

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kimberley Chambers	:	
	:	
v.	:	C-2016-2538724
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Complainant’s formal Complaint because she failed to sustain her burden of proof to establish that Philadelphia Gas Works violated any Commission orders or regulations related to the termination notice issued. The Complainant is not eligible for a Commission issued payment arrangement for her outstanding balance under Sections 1405(d) and (e) of the Public Utility Code.

HISTORY OF THE PROCEEDING

On April 7, 2016, Kimberley Chambers (Complainant) filed a formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant contends that the Company was threatening or had shut off her utility service and requests a payment arrangement.

On April 27, 2016, Respondent filed an Answer alleging that the Complainant is not entitled to a payment arrangement because she defaulted on a prior Commission-issued payment arrangement. The Respondent indicated that it had issued a termination notice.

By Hearing Notice dated May 17, 2016, an initial hearing was scheduled for June 9, 2016 at 9:00 a.m., as part of a call of the docket, and the matter was assigned to me.

I issued a Prehearing Order on May 20, 2016. The Prehearing Order directed the parties to comply with various procedural requirements and also explained that the complainant bears the burden of proof to establish that the respondent violated its tariff, the Public Utility Code, or a Commission Order or regulation, and that she is entitled to the relief requested in the Complaint.

On June 9, 2016, the Complainant submitted a letter to the Commission requesting a telephonic hearing due to her medical condition. That request was granted.

On June 14, 2016, a Hearing Cancellation/Reschedule Notice was issued indicating a new initial telephonic hearing scheduled on July 20, 2016 at 10:00 a.m.

The hearing convened as scheduled on July 20, 2016. Complainant participated *pro se* and testified. Respondent appeared and was represented by Laureto Farinas, Esq., who presented the testimony of one witness. Respondent offered eight exhibits which were all admitted into evidence.

The hearing resulted in a 32-page transcript. The record closed on August 8, 2016, when I received the transcript of the hearing.

FINDINGS OF FACT

1. The Complainant in this case is Kimberley Chambers who resides at 7254 Mansfield Avenue, First Floor Apartment, Philadelphia, Pennsylvania 19138 (Service Address). Tr. 8.
2. The Respondent is Philadelphia Gas Works.
3. The Complainant resides alone. Tr. 10-11.
4. The Complainant is disabled and not currently employed. Tr. 10.
5. The Complainant receives \$733.00 per month in Social Security Disability benefits. Tr. 10.
6. The Complainant also receives Supplemental Nutrition Assistance Plan (SNAP) benefits in the amount of \$101.00 per month. Tr. 10.
7. The Complainant receives \$22.10 per month from the Commonwealth of Pennsylvania. Tr. 29.
8. The Complainant's current household income of \$856.10 with one household member places the household at 86% of the Federal Poverty guidelines.¹
9. The Complainant has exhausted all three medical certifications provided by PGW in 2010. Tr. 21; PGW Exh. 1.
10. On August 3, 2009, the Complainant enrolled in PGW's Customer Responsibility Program (CRP). PGW Exh. 3.

¹ *Federal Register*, Vol. 81, No. 15, January 25, 2016, pp. 4036-4037. Also, see <http://aspe.hhs.gov/poverty>.

11. The Complainant was removed from CRP on February 10, 2011 for failure to make payments. Tr. 26; PGW Exh. 3.

12. The Complainant defaulted on multiple Company-issued payment arrangements. Tr. 26; PGW Exh. 3.

13. The Complainant had a Commission-issued payment arrangement starting on June 2015 and defaulting on August 22, 2015. Tr. 27, 29; PGW Exh. 2D, 3.

14. The Commission-issued payment arrangement was the result of an informal complaint filed with BCS at Case No. 3341887 where the Complainant reported an income of \$755.10 for a two-adult household. Tr. 28; PGW Exh. 1.

15. The total balance on the Complainant's account is \$13,686.88. Tr. 18-19; PGW Exhs. 2, 2A-2D.

16. The Complainant's CRP cure amount is \$8,890.75. Tr. 18; PGW Exh. 1.

DISCUSSION

The Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of a rule or order. As the proponent of a rule or order, the Complainant has the burden of proof in this matter pursuant to 66 Pa.C.S. § 332(a).

To establish a sufficient case and satisfy the burden of proof, the Complainant must show that the respondent public utility is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Co. of Pa.*, 72 Pa.P.U.C. 196 (1990), *Feinstein v. Philadelphia Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa.Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992). That is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v.*

Margulies, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. 1993); 2 Pa.C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 194 Pa.Super. 278, 166 A.2d 96 (1960); *Murphy v. Commonwealth, Dep't of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa.Cmwlth. 1984).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the Complainant shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight, the Complainant has not satisfied his burden of proof. The Complainant would be required to provide additional evidence to rebut the evidence of the Respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa.Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa.Cmwlth. 2001).

Request for Payment Arrangement

The Complainant requests a payment arrangement in this matter. PGW contends that the Complainant is not entitled to a payment arrangement due to the fact that she defaulted on a prior Commission-issued payment arrangement and there was an increase in her income.

The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401, *et seq.* (the Act or Chapter 14) applies to complaints alleging inability to pay and requesting a Commission-issued payment arrangement. This law provides guidelines that the Commission must follow in handling customer complaints. Section 1405(a) of the Public Utility Code reads as follows:

§ 1405. Payment arrangements

(a) GENERAL RULE. -- The commission is authorized to investigate complaints regarding payment disputes between a public utility, applicants and customers. The commission is authorized to establish payment arrangements between a public utility, customers and applicants within the limits established by this chapter.

66 Pa.C.S. § 1405(a).

However, Section 1405(d) of the Public Utility Code prohibits the Commission from establishing a second or subsequent payment arrangement if the customer has defaulted, absent a change in income. 66 Pa.C.S. § 1405(d). Under Section 1403, a “change in income” is defined as a decrease in household income of 10% or more if the customer's household income level is 200% or less of the Federal poverty level. 66 Pa.C.S. § 1403.

Section 1405(e) of the Public Utility Code allows for an extension by six months of a payment arrangement in default if there is a significant change in circumstance. 66 Pa.C.S. § 1405(e). "Significant change in circumstance" is defined as any of the following circumstances which are experienced by customers with household income less than 300% of the Federal poverty level:

- (1) The onset of a chronic or acute illness resulting in a significant loss in the customer's household income.
- (2) Catastrophic damage to the customer's residence resulting in a significant net cost to the customer's household.
- (3) Loss of the customer's residence.
- (4) Increase in the customer's number of dependents in the household.

66 Pa.C.S. § 1403.

It is undisputed that the Complainant resides at the Service Address alone. Tr. 10-11. The Complainant is disabled and is not currently employed. Tr. 10. Ms. Chambers receives \$733 per month in Social Security disability benefits and an additional \$22.10 from the

Commonwealth of Pennsylvania, as well as \$101.00 in SNAP benefits. Tr. 10, 29. The Complainant's current household income with one household member places the household at 86% of the Federal Poverty guidelines.² This would make the Complainant a Level 1 customer. *See* 66 Pa.C.S. § 1405(b)(1).

However, in this instance, the Complainant has had a prior Commission-issued payment arrangement which defaulted on August 22, 2015. At the time of the prior Commission-issued payment arrangement, the Complainant indicated that her household income was \$755.10 per month for a household of two adults. The Complainant's current household income is \$856.10 per month. The Complainant does not meet the "change of income" criteria set out in Section 1403 of the Public Utility Code as her income has increased since her last Commission-issued payment arrangement. The Complainant's income at the time of the prior Commission issued payment arrangement was \$755.10 for a household of two adults. In this matter, the Complainant's household income for one adult is \$856.10. The Complainant's income in this proceeding has actually increased and not decreased by 10% as required for a customer with an income of 200% or less of the Federal Poverty Guidelines. *See* 66 Pa.C.S. § 1403. Further, the Complainant did not present any evidence to indicate that she had a significant change in circumstance as defined under 66 Pa.C.S. § 1403. As such, the Commission is constrained from providing the Complainant with another payment arrangement. *See* 66 Pa.C.S. § 1405(d) and (e). Therefore, the Complainant's request for a payment arrangement is denied and the Complaint is dismissed.

CONCLUSIONS OF LAW

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

2. Pursuant to 66 Pa.C.S. § 332(a), the burden of proof in this proceeding is upon the complainant. 66 Pa.C.S. § 332(a).

² *Federal Register*, Vol. 81, No. 15, January 25, 2016, pp. 4036-4037. Also, *see* <http://aspe.hhs.gov/poverty>.

3. Any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. 1993); 2 Pa.C.S. § 704.

4. A customer is limited to two medical certifications for the same set of arrears and the public utility is not required to honor a third medical certification until the customer eliminates the arrears. 52 Pa.Code § 56.114(2).

5. The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401, *et seq.* (the Act or Chapter 14) applies to complaints alleging inability to pay and requesting a Commission-issued payment arrangement.

6. Section 1405(d) of the Public Utility Code prohibits the Commission from establishing more than one payment arrangement unless there is a change in income. 66 Pa.C.S. § 1405(d).

7. Under Section 1403, a "change in income" is defined as a decrease in household income of 20% or more if the customer's household income level exceeds 200% of the Federal poverty level. 66 Pa.C.S. § 1403.

8. The Complainant has not met her burden of demonstrating that she experienced a change in income as defined by 66 Pa.C.S. § 1403.

9. Section 1405(e) of the Public Utility Code allows for an extension by six months of a payment arrangement in default if there is a significant change in circumstance. 66 Pa.C.S. § 1405(e).

10. "Significant change in circumstance" is defined as any of the following circumstances which are experienced by customers with household income less than 300% of the Federal poverty level: 1) the onset of a chronic or acute illness resulting in a significant loss in

