

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Catherine Jenkins	:	
	:	
v.	:	C-2017-2610656
	:	
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 the Public Utility Code, or any Commission orders or regulations related to the termination of the gas utility service at the Service Address on June 15, 2017. Further, the Complainant is not entitled to a Commission issued payment arrangement for her outstanding balance pursuant to Section 1405(d) of the Public Utility Code.

HISTORY OF THE PROCEEDING

On June 19, 2017, Catherine Jenkins (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 to shut off or had already shut off her utility service and requests a payment arrangement. The Complainant also indicated that she was suffering a hardship.

This matter is an appeal of a decision issued on May 19, 2017 from the Bureau of Consumer Services (BCS) at Case No. 3509522 which dismissed the informal complaint of the Complainant.

On July 12, 2017, 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.

By Hearing Notice dated July 21, 2017, an initial hearing was scheduled for Monday, September 11, 2017 at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on August 29, 2017. 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.

The hearing convened as scheduled on September 11, 2017. Complainant participated *pro se* and testified. Respondent appeared and was represented by Laureto Farinas, Esq., who presented the testimony of Marie Charles, a Customer Review Officer. Respondent offered five exhibits which were all admitted into evidence.

The hearing resulted in a 49-page transcript. The record closed on September 27, 2017, when I received the transcript of the hearing.

FINDINGS OF FACT

1. The Complainant in this case is Catherine Jenkins who resides at 1814 67th Avenue, Philadelphia, Pennsylvania 19126 (Service Address). Tr. 6.
2. The Respondent is Philadelphia Gas Works.

3. The Complainant resides at the Service Address with her two daughters, ages 20 and 16 years old, and granddaughter, age 2 years old. Tr. 10-11, 42.
4. The Complainant is not currently employed. Tr. 9.
5. The Complainant receives approximately \$750.00 per month in Social Security benefits. Tr. 9.
6. The Complainant also receives approximately \$120.00 per month in Supplemental Nutrition Assistance Program (SNAP) benefits. Tr. 10.
7. The Complainant's 20-year old daughter works eight hours per day, seven days per week, and earns \$12.00 per hour.¹ Tr. 11, 17.
8. The Complainant's current household income of \$3,782.00 with four household members places the household at 185% of the Federal Poverty guidelines.²
9. The Complainant received three medical certifications provided by PGW on August 27, 2009, September 15, 2012, and November 7, 2012. Tr. 34-35; PGW Exh. 4.
10. On November 17, 2014, the Complainant enrolled in PGW's Customer Responsibility Program (CRP). Tr. 28; PGW Exh. 2.
11. The Complainant was removed from CRP on August 4, 2015 for failure to make payments. Tr. 28; PGW Exh. 2.

¹ The daughter's earnings are \$672.00 per week (8 hrs. x 7 days x \$12 = \$672) which is \$2,912.00 per month (\$672 per week x 52 weeks = \$34,944 per year / 12 months = \$2,912.00).

² *Federal Register*, Vol. 82, No. 19, January 31, 2017, pp. 8831-8832. Also see <http://aspe.hhs.gov/poverty>.

12. The Complainant made two payments to her account in 2014, zero payments in 2015, two payments in 2016 and zero payments in 2017. Tr. 40; PGW Exh. 5.

13. The Complainant defaulted on multiple Company-issued payment arrangements. Tr. 28; PGW Exh. 2.

14. The Complainant had a Commission-issued payment arrangement starting on September 1, 2016 and defaulting on November 15, 2016. Tr. 28-29; PGW Exh. 2.

15. The Commission-issued payment arrangement was the result of an informal complaint filed with BCS at Case No. 3439795 where the Complainant reported an income of \$768.00 for a two-adult and three-children household. Tr. 28, 33-34; PGW Exh. 4.

16. On May 31, 2017, PGW issued a ten-day shut-off notice to the Complainant. Tr. 30; PGW Exh. 3.

17. On June 6, 2017, PGW contacted the Complainant regarding the potential shut-off of the gas service. Tr. 30; PGW Exh. 3.

18. On June 15, 2017, PGW terminated the Complainant's gas service due to non-payment. Tr. 30, 36; PGW Exh. 3.

19. The total balance on the Complainant's account is \$6,676.76. Tr. 40; PGW Exh. 5.

20. The Complainant's bills from PGW were based on actual meter readings from the Service Address. Tr. 37; PGW Exh. 5.

21. PGW is not responsible for the maintenance of gas appliances at the Service Address. Tr. 39.

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, 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, 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. PUC 196 (1990), *Feinstein v. Philadelphia Suburban Water Co.*, 50 Pa. PUC 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 her 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.Cmwlt. 2001).

Termination of Service

The Complainant indicated that her service with PGW had been terminated. PGW responded that it provided all relevant notices required by the Public Utility Code prior to the termination and properly terminated service for non-payment.

Under the Public Utility Code, a public utility may notify a customer and terminate service provided to a customer for nonpayment of an undisputed delinquent account and/or failure to comply with the terms of a payment arrangement. 66 Pa.C.S. § 1406(a). Prior to terminating service, a public utility must provide proper notice to the customer which includes written notice of the termination at least ten days prior to the termination, an attempt to contact the customer at least three days prior to the termination in person, by telephone or electronic notification, and an attempt to make personal contact with the customer at the time service is terminated. 66 Pa.C.S. § 1406(b).

The Complainant's service was terminated due to nonpayment. The Complainant defaulted on multiple Company-issued payment arrangements. Tr. 28; PGW Exh. 2. PGW's witness testified that the Complainant made two payments to her account in 2014, zero payments in 2015, two payments in 2016 and zero payments in 2017. Tr. 40; PGW Exh. 5. The account statement indicates that the Complainant makes few payments on her account. PGW Exh. 5. The total balance on the Complainant's account is \$6,676.76. Tr. 40; PGW Exh. 5.

Moreover, PGW provided proper notice to the Complainant of the termination on June 15, 2017. According to PGW's witness, Ms. Charles, PGW issued a ten-day shut-off notice to the Complainant on May 31, 2017. Tr. 30; PGW Exh. 3. On June 6, 2017, PGW contacted the Complainant regarding the potential shut-off of the gas service. Tr. 30; PGW Exh. 3. On June 15, 2017, PGW terminated the Complainant's gas service due to non-payment. Tr. 30, 36; PGW Exh. 3.

Further, the Complainant is not entitled to any further medical certifications. The Complainant received three medical certifications provided by PGW on August 27, 2009, September 15, 2012, and November 7, 2012. Tr. 34-35; PGW Exh. 4. Under Section 56.114 of the Commission's regulations, 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). As such, the Complainant failed to meet her burden of proof of demonstrating that PGW violated the Public Utility Code, the Commission's regulations or a Commission order regarding the termination of service.

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 because she defaulted on a prior Commission-issued payment arrangement.

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 strict 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.

The Complainant resides with her two daughters, ages 20 and 16 years old and her granddaughter, age 2 years old. Tr. 10-11, 42. The Complainant is not currently employed. Tr. 9. The Complainant receives approximately \$750.00 per month in Social Security benefits. Tr. 9. The Complainant also receives approximately \$120.00 per month in SNAP benefits. Tr. 10. The Complainant's 20-year old daughter works and has gross earnings of \$2,912.00 per month.³ Tr. 11, 17. The Complainant's current household income of \$3,782.00 with four household members places the household at 185% of the Federal Poverty guidelines.⁴ This would make the Complainant a Level 2 customer. *See* 66 Pa.C.S. § 1405(b)(2).

³ The daughter's earnings are \$672.00 per week (8 hrs. x 7 days x \$12 = \$672) which is \$2,912.00 per month (\$672 per week x 52 weeks = \$34,944 per year / 12 months = \$2,912.00).

⁴ *Federal Register*, Vol. 82, No. 19, January 31, 2017, pp. 8831-8832. *Also see* <http://aspe.hhs.gov/poverty>.

However, in this instance, the Complainant has had a prior Commission-issued payment arrangement which defaulted on November 15, 2016. Tr. 28-29; PGW Exh. 2. At the time of the prior Commission-issued payment arrangement, the Complainant indicated that her household income was \$768.00 for a two-adult and three-children household.

The Complainant's current household income is \$3,782.00 per month with four household members. The Complainant does not meet the "change of income" criteria set out in Section 1403 of the Public Utility Code as the household income has increased from \$768.00 per month to \$3,782.00 per month since her last Commission-issued payment arrangement.

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. While the Complainant testified that she was hospitalized for an extended timeframe in September 2015 and October 2016, due to heart surgery, the Complainant did not present any evidence that this hospitalization resulted in a significant loss of her household income. Tr. 8, 12. The Complainant met none of the other criteria for a significant change in circumstance under Section 1403. *See* 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). 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).
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. Under the Public Utility Code, a public utility may notify a customer and terminate service provided to a customer for nonpayment of an undisputed delinquent account and/or failure to comply with the terms of a payment arrangement. 66 Pa.C.S. § 1406(a).

5. Prior to terminating service, a public utility must provide proper notice to the customer which includes written notice of the termination at least ten days prior to the termination, an attempt to contact the customer at least three days prior to the termination in person, by telephone or electronic notification, and an attempt to make personal contact with the customer at the time service is terminated. 66 Pa.C.S. § 1406(b).

6. 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).

7. The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401, *et seq.* applies to complaints alleging inability to pay and requesting a Commission-issued payment arrangement.

8. 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).

9. 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.

10. 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).

11. A 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) the loss of the customer's residence; or 4) an increase in the customer's number of dependents in the household. 66 Pa.C.S. § 1403.

12. The Complainant failed to meet her burden of demonstrating that the Philadelphia Gas Works violated the Public Utility Code, the Commission's regulations, and/or a Commission order when it terminated her utility service on June 15, 2017.

13. The Complainant failed to meet her burden of demonstrating that she was allowed another Commission-issued payment arrangement.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Catherine Jenkins against Philadelphia Gas Works at Docket No. C-2017-2610656 is denied and dismissed;

