax penalty is assessed for each of the months that the individual did not have health insurance as required by the individual mandate. There is, however, 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, § 2(b) and Administrative Information Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00 (clarifying that for purposes of penalty calculation, taxpayers will not be subject to penalty if they had lapses in coverage consisting of three or fewer consecutive calendar months). The Connector's regulations also provide for a waiver of the tax penalty in cases of hardship. See 956 CMR 6.07-08.

To determine if the penalty should be waived in whole or in part, there must be a determination as to whether affordable insurance that met MCC standards was available to the Appellants through through a government-subsidized program, through the private market or through employment. If affordable insurance was available, it must be determined whether such insurance was not in fact affordable to the Appellant because the Appellant experienced a hardship as defined in 956 CMR 6.08. These issues are all addressed below.

First, I conclude that affordable insurance meeting MCC requirements was not available to the Appellants through a government-subsidized program because the Appellants' income exceeded 300% of the Federal Poverty Level. Finding of Fact No. 10.

Second, I conclude that the Appellant did not have access to affordable health insurance through the private market because the Appellant suffered a hardship until the end of 2022 and the beginning of

2023. According to Table 3 of the Schedule HC, the Appellants could have afforded to pay \$853 per month for health insurance. Finding of Fact No. 11. According to Table 4 of the Schedule HC, the Appellants could have purchased a plan on the private market that cost \$794 per month. Finding of Fact No. 12. Although this insurance was theoretically affordable, I find that the Appellants suffered a hardship because they provided evidence that they received assistance paying their mortgage and utility bills through the Massachusetts Homeowner Assistance Fund: a \$8662.88 payment for their mortgage in November 2022 and a \$2548.77 for their utilities in February 2023. (Exhibit 2). This state assistance lends credence to Appellant #1's testimony that during the months in which the Appellants did not have health insurance, they were struggling to meet their basic housing needs. Finding of Fact No. 21.

Third, I conclude that affordable health insurance meeting MCC requirements was not available to the Appellants through employment for the months of June through November 2022. According to Table 3 of the Schedule HC, the Appellants could have afforded to pay \$853 per month for health insurance. Finding of Fact No. 11. Appellant #1 credibly testified that the health insurance available through Appellant #2's employer would have cost \$250-\$300 per week, which exceeds what was affordable to the Appellants. Finding of Fact No. 14. Appellant #1 testified that their own employer-sponsored health insurance would have cost \$300 per week at the job they had until July 2022 and that they were not eligible to enroll in employer-sponsored health insurance at their new job until November 2022 and that the insurance did not become effective until January 2023. Findings of Fact Nos. 16 and 17. The Appellants' Schedule HC shows that Appellant #1 had health insurance again beginning in December 2022, but Appellant #2 did not. (Exhibit 1). It is therefore unclear whether Appellant #2 was eligible for employer-sponsored health insurance in December 2022.

Reviewing the totality of the evidence, I find that the Appellant's did not have access to affordable health insurance meeting MCC requirements through a government-subsidized program throughout 2022 and that they did not have access to affordable health insurance meeting MCC requirements through employment for the months of June through November 2022. I further find that although the Appellants theoretically could have afforded health insurance meeting MCC requirements during the months in which they did not have health insurance, the Appellants suffered a financial hardship such that the purchase of health insurance would have caused them to experience a serious deprivation of food, shelter, clothing, or other necessities. I further find that to the extent employer-sponsored health insurance was available to Appellant #2 in December 2022, it is appropriate to waive Appellant #2's penalty because of the financial hardship the Appellants were experiencing at that time. I therefore waive the Appellants' penalties in their entirety. See G.L. c. 111M, § 2 and 956 CMR 6.07(8) and 6.08(1)(e).

## **PENALTY ASSESSED**

### Appellant #1

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

### Appellant #2

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 2022.

**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: PA22-741

**Appeal Decision:** The tax penalty is overturned.

**Hearing Issue:** Appeal of the 2022 Tax Year Penalty

**Hearing Date:** September 5, 2023

**Decision Date:** September 24, 2023

### **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 Massachusetts General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

### **HEARING RECORD**

The Appellant is a single person with no dependents. The Appellant appeared at the hearing, which was held by telephone, on September 5, 2023. 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 that were admitted into evidence:

- Exhibit 1: Appeal Case Information from Schedule HC 2022 (1 page).
- Exhibit 2: The Statement of Grounds for Appeal and supplemental documentation provided by the Appellant (5 pages).
- Exhibit 3: Health Connector Appeals Unit Notice of Hearing on September 5, 2023 (2 pages).

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant filed their federal income tax return a single person with no dependents claimed. (Exhibit 1).
2. The Appellant turned 30 in June 2022. (Exhibit 1).
3. The Appellant lived in Worcester County throughout 2022. (Exhibit 1) and Appellant testimony.

4. According to the Appellant's Schedule HC, the Appellant's federal Adjusted Gross Income ("AGI") for 2022 was \$57,342. (Exhibit 1).
5. According to the Appellant's Schedule HC, the Appellant did not have health insurance that met Massachusetts' minimum creditable coverage (MCC) requirements in any month in 2022. The Appellant was assessed a twelve-month tax penalty for 2022. (Exhibit 1).
6. The Appellant wrote on their Statement of Grounds for Appeal, "I had health insurance coverage for most of the year. Please see attached document." (Exhibit 2). The Appellant attached a Form 1095-HC for 2022 from a municipality in Massachusetts showing that the Appellant was enrolled health insurance from February through November 2022 and that the Appellant's required monthly contribution was \$199.63.
7. A hearing on the Appellant's appeal took place telephonically on September 5, 2023. (Exhibit 3). The Appellant appeared at the hearing.
8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the Department of Revenue ("DOR") 2022 Massachusetts Schedule HC Health Care Instruction 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 2022. Table 2 sets forth income at 300% of the federal poverty level, and Tables 5 and 6 set forth tax penalties in effect for 2022.
9. The Appellant's AGI of \$57,342 was greater than 300% of the Federal Poverty Level, which was \$38,640 for a single person in 2022. (See Table 2 of Schedule HC-2022 and 956 CMR 12.04).
10. According to Table 3 of Schedule HC for 2022, the Appellant, who filed their federal tax return as a single person with no dependents and claimed an adjusted gross income of \$57,342, could have afforded to pay \$382 per month for health insurance. The calculation is as follows: Table 3 states that a single person with no dependents whose 2022 AGI was \$51,521 or more could have spent 8% of their earnings on health insurance; 8% of \$57,342 is \$4,587, and one-twelfth of \$4,587 is \$382.
11. According to Table 4 of Schedule HC for 2022, the least expensive health insurance plan meeting Massachusetts' minimum creditable coverage requirements that a single person who was 29 and living in Worcester County in January 2022 could have purchased cost \$277 per month.
12. The Appellant testified that they had health insurance for most of 2022 through their employer, a Massachusetts municipality for which they worked as a health inspector.
13. The Appellant testified that they left their job with the municipality in September or October of 2022 and now have health insurance through their new employer.

14. The Appellant testified that a tax preparation company prepared their taxes for 2022. The Appellant testified that they thought they had received a Form MA 1099-HC from their municipal employer for 2022 and that they had provided the document to their tax preparer.
15. The Appellant was advised that in the future, they should be sure to give their tax preparer any Form MA 1099-HC they receive from their employer.

## **ANALYSIS AND CONCLUSIONS OF LAW**

The case is before me on the Appellant's appeal from the DOR's assessment of a twelve-month tax penalty because the Appellant's tax forms indicated that they did not have health insurance that met Massachusetts' minimum creditable coverage ("MCC") standards during any month in 2022. The issue to be decided is whether the tax penalty should be waived in whole or in part.

I begin by summarizing the legal rules underlying this appeal. 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 health insurance coverage "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority ("Connector"). G.L. c. 111M, § 2(a). Any health insurance policy must also satisfy the Massachusetts MCC standards for a taxpayer to avoid the penalty.

If these requirements are not met, a tax penalty is assessed for each of the months that the individual did not have health insurance as required by the individual mandate. There is, however, 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, § 2(b) and Administrative Information Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00 (clarifying that for purposes of penalty calculation, taxpayers will not be subject to penalty if they had lapses in coverage consisting of three or fewer consecutive calendar months). The Connector's regulations also provide for a waiver of the tax penalty in cases of hardship. See 956 CMR 6.07-08.

To determine if the penalty should be waived in whole or in part, there must be a determination as to whether affordable insurance that met MCC standards was available to the Appellant through employment, through a government-subsidized program, or through the private market. If affordable insurance was available, it must be determined whether such insurance was not in fact affordable to the Appellant because the Appellant experienced a hardship as defined in 956 CMR 6.08.

Here, the Appellant testified that they had health insurance through their employer, a Massachusetts municipality, for most of 2022. Finding of Fact No. 12. The Appellant provided a federal form 1095-C that showed that the Appellant was enrolled in health insurance from February through November 2022 and contributed \$190.03 per month to their premium. (Exhibit 2). The website for the municipality for which the Appellant worked states that its employees may enroll in health insurance through the state Group Insurance Commission (GIC), and the GIC website states that the municipality for which the Appellant worked has been participating in the GIC since 2015. Based on these websites, I take administrative

notice of the fact that the Appellant's employer offered health insurance through the GIC. Further, the plan summaries available on-line for GIC health insurance show that GIC health insurance for 2022 met Massachusetts' minimum creditable coverage standards. As a result, I conclude that the Appellant in fact had health insurance meeting MCC standards for the months of February through November 2022, and I therefore waive the Appellant's penalty for those months. Further, because Massachusetts law provides taxpayers a three-month grace period to make the transition between health insurance policies, I also find it appropriate to waive the Appellant's penalty for January and December 2022.

Reviewing the totality of evidence, I waive the Appellant's tax penalty in its entirety. See G.L. c. 111M, § 2 and 956 CMR 6.07(8).

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2022. 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 2022.

#### **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: PA22-761

**Appeal Decision:** The tax penalty is overturned.

**Hearing Issue:** Appeal of the 2022 Tax Year Penalty

**Hearing Date:** September 12, 2023

**Decision Date:** September 25, 2023

### **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 Massachusetts General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

### **HEARING RECORD**

The Appellant is a single person with no dependents. The Appellant appeared at the hearing, which was held by telephone, on September 12, 2023. 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 that were admitted into evidence:

- Exhibit 1: Appeal Case Information from Schedule HC 2022 (1 page).
- Exhibit 2: The Statement of Grounds for Appeal and supplemental documentation provided by the Appellant (18 pages).
- Exhibit 3: Health Connector Appeals Unit Notice of Hearing on September 12, 2023 (2 pages).
- Exhibit 4: Final Appeal Decision PA 19-72 (3 pages)
- Exhibit 5: Tax Penalty Appeal Decision PA 21-1814 (7 pages)

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant filed their federal income tax return a single person with no dependents claimed. (Exhibit 1).
2. The Appellant turned 34 in August 2022. (Exhibit 1).
3. The Appellant lived in Plymouth County throughout 2022. (Exhibit #1) and Appellant testimony.

4. According to the Appellant's Schedule HC, the Appellant's federal Adjusted Gross Income ("AGI") for 2022 was \$48,469. (Exhibit 1).
5. According to the Appellant's Schedule HC, the Appellant did not have health insurance that met Massachusetts' minimum creditable coverage (MCC) requirements in any month in 2022. The Appellant was assessed a twelve-month tax penalty for 2022. (Exhibit 1).
6. The Appellant filed an appeal of the twelve-month penalty assessment. The Appellant submitted a letter stating that in December 2021, they were involved in an accident that totaled their car and had to buy a new vehicle. The Appellant further stated in the letter that they were "scammed" in buying an unsafe vehicle and, as a result, they had to save money to purchase another new vehicle months later in order to get to work. The Appellant stated that the second new vehicle needed almost \$1,000 in repairs and that at the time, they were behind on rent payments and other household bills. The Appellant stated that inflation made it even more difficult to put money aside to pay for monthly bills. The Appellant stated that they now have health insurance through the Health Connector. (Exhibit 2).
7. The Appellant attached to their letter the following documents: late rent notices from March through December 2022; utility shut-off notices from August and December 2022; and a November 2022 car repair bill for \$950.89 on a 2008 vehicle. (Exhibit 2).
8. Earlier, the Appellant filed an appeal of a 12-month tax penalty for 2019. The Appellant's tax penalty for 2019 was waived in its entirety in Final Appeal Decision PA 19-72. (Exhibit 4).
9. The Appellant also filed an appeal of a 12-month tax penalty for 2021. In the decision on that appeal, Tax Penalty Appeal Decision PA 21-1814, the hearing officer found that in late 2021, the Appellant had received a RAFT stipend from another state agency totaling \$6594.68, portions of which were to pay past due rent and utility bills. (Exhibit 5).
10. The hearing officer waived the Appellant's 2021 tax penalty and wrote in Tax Penalty Appeal Decision PA 21-1814, "The RAFT stipend gave the Appellant a fresh start. I emphasize that [they] should use that fresh start to pursue health coverage as required by state law. Based on [their] more recent federal adjusted gross income, it appears that the Appellant should be able to afford health insurance coverage." (Exhibit 5).
11. A hearing on the Appellant's appeal took place telephonically on September 12, 2023. (Exhibit 3). The Appellant appeared at the hearing.
12. I take administrative notice of the financial information set forth in Tables 1 through 6 in the Department of Revenue ("DOR") 2022 Massachusetts Schedule HC Health Care Instruction 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 2022. Table

2 sets forth income at 300% of the federal poverty level, and Tables 5 and 6 set forth tax penalties in effect for 2022.

13. The Appellant's AGI of \$48,469 was greater than 300% of the Federal Poverty Level, which was \$38,640 for a single person in 2022. (See Table 2 of Schedule HC-2022 and 956 CMR 12.04).
14. According to Table 3 of Schedule HC for 2022, the Appellant, who filed their federal tax return as a single person with no dependents and claimed an adjusted gross income of \$48,469, could have afforded to pay \$306 per month for health insurance. The calculation is as follows: Table 3 states that a single person with no dependents whose 2022 AGI was between \$45,081 and \$51,520 could have spent 7.6% of their earnings on health insurance; 7.6% of \$48,469 is \$3,683, and one-twelfth of \$3,683 is \$306.
15. According to Table 4 of Schedule HC for 2022, the least expensive health insurance plan meeting Massachusetts' minimum creditable coverage requirements that a single person who was 33 and living in Plymouth County in January 2022 could have purchased cost \$290 per month.
16. The Appellant testified that they spent the entirety of 2022 juggling bills.
17. The Appellant testified that at the end of 2021, they crashed and totaled their car. The Appellant testified that they purchased a new vehicle for \$1800 that immediately had problems and for which they had to spend an additional \$600 on repairs. The Appellant testified that this vehicle was unsafe, so they saved money to purchase a new vehicle in July 2022 for \$2000. The Appellant testified that they then had to spend approximately \$1200 on repairs for this second new vehicle. The Appellant testified that they paid cash for these vehicles.
18. The Appellant testified that they estimated that they had the following monthly expenses in 2022: \$1125 for rent until April and \$1225 thereafter; \$100 for electricity; \$150 for internet; \$130 for phone; \$600 for food; \$20-30 for clothing; \$140 for car insurance until July and \$180 thereafter; and \$320 for gas.
19. The Appellant testified that they worked as a painter throughout 2022 and have had the same job for the past three to four years. The Appellant testified that their employer offered health insurance and that they believed they would have had to pay \$400 per month for this insurance.
20. The Appellant testified that their entire income in 2022 came from their job as a painter and that their hours were fairly regular, except for in the winter, when work slowed down.
21. The Appellant testified that they received a "financial bailout" in 2021 and that for three to six months, they were able to pay their bills. The Appellant testified that because they had to purchase two new cars in 2022, both of which needed repairs, they struggled to pay their bills and got behind on some of them.

22. The Appellant testified that they knew their utility company would let them get behind for a month or two, so sometimes they would skip paying utility bills.
23. The Appellant testified that they obtained health insurance through the Health Connector in early 2023 and are currently insured.

## **ANALYSIS AND CONCLUSIONS OF LAW**

The case is before me on the Appellant's appeal from the DOR's assessment of a twelve-month tax penalty because the Appellant's tax forms indicated that they did not have health insurance that met Massachusetts' minimum creditable coverage ("MCC") standards during any month in 2022. The issue to be decided is whether the tax penalty should be waived in whole or in part.

I begin by summarizing the legal rules underlying this appeal. 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 health insurance coverage "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority ("Connector"). G.L. c. 111M, § 2(a). Any health insurance policy must also satisfy the Massachusetts MCC standards for a taxpayer to avoid the penalty.

If these requirements are not met, a tax penalty is assessed for each of the months that the individual did not have health insurance as required by the individual mandate. There is, however, 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, § 2(b) and Administrative Information Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00 (clarifying that for purposes of penalty calculation, taxpayers will not be subject to penalty if they had lapses in coverage consisting of three or fewer consecutive calendar months). The Connector's regulations also provide for a waiver of the tax penalty in cases of hardship. See 956 CMR 6.07-08.

To determine if the penalty should be waived in whole or in part, there must be a determination as to whether affordable insurance that met MCC standards was available to the Appellant through employment, through a government-subsidized program, or through the private market. If affordable insurance was available, it must be determined whether such insurance was not in fact affordable to the Appellant because the Appellant experienced a hardship as defined in 956 CMR 6.08. These issues are all addressed below.

First, I conclude that affordable insurance meeting MCC requirements was not available to the Appellant through employment. According to Table 3 of the Schedule HC, the Appellant could have afforded to pay \$306 per month for health insurance. Finding of Fact No. 14. The Appellant credibly testified that it would have cost them approximately \$400 per month to obtain health insurance through their employer. Finding of Fact No. 19. Thus, because employer-based insurance would have cost the Appellant more than \$306 per month, it was not affordable for them.

Second, I conclude that the Appellant did not have access to affordable health insurance meeting MCC requirements through a government-subsidized program because their income exceeded 300% of the Federal Poverty Level. Finding of Fact No. 13.

Third, I conclude that although the Appellant theoretically had access to affordable health insurance meeting MCC requirements through the private market, this insurance was not actually affordable to the Appellant because the Appellant suffered a hardship. The least expensive plan the Appellant could have purchased on the private market cost \$290 per month, and, as stated earlier, according to Table 3 of the Schedule HC, the Appellant could have afforded to pay \$306 per month for health insurance. Findings of Fact Nos. 14 and 15. Thus, there was a \$16 dollar difference between what the Appellant theoretically could afford and the insurance plan that was available to the Appellant on the private market.

The Appellant testified that between the end of 2021 and July 2022, they spent a total of \$3800 in cash on two new vehicles and had to spend an additional \$1800 on repairs for these vehicles. Finding of Fact No. 17. I find the Appellant's testimony to be credible because they submitted a November 2022 repair bill for a 2008 vehicle for \$950.89. (Exhibit 2). I find that these car purchases and repairs were unanticipated but reasonable and necessary expenses that prevented the Appellant from purchasing health insurance. Had the Appellant purchased health insurance in this situation, it is likely that they would have suffered a serious deprivation of food, shelter, clothing, or other necessities. As a result, I find it appropriate to waive the Appellant's tax penalty in its entirety. See G.L. c. 111M, § 2 and 956 CMR 6.07(8) and 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 2022. 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. It is encouraging that the Appellant testified that they currently 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 2022.

#### **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: PA22-764

**Appeal Decision:** The tax penalty is overturned.

**Hearing Issue:** Appeal of the 2022 Tax Year Penalty

**Hearing Date:** September 12, 2023

**Decision Date:** September 30, 2023

### **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 Massachusetts General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

### **HEARING RECORD**

The Appellant is a single person with no dependents. The Appellant appeared at the hearing, which was held by telephone, on September 12, 2023. 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 that were admitted into evidence:

- Exhibit 1: Appeal Case Information from Schedule HC 2022 (1 page).
- Exhibit 2: The Statement of Grounds for Appeal and supplemental documentation provided by the Appellant (13 pages).
- Exhibit 3: Health Connector Appeals Unit Notice of Hearing on September 12, 2023 (2 pages).
- Exhibit 4: Final Appeal Decision PA 21-1862

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant filed their federal income tax return a single person with no dependents claimed. (Exhibit 1).
2. The Appellant turned 50 in January 2022. (Exhibit 1).
3. The Appellant lived in Worcester County throughout 2022. (Exhibit 1) and Appellant testimony.

4. According to the Appellant's Schedule HC, the Appellant's federal Adjusted Gross Income ("AGI") for 2022 was \$81,455. (Exhibit 1).
5. According to the Appellant's Schedule HC, the Appellant did not have health insurance that met Massachusetts' minimum creditable coverage (MCC) requirements in any month in 2022. The Appellant was assessed a twelve-month tax penalty for 2022. (Exhibit 1).
6. The Appellant checked the following box on their Statement of Grounds for Appeal, "During 2022, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing, or other necessities." (Exhibit 2).
7. The Appellant attached to their Statement of Grounds a letter stating that their expenses outweighed their income. The Appellant included a Financial Statement (Long Form) used by the Probate and Family Court Department. According to the Appellant's letter and the information in the Financial Statement, the Appellant's net weekly income was \$606.93, and their weekly expenses were \$814.74. The Appellant's letter further stated that their employer offered health insurance at a cost of \$98 per week and that they paid \$443 per week in child support and \$325 per week for rent. The Appellant's letter stated that the Appellant maintained a 3-bedroom apartment in order to retain visitation with their three sons. (Exhibit 2).
8. The Appellant was assessed a three-month penalty for not having health insurance meeting MCC requirements for six months in 2021. This penalty was waived on the grounds that the purchase of health insurance would have caused the Appellant to experience a "serious deprivation" of the necessities of life. The hearing officer noted in their decision that the Appellant had to pay \$1868 per month for child support, which significantly reduced the amount of money the Appellant had available for other necessities of life. (Exhibit 4).
9. A hearing on the Appellant's appeal took place telephonically on September 12, 2023. (Exhibit 3). The Appellant appeared at the hearing.
10. I take administrative notice of the financial information set forth in Tables 1 through 6 in the Department of Revenue ("DOR") 2022 Massachusetts Schedule HC Health Care Instruction 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 2022. Table 2 sets forth income at 300% of the federal poverty level, and Tables 5 and 6 set forth tax penalties in effect for 2022.
11. The Appellant's AGI of \$81,455 was greater than 300% of the Federal Poverty Level, which was \$38,640 for a single person in 2022. (See Table 2 of Schedule HC-2022 and 956 CMR 12.04).
12. According to Table 3 of Schedule HC for 2022, the Appellant, who filed their federal tax return as a single person with no dependents and claimed an adjusted gross income of \$81,455, could have afforded to pay \$543 per month for health insurance. The calculation is as follows: Table 3 states that a single person with no dependents whose 2022 AGI was \$51,521 or more could have

spent 8% of their earnings on health insurance; 8% of \$81,455 is \$6,516, and one-twelfth of \$6,516 is \$543.

13. According to Table 4 of Schedule HC for 2022, the least expensive health insurance plan meeting Massachusetts' minimum creditable coverage requirements that a single person who was 49 and living in Worcester County in January 2022 could have purchased cost \$364 per month.
14. The Appellant testified that they prepared the Financial Form submitted with their Statement of Grounds for the purposes of this appeal, not for the Probate and Family Court, and that they used the form because they thought it provided a helpful framework. The Appellant confirmed that the numbers listed in the form were for 2022 and showed their expenses on a weekly basis.
15. The Appellant testified that in 2022, they struggled to pay for rent, food, and child support and that their expenses exceeded their income. The Appellant testified that their monthly child support obligation was nearly \$2000 per month.
16. The Appellant testified that their employer offered health insurance for \$98 per month but that they could not afford it due to their other expenses.
17. The Appellant testified that they had to take a loan from their 401k plan several years ago to pay legal fees for their divorce. The Appellant testified that \$128.21 is taken out of their weekly paycheck to pay back this loan.
18. The Appellant testified that they recently started working at a new job that provides health insurance and does not require an employee contribution. The Appellant testified that they now have health insurance.
19. The Appellant testified that the two mothers of their three children claim their children as dependents on their taxes and that the Appellant cannot declare the children as dependents.

## **ANALYSIS AND CONCLUSIONS OF LAW**

The case is before me on the Appellant's appeal from the DOR's assessment of a twelve-month tax penalty because the Appellant's tax forms indicated that they did not have health insurance that met Massachusetts' minimum creditable coverage ("MCC") standards during any month in 2022. The issue to be decided is whether the tax penalty should be waived in whole or in part.

I begin by summarizing the legal rules underlying this appeal. 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 health insurance coverage "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority ("Connector"). G.L. c. 111M, § 2(a). Any health insurance policy must also satisfy the Massachusetts MCC standards for a taxpayer to avoid the penalty.



If these requirements are not met, a tax penalty is assessed for each of the months that the individual did not have health insurance as required by the individual mandate. There is, however, 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, § 2(b) and Administrative Information Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00 (clarifying that for purposes of penalty calculation, taxpayers will not be subject to penalty if they had lapses in coverage consisting of three or fewer consecutive calendar months). The Connector's regulations also provide for a waiver of the tax penalty in cases of hardship. See 956 CMR 6.07-08.

To determine if the penalty should be waived in whole or in part, there must be a determination as to whether affordable insurance that met MCC standards was available to the Appellant through a government-subsidized program, through employment, or through the private market. If affordable insurance was available, it must be determined whether such insurance was not in fact affordable to the Appellant because the Appellant experienced a hardship as defined in 956 CMR 6.08. Each of these issues is addressed in turn.

First, I conclude that the Appellant did not have access to affordable health insurance meeting MCC standards through a government-subsidized program because their AGI exceeded 300% of the Federal Poverty Level. Finding of Fact No. 11.

Second, I conclude that the Appellant theoretically had access to affordable health insurance meeting MCC standards through employment and the private market. According to Table 3 of the Schedule HC, the Appellant could have afforded to pay \$543 per month for health insurance. Finding of Fact No. 12. According to Table 4, the Appellant could have purchased a plan on the private market for \$364 per month, and the Appellant testified that their employer offered health insurance for \$98 per week (or \$424 per month). Findings of Fact Nos. 13 and 16. Thus, health insurance was theoretically affordable to the Appellant.

However, I find that the Appellant suffered a hardship such that the health insurance available to them on the private market and through their employer was not actually affordable to them. The Appellant credibly testified that they paid nearly \$2000 per month in child support. Finding of Fact No. 15. The Financial Statement provided by the Appellant with their Statement of Grounds listed the Appellant's weekly expenses, all of which seemed reasonable, and demonstrated that the Appellant had an income deficit. (Exhibit 2). Reviewing the totality of the evidence, I find, as did the hearing officer in the Appellant's 2021 appeal, that had the Appellant purchased health insurance, they likely would have suffered a serious deprivation of food, shelter, clothing or other necessities. I therefore waive the Appellant's tax penalty in its entirety. See G.L. c. 111M, § 2 and 956 CMR 6.07(8) and 608(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 2022. 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 2022.

**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: PA21-2650

**Appeal Decision:** The tax penalty is overturned.

**Hearing Issue:** Appeal of the 2021 Tax Year Penalty

**Hearing Date:** August 7, 2023

**Decision Date:** September 7, 2023

### **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 Massachusetts General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on August 7, 2023. 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 was left open for the Appellant to provide additional documentation, which the Appellant so provided. The hearing record consists of the Appellant's testimony and the following documents that were admitted into evidence:

- Exhibit 1: Appeal Case Information from Schedule HC 2021 (1 page).
- Exhibit 2: Notice of August 7, 2023 hearing (2 pages).
- Exhibit 3: Notice of dismissal of appeal, dated September 2, 2022 (2 pages).
- Exhibit 4: Open record request following August 7, 2023 hearing
- Exhibit 5: Documents provided by the Appellant on September 5, 2023 in response to the open record request (2 pages).

### **FINDINGS OF FACT**

The record shows, and I so find:

1. The Appellant, who turned age 26 in March 2021, filed their federal income tax return as a single person with no dependents claimed. (Exhibit 1).

2. The Appellant lived in Suffolk County from March 1, 2021 to December 31, 2021. (Exhibit 1) and Appellant Testimony.
3. The Appellant's federal Adjusted Gross Income ("AGI") for 2021 was \$77,516. (Exhibit 1).
4. According to the Appellant's Schedule HC, the Appellant did not have health insurance that met Massachusetts' minimum creditable coverage (MCC) requirements for any month in 2021. The Appellant was assessed a seven-month tax penalty for 2021. (Exhibit 1).
5. On September 2, 2022, the Health Connector dismissed the Appellant's appeal of their 2021 tax penalty because they had not filed a Statement of Grounds for their appeal. (Exhibit 3).
6. On September 28, 2022, the Health Connector approved the Appellant's request to vacate the dismissal of their appeal. (Exhibit 1).
7. A hearing on the Appellant's appeal took place telephonically on August 7, 2023. (Exhibit 2). The Appellant appeared at the hearing.
8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the Department of Revenue ("DOR") 2021 Massachusetts Schedule HC Health Care Instruction 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 2021. Table 2 sets forth income at 300% of the federal poverty level, and Tables 5 and 6 set forth tax penalties in effect for 2021.
9. The Appellant's AGI of \$77,516 was greater than 300% of the Federal Poverty Level, which was \$38,280 for a single person in 2021. (See Table 2 of Schedule HC-2021 and 956 CMR 12.04).
10. According to Table 3 of Schedule HC for 2021, the Appellant, who filed their federal tax return as a single person with no dependents and claimed an adjusted gross income of \$77,516, could have afforded to pay \$516 per month for health insurance. The calculation is as follows: Table 3 states that a single person with no dependents whose 2021 AGI was \$51,041 or more could have spent 8% of their earnings on health insurance; 8% of \$77,516 is \$6,201; and one-twelfth of \$6,201 is \$516.
11. According to Table 4 of Schedule HC for 2021, the least expensive health insurance plan meeting Massachusetts' minimum creditable coverage requirements that a single person with no dependents living in Middlesex County and who was 25 years old at the beginning of March 2021 could have purchased on the private market cost \$263 per month.
12. The Appellant testified that they started a new job in May 2021 and that they believed that they had enrolled in health insurance on-line when they commenced employment.
13. The Appellant testified that they did not have to go to the doctor for most of 2021.

14. The Appellant testified that when they had to go to the doctor later in 2021, they could not find their health insurance policy number and contacted their employer's human resources department.
15. The Appellant testified that their human resources department told them that there was no record of them having enrolled in employer-sponsored health insurance.
16. The Appellant testified that there were Slack messages between them and their human resources department regarding their health insurance.
17. I left the record open for the Appellant to provide evidence demonstrating that they believed they had enrolled in employer-sponsored health insurance in May 2021. (Exhibit 4).
18. On September 5, 2023, the Appellant provided screenshots of communications they had with their employer on October 25 and 26, 2021 in which the Appellant requested information on their health insurance, and their employer told them they were not in fact enrolled in health insurance. In the communications, the Appellant states their belief that they had enrolled in health insurance during their first 30 days of employment. The Appellant's employer tells the Appellant that they can no longer enroll in health insurance for 2021 but that open enrollment for health insurance in 2022 will soon begin. (Exhibit 5).
19. The Appellant also provided screenshots of communications with their employer on November 15, 2021 in which the Appellant sought and obtained confirmation from their employer that they had successfully enrolled in employer-sponsored health insurance that would begin on January 1, 2022.

## **ANALYSIS AND CONCLUSIONS OF LAW**

The case is before me on the Appellant's appeal from the DOR's assessment of a seven-month tax penalty, which was assessed against the Appellant because the Appellant's tax forms indicated that they did not have health insurance that met minimum creditable coverage ("MCC") standards during the months in which they lived in Massachusetts in 2021. The issue to be decided is whether the tax penalty should be waived in whole or in part.

I begin by summarizing the legal rules underlying this appeal. 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 health insurance coverage "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority ("Connector"). G.L. c. 111M, § 2(a). Any health insurance policy must also satisfy the Massachusetts MCC standards for a taxpayer to avoid the penalty.

If these requirements are not met, a tax penalty is assessed for each of the months that the individual did not have health insurance as required by the individual mandate. There is, however, 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, § 2(b) and Administrative Information Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00 (clarifying that for purposes of penalty calculation, taxpayers will not be subject to a penalty if they had lapses in coverage consisting of three or fewer consecutive calendar months). The Connector's regulations also provide for a waiver of the tax penalty in cases of hardship. See 956 CMR 6.07-08.

To determine if the penalty should be waived in whole or in part, there must be a determination as to whether affordable insurance that met MCC standards was available to the Appellant through a government-subsidized program, through the private insurance market, or through employment. If affordable insurance was available, it must be determined whether such insurance was not in fact affordable to the Appellant because the Appellant experienced a hardship as defined in 956 CMR 6.08. These issues are all addressed below.

First, I conclude that the Appellant could not have obtained affordable health insurance meeting MCC standards through a government-subsidized program because their income exceeded 300% of the Federal Poverty Level. Finding of Fact No. 9.

Second, I conclude that the Appellant theoretically had access to affordable health insurance meeting MCC standards through the private market because the Appellant could have afforded to pay \$516 per month for health insurance, and there was a plan available to them on the private market for \$263 per month. Findings of Fact Nos. 10 and 11. However, I conclude that the Appellant did not have actual access to this private health insurance because they had a genuine, good faith belief that they were enrolled in employer-sponsored health insurance. Findings of Fact Nos. 12 and 18. This belief in turn effectively blocked the Appellant's access to this private health insurance. The Appellant had no need to explore the purchase of private health insurance because they thought they had successfully enrolled in employer-sponsored health insurance.

Third, based on the Appellant's testimony and the screenshots they provided, I conclude that the Appellant had access to employer-sponsored health insurance during the months they lived in Massachusetts. Findings of Fact Nos. 12, 18-19. The record does not conclusively establish whether this employer-sponsored health insurance met MCC standards. However, the record does show that until October, the Appellant had a genuine, good faith belief that they had in fact enrolled in such health insurance within 30 days after commencing employment in May 2021 and that they quickly enrolled in employer-sponsored health insurance for 2022 when open enrollment began. Findings of Fact Nos. 12, 18-19. Therefore, assuming, arguendo, that the Appellant's employer-sponsored health insurance did meet MCC standards, I find it appropriate to waive any penalty imposed on the Appellant based on their failure to access it.

Reviewing the totality of the evidence, I conclude that the Appellant did not have effective access to affordable health insurance meeting MCC requirements through a government-sponsored program or through the private market for the months in which they lived in Massachusetts. I further find that it is

appropriate to waive any penalty based on the Appellant's failure to enroll in employer-sponsored health insurance for those months. I therefore waive the Appellant's seven-month penalty in its entirety. See G.L. c. 111M, § 2 and 956 CMR 6.07(8) and 6.08(3).

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2021. 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:   7        Number of Months Assessed:   0  

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2021.

**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: PA21-2666

**Appeal Decision:** The tax penalty is overturned.

**Hearing Issue:** Appeal of the 2021 Tax Year Penalty

**Hearing Date:** August 10, 2023

**Decision Date:** September 21, 2023

### **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 Massachusetts General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

### **HEARING RECORD**

The Appellant appeared at the hearing, which was held by telephone, on August 10, 2023. 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 was left open for the Appellant to provide additional documentation, which the Appellant so provided. The hearing record consists of the Appellant's testimony and the following documents that were admitted into evidence:

- Exhibit 1: Appeal Case Information from Schedule HC 2021 (1 page).
- Exhibit 2: October 19, 2022 letter from Appellant requesting that dismissal be vacated and attaching 2021 Schedule HC (2 pages).
- Exhibit 3: Letter from Appellant requesting that dismissal be vacated, received by Health Connector on October 13, 2022 (2 pages).
- Exhibit 4: Notice of August 10, 2023 hearing (2 pages).
- Exhibit 5: Open record request following August 10, 2023 hearing
- Exhibit 6: September 3, 2023 email from Appellant submitting documents in response to open record request
- Exhibit 7: August 29, 2023 letter to Appellant from New York-based health insurance plan (4 pages)
- Exhibit 8: August 29, 2023 certificate of coverage for Appellant from New York-based health insurance plan (2 pages)
- Exhibit 9: "Health Benefits Provided" document
- Exhibit 10: July 2014 Summary Plan Description



## FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant, who turned age 22 in February 2021, filed their federal income tax return as a single person with no dependents claimed. (Exhibit 1).
2. The Appellant's federal Adjusted Gross Income ("AGI") for 2021 was \$52,240. (Exhibit 1).
3. According to the Appellant's Schedule HC, the Appellant did not have health insurance that met Massachusetts' minimum creditable coverage (MCC) requirements for any month in 2021. The Appellant was assessed a twelve-month tax penalty for 2021. (Exhibit 1).
4. On September 16, 2022, the Health Connector dismissed the Appellant's appeal of their 2021 tax penalty because they had not filed a Statement of Grounds for their appeal. (Exhibit 1).
5. The Appellant submitted letters seeking to have the dismissal of their appeal vacated. (Exhibits 2 and 3).
6. On October 19, 2022, the Health Connector approved the Appellant's request to vacate the dismissal of their appeal. (Exhibit 1).
7. A hearing on the Appellant's appeal took place telephonically on August 10, 2023. (Exhibit 2). The Appellant appeared at the hearing.
8. I take administrative notice of the financial information set forth in Tables 1 through 6 in the Department of Revenue ("DOR") 2021 Massachusetts Schedule HC Health Care Instruction 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 2021. Table 2 sets forth income at 300% of the federal poverty level, and Tables 5 and 6 set forth tax penalties in effect for 2021.
9. The Appellant's AGI of \$52,240 was greater than 300% of the Federal Poverty Level, which was \$38,280 for a single person in 2021. (See Table 2 of Schedule HC-2021 and 956 CMR 12.04).
10. According to Table 3 of Schedule HC for 2021, the Appellant, who filed their federal tax return as a single person with no dependents and claimed an adjusted gross income of \$52,240 could have afforded to pay \$348 per month for health insurance. The calculation is as follows: Table 3 states that a single person with no dependents whose 2021 AGI was \$51,041 or more could have spent 8% of their earnings on health insurance; 8% of \$52,240 is \$4,179; and one-twelfth of \$4,179 is \$348.
11. According to Table 4 of Schedule HC for 2021, the least expensive health insurance plan meeting Massachusetts' minimum creditable coverage requirements that a single person with no

dependents living in Middlesex County and who was 21 years old at the beginning of January 2021 could have purchased on the private market cost \$263 per month.

12. The Appellant testified that they had health insurance throughout 2021 through their father's New York-based health insurance plan.
13. I left the record open for the Appellant to provide documentation showing the months that they were enrolled in health insurance in 2021 and documentation that would enable me to determine the extent to which such health insurance met Massachusetts' minimum creditable coverage standards.
14. In response to my open record request, the Appellant submitted documents showing that they were enrolled in a New York-based health insurance plan throughout 2021. One document showed that the Appellant was enrolled in health insurance until July 31, 2021. (Exhibit 7). The other document showed that the Appellant was enrolled in health insurance after July 31, 2021. (Exhibit 8).
15. The Appellant also submitted a June 2014 Summary Plan Description ("SPD") for the health insurance plan. (Exhibit 10).
16. The SPD states that the first 120 days of hospitalization are covered in full for a semi-private room, and the next 180 days of hospitalization are covered at 50% of private room rates. (Exhibit 10, p. 8).
17. None of the information submitted by the Appellant in response to the open record request provided information on whether the health insurance plan in which they were enrolled had a cap on annual deductibles or a maximum amount of out-of-pocket spending.

## **ANALYSIS AND CONCLUSIONS OF LAW**

The case is before me on the Appellant's appeal from the DOR's assessment of a twelve-month tax penalty, which was assessed against the Appellant because the Appellant's tax forms indicated that they did not have health insurance that met minimum creditable coverage ("MCC") standards for any month in 2021. The issue to be decided is whether the tax penalty should be waived in whole or in part.

I begin by summarizing the legal rules underlying this appeal. 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 health insurance coverage "[s]o long as it is deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority ("Connector"). G.L. c. 111M, § 2(a). Any health insurance policy must also satisfy the Massachusetts MCC standards for a taxpayer to avoid the penalty.

If these requirements are not met, a tax penalty is assessed for each of the months that the individual did not have health insurance as required by the individual mandate. There is, however, 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, § 2(b) and Administrative Information Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00 (clarifying that for purposes of penalty calculation, taxpayers will not be subject to a penalty if they had lapses in coverage consisting of three or fewer consecutive calendar months). The Connector's regulations also provide for a waiver of the tax penalty in cases of hardship. See 956 CMR 6.07-08.

To determine if the penalty should be waived in whole or in part, there must be a determination as to whether affordable insurance that met MCC standards was available to the Appellant through a government-subsidized program, through the private insurance market, or through employment. If affordable insurance was available, it must be determined whether such insurance was not in fact affordable to the Appellant because the Appellant experienced a hardship as defined in 956 CMR 6.08.

Here, the Appellant testified that they had health insurance throughout 2021 through their father's New York-based health insurance plan. Finding of Fact No. 12. I left the record open for the Appellant to provide documentation that the Appellant was enrolled in health insurance throughout 2021 and documentation that would enable me to determine whether such health insurance met MCC standards. Finding of Fact No. 13. In response to my open record request, the Appellant provided documentation showing that they were enrolled in health insurance through a New York-based plan throughout 2021. Finding of Fact No. 14.

The Appellant also provided a Summary Plan Description ("SPD") for the health insurance plan in which they were enrolled. Finding of Fact No. 15. The SPD is missing some key information for the analysis as to whether and to what extent it met MCC standards. For example, the SPD does not state whether the plan has a cap on deductibles or a maximum for out-of-pocket spending. Finding of Fact No. 17; 956 The SPD states that the plan covers the first 120 days of a hospital stay in a semi-private room, but that it only covers 50% of the cost of the next 180 days. Finding of Fact No. 16. This suggests that the plan does not meet MCC standards. 956 CMR 5.03.

The Appellant theoretically had access to affordable health insurance on the private market because they could have afforded to pay \$348 per month for health insurance, and they could have purchased a plan on the private market for \$263 per month. Findings of Fact No. 10 and 11. However, I find that the Appellant effectively did not have access to this private insurance because they had a genuine, good faith belief that they had the requisite health insurance. Because the Appellant had this belief, they had no reason to explore the purchase of health insurance on the private market.

Reviewing the totality of the evidence, I conclude it is appropriate to waive the Appellant's twelve-month penalty in its entirety because they effectively did not have access to affordable health insurance meeting MCC requirements. See G.L. c. 111M, § 2 and 956 CMR 6.07(8) and 6.08(3).

The Appellant should note that the waiver of their penalty is based upon the facts that I have determined to be true in 2021. 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 2021.

**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