**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jane Adams :

:

v. : C-2013-2345212

:

UGI Utilities, Inc. :

**INITIAL DECISION**

Before

Joel H. Cheskis

Administrative Law Judge

HISTORY OF THE PROCEEDING

On January 19, 2013, Jane Adams filed with the Pennsylvania Public Utility Commission (Commission) a formal Complaint against UGI Utilities Inc. (UGI or “the Company”) at docket number C-2013-2345212. The Complaint was an untimely appeal of a decision of the Commission’s Bureau of Consumer Services (BCS) at case number 3012432. In her Complaint, Ms. Adams averred that UGI is holding her responsible for a balance accrued on her cousin’s account and threatened Ms. Adams with termination. Ms. Adams attached a one-page typed explanation of where she lived and why during the period that the balance accrued to explain why she felt she was not responsible for her cousin’s balance and requested that her cousin’s balance be removed from her bill.

On February 18, 2013, UGI filed an Answer to Ms. Adams’ Complaint. In its Answer, UGI admitted that it demanded payment on the account and provided a Notice of Pending Termination of Service when Ms. Adams refused to pay the arrearage. UGI averred that it has correctly billed Ms. Adams in accordance with its approved tariffs and that Ms. Adams is legally required to pay the outstanding balance. UGI further averred that Ms. Adams was an adult occupant at the premises where the outstanding balance of $2,305.93 accrued, benefitted from service and is therefore jointly and severally liable to pay the arrearage.

On March 21, 2013, the Commission issued a Telephone Hearing Notice establishing an Initial Telephonic Hearing for this matter for Tuesday, April 23, 2013 and assigning me as the Presiding Officer. A Prehearing Order was issued dated March 25, 2013 setting forth various rules that would govern the hearing.

The Hearing was held on April 23, 2013 as scheduled. Ms. Adams appeared *pro se* and presented oral testimony. Mr. Larry Crayne, Esquire appeared on behalf of UGI and presented the testimony of one witness who sponsored nine exhibits. A transcript of forty-two pages was created. The record closed in this case on May 23, 2013 when the transcript was submitted to the Commission.

Ms. Adams’ Complaint is now ready for disposition. As discussed further below, Ms. Adams’ Complaint will be sustained.

FINDINGS OF FACT

1. The Complainant in this case is Jane Adams.
2. The Respondent in this case is UGI Utilities, Inc.
3. The Service Address is 317 Woodland Avenue, New Cumberland, PA.
4. Ms. Adams was the caretaker for her cousin, Mr. Leiboult, who lived at the Service Address. Tr. 7-12.
5. Mr. Leiboult was bipolar, suffered from grand mal seizures and died in December, 2012. Tr. 7-8, 13.
6. Ms. Adams paid Mr. Leiboult’s bills at the Service Address because he was too ill to pay them. Tr. 7, 9, 12, 13.
7. Ms. Adams never owned the property at the Service Address. Tr. 7, 9.
8. Mr. Leiboult had other roommates at the Service Address. Tr. 7, 9.
9. Ms. Adams lived in three properties during the time she was taking care of Mr. Leiboult, including with her mother, who she also took care of, and with her fiancé. Tr. 7-9, 11, 12.
10. Ms. Adams filed for bankruptcy in March, 2012. Tr. 8.
11. Amy Wynn has been a compliance specialist with UGI for 15 years. Tr. 27.
12. UGI Exhibit 1 is a Statement of Account for service provided at the Service Address. Tr. 28; UGI Exh. No. 1.
13. UGI Exhibit 1 shows an arrearage of $2,599.52 on the account at the Service Address. Tr. 28; UGI Exh. No. 1.
14. $2,305.93 was transferred to Ms. Adams’ account at 1360 Stillhouse Lane, Etters, PA. Tr. 30; UGI Exh. No. 1.
15. UGI Exhibit 2 is an Informal Complaint filed at the Commission’s Bureau of Consumer Services on September 13, 2010 which notes that Mr. Leiboult indicated that there are two adults living at the Service Address. Tr. 30; UGI Exh. No. 2.
16. UGI Exhibit 3 is the Payment Arrangement History for the Service Address. Tr. 30; UGI Exh. No. 3.
17. UGI Exhibit 4 is an Experian Credit inquiry for Ms. Adams. Tr. 31; UGI Exh. No. 4.
18. UGI Exhibit 4 lists the Service Address for Ms. Adams’ residence from December, 2009 to February, 2012. Tr. 31; UGI Exh. No. 4.
19. UGI Exhibit 4 indicated that Ms. Adams lived at 1360 Stillhouse Lane in Etters, PA from January, 2008 to September, 2012. UGI Exh. No. 4.
20. UGI Exhibit 5 is a UGI document dated September 16, 2011 that lists Mr. Leiboult and Ms. Adams as the occupants of the Service Address. Tr. 32; UGI Exh. No. 5.
21. UGI Exhibit 6 is a print out of the intake form for UGI’s Customer Assistance Program (CAP) for Mr. Leiboult dated June 25, 2010 that UGI uses to determine a customer’s eligibility for CAP. Tr. 32; UGI Exh. No. 6.
22. UGI Exhibit 6 lists Ms. Adams as a resident at the Service Address. Tr. 32; UGI Exh. No. 6.
23. UGI Exhibit 7 is a letter from UGI to Ms. Adams dated August 17, 2012 explaining the Company’s position that Ms. Adams is responsible for the balance of $2,305.92. Tr. 33; UGI Exh. No. 7.
24. UGI Exhibit 8 is a copy of UGI’s tariff regarding prior debts and transfer of account and indicates the various means UGI may use to determine a customer’s liability for an outstanding balance. Tr. 33-34; UGI Exh. No. 8.
25. UGI Exhibit 9 is a copy of the decision of the Commission’s Bureau of Consumer Services regarding Ms. Adams’ informal complaint finding Ms. Adams liable for the balance. Tr. 34; UGI Exh. No. 9.

DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa. C.S. § 332(a). "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950). In this proceeding, Ms. Adams seeks a finding from the Commission that she is not responsible for the balance that accrued at the Service Address because she did not live there when the balance accrued but was only acting as a caretaker for her cousin who lived there. Ms. Adams, therefore, has the burden of proof in this proceeding.

If a complainant establishes a prima faciecase, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. Replogle v. Pennsylvania Electric Company, 54 Pa. PUC 528 (1980) (Replogle), and Waldron v. Philadelphia Electric Company, 54 Pa. PUC 98 (1980).

The decision of the Commission must be supported by substantial evidence. 2 Pa. C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. P.U.C., 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa. Superior Ct. 278, 166 A.2d 96 (1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 85 Pa. Cmwlth Ct. 23, 480 A.2d 382 (1984).

In this case, Ms. Adams testified that she should not be responsible for the balance that accrued at the Service Address because she did not live there during that period but, rather, was caring for her ailing cousin. Tr. 7. Ms. Adams explained that there was no one else to care for her cousin during that time and that, as a result, she would spend significant amounts of time, including overnight, helping him with various things including taking medication, attending doctor’s appointments, paying bills and more. Tr. 7-12. Ms. Adams added that she was also taking care of her mother during that period and that she was staying at three properties during that time: her fiancé’s home, her mother’s home and the Service Address where her cousin lived. Tr. 7-9, 11, 12. Ms. Adams explained that this was a very stressful experience for her and that she nearly had a nervous breakdown as a result. Tr. 25. Therefore, Ms. Adams’ argument essentially is that she should not be responsible for gas usage incurred at the Service Address during the time she was helping her cousin through significant medical problems because she did not live there, even though she spent a significant amount of time at the Service Address, including some overnight stays.

In response, UGI presented the testimony of Amy Wynn, a compliance specialist for UGI. Tr. 27. Ms. Wynn sponsored various exhibits that supported the Company’s position that Ms. Adams is responsible for the $2,305.93 balance that accrued at the Service Address. For example, Ms. Wynn discussed UGI Exhibit 2, a report of an informal complaint filed by Mr. Leiboult with the Commission, which indicates that two adults lived at the Service Address. Tr. 30; UGI Exh. No. 2. Additionally, Ms. Wynn testified regarding the Experian Credit inquiry report that listed Ms. Adams as living at the Service Address from December, 2009 to February, 2012. Tr. 31; UGI Exh. 4. Ms. Wynn also discussed the UGI CAP intake form that listed Ms. Adams as having lived at the Service Address. Tr. 32; UGI Exh. No. 6.

In response to Ms. Wynn’s testimony, however, Ms. Adams provided reasonable explanations why the Company’s arguments should be rejected. For example, when asked why Ms. Adams was listed as having lived at the Service Address on UGI Exhibit 4, the Experian Credit report, Ms. Adams noted that the same credit report also had her living at a different address during the same period. Tr. 16-17; UGI Exh. No. 4. In fact, UGI Exhibit 4 indicates that Ms. Adams lived at 1360 Stillhouse Lane in Etters, PA from January, 2008 to September, 2012. UGI Exh. No. 4. As a result, UGI Exhibit 4 corroborates Ms. Adams’ argument as much as it supports UGI’s argument. Further, Ms. Adams noted that, in her experience as a realtor, there is often incorrect information contained on credit reports and that may be why her name appeared on the credit report. Ms. Adams otherwise had no idea why the credit report had her as living at the Service Address from December, 2009 to February, 2012. Tr. 16.

Similarly, when asked about UGI Exhibit 5, a UGI internal report that listed Ms. Adams as an occupant at the Service Address, Ms. Adams reiterated that Mr. Leiboult was very ill and surmised that her name may have been listed there because Mr. Leiboult incorrectly indicated to the Company that she lived there. Ms. Adams testified that “Mr. Leiboult was bipolar. He didn’t know what was going on and died.” Tr. 20. Ms. Adams added that Mr. Leiboult must have spoken with UGI at a time when she was not present and told them she lived there. Tr. 20. Similarly, with regard to UGI Exhibit 6, the intake form for UGI’s CAP, Ms. Adams testified that she did not help Mr. Leiboult provide this information to UGI and, again, surmised that Mr. Leiboult may have incorrectly told UGI that she lived at the Service Address. Tr. 22. Ms. Adams added that this is explained by the fact that there is no financial information listed for Ms. Adams on the form. Tr. 21-23; UGI Exh. No. 6. Ms. Adams noted the additional incomplete information contained in the form in support of her position that Mr. Leiboult provided UGI the information and did not always have correct information. Tr. 24. That is, had Ms. Adams helped Mr. Leiboult complete the information on the form, she would have given complete information.

Furthermore, UGI’s reliance on the report of the Commission’s Bureau of Consumer Services (BCS) in response to Ms. Adams’ informal complaint, *see*, UGI Exh. No. 9, in support of its position that Ms. Adams was a resident at the Service Address should be rejected. Review of informal complaint decisions are heard *de novo* by an administrative law judge. 52 Pa. Code § 56.403(a). A hearing *de novo* is a reviewing court’s decisions of a matter anew, giving no deference to a lower court’s findings, conducted as if the original hearing had not taken place. Black’s Law Dictionary, 738 (8th Ed. 1999). Therefore, the fact that BCS determined that Ms. Adams was a resident at the Service Address and liable for the outstanding balance accrued there is not controlling in this case.

As a result, Ms. Adams has effectively rebutted each of UGI’s arguments. As noted above, if the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. Replogle. In this case, Ms. Adams has met that burden. After having demonstrated why she should not be responsible for the outstanding balance that accrued at the Service Address, Ms. Adams also effectively rebutted each of UGI’s reasons why she should be held responsible for that outstanding balance. Ms. Adams has therefore met her burden under Replogle and her Complaint should be sustained.

The specific facts and circumstances of this case support sustaining Ms. Adams’ Complaint. Most notably, Ms. Adams testified that Mr. Leiboult was bipolar and suffered grand mal seizures. It is therefore reasonable that he would tell UGI that Ms. Adams lived at the Service Address when she was at the Service Address only for the purpose of caring for her ailing cousin. Given Mr. Leiboult’s significant medical issues and the conditions under which Ms. Adams was caring for him, Ms. Adams’ responses are not unreasonable and effectively rebut the evidence presented by UGI.

Ms. Adams did testify that she stayed at the Service Address overnight, but that is also not unreasonable when caring for someone with significant medical issues. Such instances do not, however, justify making Ms. Adams responsible for the utility gas service at the Service Address as if she were benefitting from the gas service. Ms. Adams should be commended for her actions in this case with regard to caring for her cousin, not saddled with a bill for $2,300 worth of gas service. Ms. Adams also testified about a lease at the Service Address, Tr. 8, 9, 25, but it is unclear from the record evidence the specifics of that statement, including whether Ms. Adams’ name appeared on the lease during the time the outstanding balance accrued. UGI did not present any evidence demonstrating that Ms. Adams’ name appeared on the lease during the relevant time period and there is not sufficient evidence that supports such a finding that warrants making her responsible for the outstanding balance.

Additionally, upon examining the facts and circumstances surrounding this particular situation, UGI could have taken other steps to collect the outstanding balance that had accrued. This is especially true given the fact that there were other people living at the Service Address during the relevant period.

Finally, Chapter 14 of the Public Utility Code defines a “customer” as “a natural person in whose name a residential service account is listed and who is primarily responsible for payment of bills rendered for the service or any adult occupant whose name appears on the mortgage, deed or lease of the property for which the residential utility service is requested.” 66 Pa. C.S. § 1403. Similarly, UGI’s tariff provides multiple ways the Company can determine a customer’s liability for any outstanding balance, including valid mortgage, lease or deeds or use of commercially available consumer credit reporting service. UGI Exh. No. 8; *see also*, 52 Pa. Code §56.35(b)(2). Yet, UGI has not provided substantial record evidence demonstrating under Chapter 14 or its own tariff that Ms. Adams was a customer at the Service Address and should therefore be held liable for the outstanding balance that accrued there.

As such, Ms. Adams has effectively rebutted the arguments presented by UGI regarding the Company’s position that she should be responsible for the outstanding balance that accrued at the Service Address. After having demonstrated why she believes she should not be responsible for the outstanding balance that accrued at the Service Address, Ms. Adams also effectively rebutted each of UGI’s reasons why she should be held responsible for that outstanding balance. Ms. Adams has therefore met her burden under Replogle and her Complaint should be sustained.

CONCLUSIONS OF LAW

1. Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa. C.S. § 332(a).
2. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950).
3. If a complainant establishes a prima faciecase, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. Replogle v. Pennsylvania Electric Company, 54 Pa. PUC 528 (1980), and Waldron v. Philadelphia Electric Company, 54 Pa. PUC 98 (1980).
4. The decision of the Commission must be supported by substantial evidence. 2 Pa. C.S. § 704.
5. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. P.U.C., 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa. Superior Ct. 278, 166 A.2d 96 (1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 85 Pa. Cmwlth Ct. 23, 480 A.2d 382 (1984).
6. Review of informal complaint decisions are heard de novo by an administrative law judge. 52 Pa. Code § 56.403(a).
7. Chapter 14 of the Public Utility Code defines a “customer” as “a natural person in whose name a residential service account is listed and who is primarily responsible for payment of bills rendered for the service or any adult occupant whose name appears on the mortgage, deed or lease of the property for which the residential utility service is requested.” 66 Pa. C.S. § 1403.
8. UGI’s tariff provides multiple ways the Company can determine a customer’s liability for any outstanding balance, including valid mortgage, lease or deeds or use of commercially available consumer credit reporting service. UGI Exh. No. 8; *see also*, 52 Pa. Code §56.35(b)(2).
9. Ms. Adams’ formal Complaint against UGI should be sustained.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal Complaint filed by Jane Adams against UGI Utilities, Inc. at Docket Number C-2013-2345212 and dated January 19, 2013 is hereby sustained.
2. That UGI Utilities, Inc. shall remove from Jane Adams’ account the $2,305.93 balance that was transferred from the account at 317 Woodland Avenue, New Cumberland, PA.
3. That this matter be marked closed.

Date: July 15, 2013 \_\_\_\_\_\_/s/\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Joel H. Cheskis

Administrative Law Judge