

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Cleatus W. Santee Jr.	:	
	:	
v.	:	C-2017-2586450
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This Initial Decision denies Cleatus W. Santee Jr.’s formal Complaint against PECO Energy Company at Docket No. C-2017-2586450 because he failed to carry the burden of proving: 1) that he qualifies for a subsequent Commission-issued payment arrangement, and 2) that PECO acted improperly in accepting three medical certificates that were not requested by him.

HISTORY OF THE PROCEEDING

On January 23, 2017, Cleatus W. Santee Jr. (Complainant) filed a formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant alleged his inability to pay his electricity bills to PECO and requested an affordable payment arrangement.

On February 3, 2017, PECO filed an Answer denying all material allegations of fact and conclusions of law in the Complaint.

By Hearing Notice dated February 27, 2017, a hearing was scheduled for Thursday, April 13, 2017, at 9:30 a.m., and the matter was assigned to me.

A Prehearing Order was issued on March 29, 2017, reminding the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to this proceeding, and directing the submission of documents prior to the hearing.

The initial hearing convened as scheduled on April 13, 2017. The Complainant appeared *pro se* and testified in support of the Complaint. The Complainant sponsored one exhibit which was admitted into the record. Margaret Morris, Esq. represented the Respondent, and presented the testimony of Renee Tarpley, who is a customer review officer in charge of investigating formal and informal complaints filed against PECO. The Respondent sponsored eight exhibits which were admitted into the record.

The record in this matter closed on May 12, 2017, 30 days from the date of the hearing.

FINDINGS OF FACT

1. The Complainant is Cleatus W. Santee Jr., who resides at 1826 Placid Street, Philadelphia, PA 19152 (Service Address). Tr. 6.
2. The Respondent is PECO Energy Company.
3. Mr. Santee owns the Service Address where he receives electric residential service from PECO. Tr. 16, 23.

Payment Arrangement

4. On June 26, 2009, Mr. Santee entered into a payment arrangement with PECO, reporting a gross household income of \$3,688 for five individuals. Tr. 28, PECO Exhibit 2.

5. On September 3, 2010, the Commission's Bureau of Consumer Services (BCS) established a payment arrangement on behalf of Mr. Santee at BCS Case # 2734424, based upon a reported gross household income of \$3,600 per month for five individuals. *Id.*

6. On October 5, 2011, BCS established a payment arrangement on behalf of Mr. Santee at BCS Case # 2893780, based upon a reported gross household income of \$4,199 per month for five individuals. Tr. 28, PECO Exhibit 2.

7. Complainant defaulted on the Company-issued payment arrangement and on the two Commission-issued payment arrangements, but by January of 2014 he had paid off the outstanding balance in his account with PECO. Tr. 29-30, PECO Exhibits 1 and 2.

8. On May 17, 2016, Mr. Santee filed an informal complaint with BCS against PECO at BCS Case # 3440341, reporting a gross household income of \$7,078.27 per month for a household of three individuals. Tr. 30-31, PECO Exhibit 4.

9. On May 23, 2016, BCS issued a written decision at BCS Case # 3440341, establishing a payment arrangement on behalf of Mr. Santee after finding that he was a level 4 income customer. PGW Exhibit 4.

10. The payment arrangement established by BCS on May 23, 2016, required Mr. Santee to pay a special budget bill of \$395.00 per month, consisting of the regular budget amount of \$260.00 per month, plus \$135.00 per month towards the arrearages accumulated in his account with PECO. *Id.*

11. On May 31, 2016, Mr. Santee filed another informal complaint with BCS at BCS Case # 3444533, alleging that he had undergone a significant change in circumstances when his sister, her husband and their four children moved in with him and his family. PECO Exhibit 5.

12. On June 15, 2016, BCS issued a written decision at BCS Case # 3444533 denying Mr. Santee's informal complaint after finding that the events described by the Complainant did not constitute a significant change in circumstances. PECO Exhibit 5.

13. On August 25, 2016, Mr. Santee defaulted on the Commission-issued payment arrangement, BCS Case # 3440341. PECO Exhibit 1.

14. On October 20, 2016, Mr. Santee filed another informal complaint with BCS at BCS Case # 3486729, attempting to correct the information provided at BCS case # 3440341 and reporting a gross household income of \$6,126.67 per month for a household of two individuals. PECO Exhibit 6.

15. On December 2, 2016, BCS issued a written decision at BCS Case # 3486729 denying Mr. Santee's informal complaint after finding that the Complainant had failed to submit sufficient information to substantiate his claim of a change in income. PECO Exhibit 6.

16. From the date BCS issued the last payment arrangement on Mr. Santee's behalf until the date of the hearing, the Complainant made six payments towards his account with PECO, totaling \$783.51. PECO Exhibit 1.

17. As of the day of the hearing, Complainant's outstanding balance with PECO was \$2,278.47. Tr. 27, PECO Exhibit 1.

18. Mr. Santee's gross income consists of \$1,133.60 per week from his employment with the Philadelphia Housing Authority, minus a garnishment of \$160.45 per week for child support payments. Tr. 18, Complainant Exhibit 1.

19. As of the day of the hearing, Mr. Santee was the sole resident at the Service Address. Tr. 8, 19.

Medical Certificate

20. In September of 2015, Mr. Santee allowed his sister and her family to move into the Service Address. Tr. 7.

21. Mr. Santee's sister and her family moved out of the Service Address on or about September 2016. Tr. 7-8.

22. Mr. Santee's father also resided at the Service Address between September 2015 and September 2016. Tr. 8, 12, 31, 40-41.

23. PECO accepted three medical certificates – on November 20, 2015, April 5, 2016, and August 26, 2016 – on behalf of Mr. Santee's father in order to avoid termination of services for nonpayment. Tr. 32, PECO Exhibit 3.

DISCUSSION

In the present formal Complaint, Mr. Santee alleged his inability to pay his electricity bills to PECO and requested an affordable payment arrangement.

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S.A. § 332(a). In *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980) (*Waldron*), the Commission explained the process for initially meeting the burden of proof. A complainant

must first establish a *prima facie* case, showing that the utility breached some duty owed to the complainant, in that the utility violated the Public Utility Code or a regulation or order of the Commission. 66 Pa.C.S.A. § 701. If the complainant establishes a *prima facie* case, then the burden of going forward with the evidence, but not the ultimate burden of proof, shifts to the utility to rebut the *prima facie* case with evidence which is at least co-equal. If the utility presents co-equal evidence, the burden of going forward shifts back to the complainant, to rebut the utility's case by a preponderance of the evidence. *Poorbaugh v. West Penn Power Company*, 1994 Pa. PUC LEXIS 95 (*Poorbaugh*). Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990) *alloc. den.*, 529 Pa. 654, 602 A.2d 863 (1992). In addition, the Commission's decision must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere "trace of evidence or a suspicion of the existence of a fact" is insufficient. *Norfolk and Western Railway Co. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980).

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*, 501 Pa. 433, 461 A.2d 1234 (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).

Payment arrangement

Mr. Santee owns the Service Address where he receives electric residential service from PECO. On June 26, 2009, Mr. Santee entered into a payment arrangement with PECO, reporting a gross household income of \$3,688 for five individuals. On September 3, 2010, the Commission's Bureau of Consumer Services, at BCS Case # 2734424, established a payment arrangement on behalf of Mr. Santee, based upon a reported gross household income of \$3,600 per month for five individuals. On October 5, 2011, BCS established a second payment arrangement on behalf of Mr. Santee at BCS Case # 2893780, based upon a reported gross household income of \$4,199 per month for five individuals. According to PECO, the Complainant defaulted on the Company-issued payment arrangement and on the two Commission-issued payment arrangements. Tr. 29-30. However, the evidence collected in this case indicates that by January of 2014, Mr. Santee had paid off the outstanding balance in his account with PECO. See PECO Exhibit 1.

On May 17, 2016, Mr. Santee filed a third informal complaint with BCS against PECO at BCS Case # 3440341, reporting a gross household income of \$7,078.27 per month for a household of three individuals. On May 23, 2016, BCS issued a written decision at BCS Case # 3440341, establishing a payment arrangement on behalf of Mr. Santee after finding that he was a level 4 income customer. The payment arrangement required Mr. Santee to pay a special budget bill of \$395.00 per month, consisting of the regular budget bill amount of \$260.00 per month, plus \$135.00 per month towards the arrearages accumulated in his account with PECO. Mr. Santee defaulted on this Commission-issued payment arrangement on August 25, 2016.

On May 31, 2016 and October 20, 2016, Complainant filed two informal complaints with BCS, BCS Case # 3444533 and BCS Case # 3486729, attempting without success to modify the terms of the payment arrangement issued on May 23, 2016. On January 23, 2017, the Complainant filed the present formal Complaint alleging his inability to pay his electricity bills to PECO and requesting an affordable 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 of the Public Utility Code regarding payment arrangements reads in pertinent part:

(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.

(b) *Length of payment arrangements.* --

The length of time for a customer to resolve an unpaid balance on an account that is subject to a payment arrangement that is investigated by the commission and is entered into by a public utility and a customer shall not extend beyond:

(1) Five years for customers with a gross monthly household income level not exceeding 150% of the Federal poverty level.

(2) Three years for customers with a gross monthly household income level exceeding 150% and not more than 250% of the Federal poverty level.

(3) One year for customers with a gross monthly household income level exceeding 250% of the Federal poverty level and not more than 300% of the Federal poverty level.

(4) Six months for customers with a gross monthly household income level exceeding 300% of the Federal poverty level.

* * *

(d) NUMBER OF PAYMENT ARRANGEMENTS – Absent *a change in income*, the Commission shall not establish or order a public utility to establish a second or subsequent payment agreement if a customer has defaulted on a previous payment agreement. A public utility may, at its discretion, enter into a second or subsequent payment agreement with a customer.

66 Pa.C.S. § 1405(a), (b) and (d). In addition, "Household income" is defined in section 1403 the Public Utility Code as "[t]he combined gross income of all adults in a residential household who benefit from the public service." 66 Pa.C.S. § 1403. Furthermore, section 1403 defines "change in income" as a decrease in household income of 20% or more if the customer's household income level exceeds 200% of the Federal poverty level or 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.

The evidence collected in this matter reveals that Mr. Santee has already received and defaulted on one Commission-issued payment arrangement. In addition, Mr. Santee's gross income consists of \$1,133.60 per week from his employment with the Philadelphia Housing Authority, with a garnishment of \$160.45 per week for child support payments. As of the day of the hearing, Mr. Santee was the sole resident at the Service Address and carried an outstanding balance of \$2,278.47 in his account with PECO.

With a gross monthly income of \$4,216.98¹ for a household of one, Mr. Santee's household income exceeds 300% of the Federal Poverty guidelines². The Complainant is still a level 4 income customer. Therefore, while his gross household income has decreased by more than 20% since the last Commission-issued payment arrangement, the income decrease was accompanied by a decrease in the number of individuals in his household. Mr. Santee's level of income has remained unchanged.

In *Caroline Maitland v. UGI Penn Natural Gas Inc.*, Docket No. C-20078353 (Opinion and Order entered August 20, 2008), the Commission noted that the record in that case

¹ Mr. Santee's gross monthly income without the wage garnishment for child support payments is equal to \$1,133.60 per week times 52 weeks per year divided by 12 months per year, or \$4,912.26. Because Mr. Santee's child support payments are automatically deducted from his paychecks and would be included in his ex-wife's household income had she requested a Commission-issued payment arrangement, I find that they should not be included in his gross household income. Consequently, Mr. Santee's gross monthly income with the wage garnishment for child support payments is equal to \$4,216.98 $\{[(\$1,133.60 \text{ per week} - \$160.45)] \times 52 \text{ weeks per year} \div 12 \text{ months per year} = \$4,216.98\}$.

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

reflected “that Complainant was a level 2 income customer under the Federal poverty guidelines before and after her household decrease in income. As a result, the payment agreement contains the same repayment period and terms as the payment agreement issued previously by BCS, on which the Complainant defaulted.” After noting that a drop in income does not automatically entitle a customer to a new payment agreement under the Code, the Commission decided not to issue a new payment arrangement to Ms. Maitland.

After carefully reviewing the record in this matter, I find that a subsequent payment arrangement would require Mr. Santee to retire the \$2,278.47 balance accumulated in his account in six monthly installments in addition to paying his regular budget billing amount. Such a payment arrangement would not be more affordable than the last payment arrangement that BCS established for Mr. Santee in May of 2016, which he was unable to keep. In view of the above, I find that the Complainant has failed to carry his burden of proving that he is entitled to the relief sought.

Medical certificates

Pursuant to 52 Pa.Code § 56.111, a public utility may not terminate service, or refuse to restore service, to a premises when a licensed physician or nurse practitioner has certified that the customer or an applicant or a member of the customer's or applicant's household is seriously ill or afflicted with a medical condition that will be aggravated by cessation of service. Pursuant to provisions of this section, in order to prevent the termination of services in the scenario described above, “the customer shall obtain a letter from a licensed physician verifying the condition and promptly forward it to the public utility.” 52 Pa.Code § 56.111. (Emphasis added).

At the hearing, Mr. Santee questioned the propriety of PECO’s acceptance of medical certificates sought by an individual who was not the customer of record for the Service Address. Tr. 40-43. In particular, he claimed that the medical certificates were sought by his sister who is not the customer of record for the Service Address. Although this claim was made

for the first time at the hearing, PECO did not object to it, instead choosing to respond to the claim through the testimony of Ms. Tarpley.

The evidence collected in this matter revealed that in September of 2015, Mr. Santee allowed his sister and her family to move into the Service Address. Mr. Santee's sister and her family moved out of the Service Address on or about September 2016. Mr. Santee's father also resided at the Service Address between September 2015 and September 2016. Between November 20, 2015 and August 26, 2016, PECO accepted three medical certificates – on November 20, 2015, April 5, 2016, and August 26, 2016, respectively – on behalf of Mr. Santee's father in order to avoid termination of services at the Service Address for nonpayment.

PECO did not refute Mr. Santee's claim that the three medical certificates were filed by his sister. Instead, Ms. Tarpley testified either "a customer or an occupant of record" can request a medical certificate, which is then sent by PECO to a doctor to verify the medical condition of the occupant for which the medical certificate is requested. Tr. 42-43. She explained that PECO received the medical certificates during the period of time that Mr. Santee's sister and father were listed as adult occupants of the Service Address, and therefore, PECO acted in compliance with the provisions of 52 Pa.Code § 56.111. Tr. 42-43.

The language of 52 Pa.Code § 56.111 does not provide for an occupant of the Service Address requesting a medical certificate on behalf of another occupant of the property, as PECO's interpretation of the regulation would suggest. While I do not agree with PECO's interpretation of the language of 52 Pa.Code § 56.111, I find that the Complainant has failed to carry his burden of proving that PECO acted improperly in accepting the three medical certificates in question. In particular, I find that the evidence collected at the hearing on the payment arrangement issue calls into question the credibility of Mr. Santee's allegations with regard to the medical certificates. Mr. Santee averred that for personal reasons he had to leave the Service Address during the period late November 2015 to April 2016. Tr. 15. The first medical certificate was accepted by PECO on November 20, 2015 and remained in effect until December 20, 2015. PECO Exhibit 1. The second medical certificate was accepted by PECO on April 5, 2016, and remained in effect until May 5, 2016. *Id.* At the hearing, Mr. Santee averred

that he had to borrow over \$1,000 from his 401K plan in April of 2016 in order to avoid the termination of service at the Service Address. Tr. 9, 12. The statement of accounts for the Service Address shows a payment of \$900 made on April 22, 2016 and another of \$200 made on May 6, 2016, the day after the second medical certificate was set to expire. See PECO Exhibit 1. The third medical certificate was accepted on August 26, 2016, and remained in effect until September 25, 2016, when Mr. Santee admitted residing at the Service Address. *Id.*

In view of the above, I find that the Complainant was present at the Service Address during the times the medical certificates were requested, or at least when the termination notices were received. Consequently, I find that the medical certificates were requested with his knowledge or permission, if not by him as the customer of record. The Complainant failed to carry his burden of proving that PECO acted improperly in accepting the three medical certificates in question.

For the reasons stated above, Mr. Santee's present Complaint against PECO is dismissed in its entirety.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. § 701.
2. The Complainant had the burden of proof. 66 Pa.C.S. § 332(a).
3. The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401, *et seq.*, applies to this proceeding.
4. Absent a change in income, the commission shall not establish or order a public utility to establish a second or subsequent payment agreement if a customer has defaulted on a previous payment agreement. 66 Pa.C.S. § 1405(d).

5. 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 or 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.

6. Commission regulations require that, when obtaining a medical certification, the customer obtain a letter from a licensed physician verifying the medical condition and promptly forwarding it to the public utility. 52 Pa.Code § 56.111.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Cleatus W. Santee Jr. against PECO Energy Company at Docket No. C-2017-2586450 is dismissed in its entirety.
2. That the Secretary mark this docket closed.

Date: November 21, 2017

/s/
Eranda Vero
Administrative Law Judge