

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kimekia Mayo

v.

Philadelphia Gas Works

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C-2016-2562263

INITIAL DECISION ON REMAND

Before
David A. Salapa
Administrative Law Judge

INTRODUCTION

This decision dismisses a complaint for failure of the customer to appear at the telephonic hearing and prosecute the complaint.

HISTORY OF THE PROCEEDING

On August 12, 2016, Kimekia Mayo (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (Respondent). The complaint alleges that the Complainant is not responsible for charges on her natural gas utility bills incurred in 2004.

According to the complaint, the Complainant was a ward of the state under the care of the Department of Human Services (DHS) in 2004. The complaint alleges that in 2004 the Complainant was unable to take care of herself.

The complaint further asserts that when the Complainant was no longer under the care of DHS, she received a bill from the Respondent that was so high she has never been able to pay off her balance. Included in this bill were charges incurred in 2004. The complaint requests that the Commission direct the Respondent to remove charges on her bill incurred from 2004 to 2006.

The Respondent filed an answer with new matter and preliminary objections on September 7, 2016. The answer asserts that on August 10, 2016, the Complainant requested that service to the address shown on the complaint be terminated. According to the answer, the Respondent complied with the Complainant's request.

The new matter asserts that the Complainant's complaint is barred by the statute of limitations at 66 Pa.C.S. § 3314. The new matter argues that 66 Pa.C.S. § 3314 divests the Commission of jurisdiction to hear an action brought more than three years from the date the liability arose. The answer with new matter requests that the Commission dismiss the Complainant's complaint.

The preliminary objections reiterate the assertions in the Respondent's new matter. The preliminary objections contend that the subject matter of the Complainant's complaint is outside the Commission's subject matter jurisdiction because the statute of limitations bars the claim. The preliminary objections conclude that the Complainant's complaint is barred by the statute of limitations and request that the Commission dismiss the complaint.

By notice dated October 26, 2016, the Commission notified the parties that it had assigned the case to me as motion judge. By initial decision served on November 10, 2016, I sustained the Respondent's preliminary objections and dismissed the Complainant's complaint due to lack of subject matter jurisdiction.

By Opinion and Order entered March 17, 2017, the Commission reversed my initial decision. In its Opinion and Order, the Commission read the Complainant's complaint broadly as "a request for a payment arrangement for arrears which may or may not be subject to

the three year statute of limitations.” The Commission directed that a hearing be held to ascertain if any amount owed by the Complainant was eligible for a payment arrangement.

By notice dated March 8, 2017, the Commission scheduled this matter for a telephonic hearing on April 7, 2017, at 10:00 a.m. and assigned the case to me. I issued a prehearing order dated March 22, 2017, addressing, inter alia, requests for continuance, subpoena procedures, attorney representation and the Commission’s policy encouraging settlements.

I conducted a telephonic hearing on April 7, 2017, at 10:00 a.m. The Complainant failed to appear for that hearing. The Complainant failed to call the conference number set forth in the March 8, 2017 hearing notice at 10:00 a.m.

I then verified with the support staff for the Office of Administrative Law Judge (OALJ) in Harrisburg that the Complainant had not contacted that office to indicate that she would be unable to participate in the telephonic hearing. My voice mail and email had no messages from the Complainant stating that she would be unable to participate in the hearing.

After verifying that the Complainant had not contacted OALJ in Harrisburg, I returned to the telephone conference at approximately 10:10 a.m. The Complainant had still failed to call the conference number.

Upon commencement of the hearing, Graciela Christlieb, Esquire, counsel for the Respondent, moved to dismiss the complaint for failure to appear and prosecute. N.T. 6. I advised the Respondent that I would take its motion under advisement. N.T. 6.

The record closed on May 1, 2017, the date the transcript was filed with the Secretary’s Bureau. This decision grants the Respondent’s motion to dismiss the complaint.

FINDINGS OF FACT

1. The Complainant in this case is Kimekia Mayo.
2. The Respondent in this case is Philadelphia Gas Works.
3. On August 12, 2016, the Complainant filed a complaint with the Commission against the Respondent.
4. The Respondent filed an answer with new matter on September 7, 2016.
5. By notice dated March 8, 2017, the Commission scheduled this matter for a telephonic hearing on April 7, 2017, at 10:00 a.m.
6. The Commission sent notice of the telephonic hearing in this case to the Complainant by regular first-class mail to the address stated on the complaint.
7. The Commission's hearing notice was never returned to the sender.
8. The Complainant failed to appear at the April 7, 2017 telephonic hearing.
9. The Complainant did not settle, withdraw or request a continuance of the matter.

DISCUSSION

Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them. Schneider v. Pa. Pub. Util. Comm'n., 479 A.2d 10 (Pa.Cmwlth. 1984). This due process requirement is satisfied, however, when the administrative agency provides the parties notice and the opportunity to be heard.

The Commission sent notice of the telephonic hearing in this case to the Complainant on March 8, 2017, by regular first-class mail to the Complainant's address. To my

knowledge this piece of mail was never returned to the sender, the scheduling staff for OALJ in Harrisburg.

In addition, I issued a prehearing order dated March 22, 2017, which, inter alia, directed the parties to call the conference number shown on the hearing notice at the date and time of the hearing and that if a party failed to call the conference number, the hearing would proceed without that party. This order, which was also mailed to the Complainant at the address stated on the complaint, was never returned. Accordingly, I must presume that this mail, which was sent in the ordinary course of business, was received by the Complainant. Berkowitz v. Mayflower Securities, Inc., 317 A.2d 584 (Pa. 1974); Meierdierck v. Miller, 147 A.2d 406 (Pa. 1959); Samaras v. Hartwick, 698 A.2d 71 (Pa.Super. 1997); Judge v. Celina Mutual Insurance Co., 444 A.2d 658 (Pa.Super. 1982).

The Complainant did not appear for the scheduled hearing because she did not call the conference number listed on the telephonic hearing notice. The Complainant never notified me that she would be unable to participate in the hearing. Under these circumstances, it appears the Complainant had ample opportunity to appear and be heard in this proceeding, but voluntarily chose not to do so. Therefore, the due process rights of the Complainant have been fully protected. Sentner v. Bell Telephone Co. of Pa., Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

Finally, Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of any request for relief. As the party bringing this complaint, the Complainant bears the burden of proving by a preponderance of the evidence that she is entitled to relief. By failing to appear and proffer any evidence to support her complaint, the Complainant has failed to meet this burden. The Complainant's failure to appear has caused the Commission and the Respondent to waste resources. Under these circumstances, the complaint should be dismissed with prejudice. Jefferson v. UGI Utilities, Inc., Docket No. Z-00269892 (Opinion and Order entered December 26, 1995); El-Ayazra v. West Penn Power Company, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); 52 Pa.Code § 5.245.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of and the parties to this proceeding. 66 Pa.C.S. § 701.

2. The due process rights of the Complainant have been fully protected in this proceeding. Sentner v. Bell Telephone Co. of Pa., Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

3. By failing to appear and proffer any evidence to support her complaint, the Complainant has failed to meet her burden of proving that she is entitled to the relief that she seeks from the Commission. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of Philadelphia Gas Works to dismiss the complaint filed by Kimekia Mayo at Docket No. C-2016-2562263 is granted.

2. That the complaint of Kimekia Mayo against Philadelphia Gas Works at Docket No. C-2016-2562263 is dismissed with prejudice for failure to appear and prosecute.

3. That the docket at Docket No. C-2016-2562263 is marked closed.

Date: May 2, 2017

/s/
David A. Salapa
Administrative Law Judge