

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Shantelle Thomas	:	
	:	
v.	:	F-2017-2612646
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Angela T. Jones
Administrative Law Judge

INTRODUCTION

The Complainant filed a formal complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent or Company). The Complainant failed to sustain her burden of proof for requesting an affordable payment arrangement issued by the Commission, and therefore, this decision denies the Complaint.

HISTORY OF THE PROCEEDING

On June 30, 2017, Shantelle Thomas (Complainant) filed a Complaint with the Pennsylvania Public Utility Commission (PUC or Commission) against the Respondent. The Complainant requested a payment arrangement stating that she cannot afford the arrangement that was presented. The Complainant also indicated that her service would be terminated if she did not receive a payment arrangement. The Complainant alleged that she was out of work for about a year and a half and the Respondent would not accept her significantly decreased income information.

The Complainant further explained her household includes three children and she does not receive child support. The Complainant stated that the amount the Respondent is requesting as a down-payment for a payment arrangement is not affordable.

The Complaint was served electronically (eService) by the Commission's Secretary on July 5, 2017, per the audit history of the docket. The eService is pursuant to the Waiver of Section 702 program, under which the Respondent waives the service requirements in 66 Pa.C.S. § 702.

Counsel for the Respondent, Laureto Farinas, Esquire, filed an Answer on July 26, 2017. The Answer admitted that the Company issued a shut off notice for 1930 E. Albert Street, Philadelphia, Pennsylvania (service address). The Answer also admitted that the Complainant seeks a payment arrangement.

The Respondent stated that the Complainant established service at the service address on June 1, 2008. The Complainant enrolled in the Respondent's Customer Responsibility Program (CRP) on October 7, 2014 with a beginning balance of \$3,188.86 and a monthly payment set at \$154.73.

The Respondent's records show the Complainant has broken at least two payment arrangements. The Respondent advised that on March 29, 2017, the Complainant contacted the Company with a reported monthly income of \$600.00 for a four-person household. The Respondent stated that a down-payment of \$1,018.00 was needed for a payment arrangement. The Respondent also informed the Complainant that a cure amount of \$1,753.60 was needed along with the requisite documents to apply for its CRP program.

The Complainant filed an informal complaint with the Commission's Bureau of Consumer Services (BCS) at Case No. 3508077 on April 4, 2017. The Respondent referenced the BCS decision at Case No. 3508077 dated May 19, 2017, which found that the Company's

CRP program would not be beneficial to the Complainant. The BCS decision also concluded that the Complainant had a prior Commission-issued payment arrangement that was not satisfied, and therefore, the Complainant is ineligible for another Commission-issued payment arrangement. The Respondent requested that the Commission find against the Complainant and dismiss the Complaint.

By Hearing Notice dated July 27, 2017, the matter was scheduled for an initial hearing on Tuesday, September 5, 2017, at 1:30 p.m. The matter was assigned to the undersigned Administrative Law Judge (ALJ), Angela T. Jones.

On September 1, 2017, Graciela Christlieb, Esquire, filed a Notice of Appearance in this proceeding on behalf of the Respondent.

By Prehearing Order dated July 27, 2017, the undersigned provided, among other things, the procedural rules for the proceeding.

The initial hearing convened as scheduled on September 5, 2017. Shantelle Thomas Plummer was present and represented herself. Counsel for the Respondent, Ms. Christlieb, was present and was accompanied by one witness, Joyshalyn Moore.

Ms. Thomas testified and did not sponsor any exhibits.

The Respondent's witness sponsored the following three exhibits:¹

- (1) PGW Exhibit 1 – service agreement for service address;
- (2) PGW Exhibit 2 – Complainant payment arrangement history; and
- (3) PGW Exhibit 3 – BCS Case No. 358077 informal complaint.

The three PGW exhibits were admitted by Order dated December 6, 2017.

¹ The Respondent intentionally did not offer an exhibit 2 to be considered at this proceeding.

During the course of the hearing, the undersigned determined additional information was required. Specifically, the Complainant needed to verify her income after the accident alleged in August 2015. The Respondent was to provide a history of the contacts the Complainant had with the Company. The evidentiary hearing recessed to be scheduled for a further hearing.

By Hearing Notice dated September 6, 2017, a further hearing was scheduled for Wednesday, October 25, 2017, at 10:00 a.m.

The further hearing convened as scheduled. Attorney Christlieb appeared representing the Respondent and was accompanied by one witness. The Complainant failed to appear.

Attorney Christlieb moved to dismiss the further hearing. Attorney Christlieb requested that the outstanding issues be resolved to the detriment of the Complainant for her failure to prosecute. The undersigned took the motion of Attorney Christlieb under consideration and adjourned.

The transcripts for the initial hearing and the further hearing were received on October 11, 2017, and November 15, 2017, respectively. The record closed on November 15, 2017, when the further hearing transcript was received. The record was reopened on December 6, 2017, to admit the PGW exhibits that were not ruled upon. The record was again closed on December 6, 2017. This matter is now ripe for decision.

FINDINGS OF FACT

1. The Complainant is Shantelle Thomas, who currently resides at the service address where she receives gas service. Tr. 6.
2. The Respondent is Philadelphia Gas Works.

3. The Complainant has three children ages 17, 15, and 8, and therefore, including Ms. Thomas, there are four people in her household. Tr. 19-20.

4. The Complainant had an auto accident in August 2015, which caused her to be unemployed until the beginning of 2017. Tr. 8-9.

5. Prior to the auto accident the Complainant's income was \$14.50 per hour at 40 hours per week, so her income was \$580.00 per week ($\$14.50/\text{hr} \times 40 \text{ hr}/\text{wk} = \$580.00/\text{wk}$) or \$2,320.00 per month ($\$580.00/\text{wk} \times 4 \text{ wk}/\text{month} = \$2,320.00/\text{month}$). Tr. 14-15.

6. The Complainant's 17-year-old son's gross monthly social security income is \$735.00. Tr. 13-14.

7. After the auto accident, from August 2015 to February 2016, the Complainant received social security disability income, which was \$373.00 per week. Tr. 14-15.

8. On February 4, 2016, the Complainant exhausted her disability benefits from her job due to the accident. Tr. 12.

9. After February 4, 2016, the Complainant's income was just that of her 17-year-old son's social security disability income at \$735.00 per month; so according to the definition of household income, which is just that of adults, the Complainant had no household income. Tr. 15.

10. The Complainant went to another employer for part-time work in January 2017, and received an income of \$13.50 per hour. Tr. 9, 15-16.

11. The Complainant worked about 30 hours a week part-time from January 2017 to July 2017. Tr. 16.

12. The Complainant suffered back issues that caused her to be out of work as of July 2017. Tr. 9, 16.

13. As of July 2017, the only income for the Complainant's is her son's disability income, and since her son is not an adult, she has no household income. Tr. 9.

14. The Complainant does not dispute that she owes an outstanding balance to the Respondent for gas service rendered. Tr. 17.

15. The Complainant started participating in the Company's CRP in May 2009. Tr. 10.

16. Joyshalyn Moore has been employed by PGW for nine years and is currently a customer review officer, who investigates informal and formal complaints filed by customers with the Commission. Tr. 22-23.

17. Ms. Moore investigated this Complaint. Tr. 23.

18. As of the September 5, 2017 hearing, the account balance of the Complainant at the service address was \$5,166.84, which includes CRP arrears. Tr. 26, PGW Exhibit 1.

19. From June 30, 2014, through September 5, 2017, the Complainant made the following payments:

- a. December 8, 2014, for \$149.73;
- b. February 23, 2015, for \$449.19;
- c. September 21, 2015, for \$898.38;
- d. November 5, 2015, for \$150.00;
- e. March 16, 2016, for \$200.00;
- f. April 6, 2016, for \$162.00; (LIHEAP grant)²
- g. April 6, 2016, for \$70.00; (LIHEAP grant)
- h. July 6, 2016, for \$65.00; (LIHEAP grant)

² LIHEAP is Low Income Home Energy Assistance Program.

- i. August 16, 2016, for \$200.00;
- j. February 1, 2017, for \$244.00; (LIHEAP grant)
- k. February 1, 2017, for \$50.00; (LIHEAP grant)
- l. February 9, 2017, for \$200.00;
- m. April 24, 2017, for \$200.00; and
- n. August 18, 2017, for \$100.00;

which include nine payments from the finances of the Complainant and five payments made through grants on her account for a total of 14 payments. Tr. 27-28, PGW Exhibit 1.

20. Ms. Moore found that the Complainant was not a good faith payer. Tr. 29.

21. The Complainant has had four payment arrangements on her gas service account with the Respondent. Tr. 30-31, PGW Exhibit 2.

22. The Complainant had a Commission-issued payment arrangement on September 17, 2009, at BCS Case No. 2584789. Tr. 31, PGW Exhibit 2.

23. The Complainant did not satisfy the balance on the Commission-issued payment arrangement at BCS Case No. 2584789, and therefore, defaulted on the payment arrangement. Tr. 36, PGW Exhibit 3.

24. The Complainant's most recent payment arrangement was a Company-issued arrangement on September 19, 2011, on which she defaulted. Tr. 30, 33-34, PGW Exhibit 2.

25. The Complainant started a CRP arrangement on October 7, 2014, but the CRP arrangement was suspended on November 4, 2015. Tr. 34-35, PGW Exhibit 2.

26. The CRP arrangement was suspended because the Complainant failed to timely provide the necessary documentation to renew the arrangement. Tr. 36-37.

27. On March 29, 2017, the Complainant filed a BCS informal complaint at Case No. 3508077, requesting that the PUC assist her in re-entering the CRP program. Tr. 35, PGW Exhibit 3.

28. BCS issued a decision on May 18, 2017, which concluded that the Complainant's LIHEAP grant was not enough to satisfy the cure amount to participate in the CRP, and found that the CRP program would not be beneficial to the Complainant. Tr. 36, PGW Exhibit 3.

29. BCS found that the Complainant did not satisfy the balance of a prior PUC payment arrangement issued at BCS Case No. 2584789. PGW Exhibit 3.

30. BCS concluded that the Complainant was ineligible for another Commission-issued payment arrangement. Tr. 36, PGW Exhibit 3.

DISCUSSION

I. Applicable Legal Standard

As the proponent of a rule or order seeking affirmative relief from the Commission, 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. § 332(a). To satisfy this burden, the Complainant must demonstrate that the Respondent was responsible for the problems alleged in the Complaint through a violation of the Code or a regulation or order of the Commission. This must be shown by a preponderance of the evidence. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976).

A preponderance of the evidence is that which is more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulie*, 70 A.2d 854 (Pa. 1950); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990) *alloc. den.*, 602 A.2d 863 (Pa.Cmwlth. 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*, 413 A.2d 1037 (Pa.Cmwlth. 1980).

If the Complainant presents 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.Cmwlth. 2001).

II. Whether Complainant Sustained Her Burden of Proof

The Complainant is seeking an affordable payment arrangement. Tr. 17. The Complainant does not dispute that she owes the outstanding balance due for gas service at the service address. *Id.* The Complainant cannot pay the amount requested by the Company as the down-payment for a payment arrangement. *Id.*

The Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401 *et seq.*, was enacted to protect responsible customers of public utilities. Section 1405(a) of the Code states,

The Commission is authorized to investigate complaints regarding payment disputes between a public utility, applicants and customers. The Commission is authorized to establish payment arrangement between a public utility, customers and applicants within the limits established by this chapter.

66 Pa.C.S. § 1405(a). The Code defines 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. The term includes a person who, within 30 days after service termination or discontinuance of service, seeks to have service reconnected at the same location or transferred to another location within the service territory of the public utility.

66 Pa.C.S. § 1403.

The Complainant is a natural person, receives gas service at the service address, and has a residential account for gas service at the service address. Tr. 6, PGW Exhibit 1. The Respondent is a public utility. The Complainant fits the definition of a customer of the Respondent.

Section 1405(d) of the Code states,

Absent a change in income, the commission shall not establish or order a public utility to establish a second or subsequent payment arrangement if a customer has defaulted on a previous payment arrangement established by a commission order or decision. A public utility may, at its discretion, enter into a second or subsequent payment arrangement with a customer.

66 Pa.C.S. § 1405(d).

The Complainant does not dispute that she had a Commission-issued payment arrangement. Tr. 31, PGW Exhibit 2. The Complainant defaulted on the Commission-issued payment arrangement. *Id.* However, the Complainant alleged a change in income. Tr. 9.

Section 1403 defines a 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 Commission issued the Complainant a payment arrangement on September 17, 2009. Tr. 31, PGW Exhibit 2. The Complainant's household income corresponding to the date of the Commission-issued payment arrangement was \$3,000.00 per month. PGW Exhibit 2. The number of occupants in the Complainant's household was four, the Complainant and three children. Tr. 19-20. According to the 2009 Federal poverty income guidelines, the Complainant's household income was less than 175% of the Federal poverty income. 74 Federal Register 4199 (January 23, 2009). It is noted that according to the Federal poverty income guidelines for 2017, the Complainant's household income is less than 150% of the Federal poverty income. 82 Federal Register 8831 (January 26, 2017). Thus, the Complainant's household income fitting the definition of change of income would be $(\$3,000.00 - (\$3,000.00 \times 10\%)) = \$3,000.00 - \$300.00 = \$2,700.00$ or less.

The Complainant testified that the current income of the household is that of her son, which is \$735.00 per month. Tr. 9, 13-15. However, the Complainant's son is 17 years old, and therefore, is not an adult. The definition of household income is, "the combined income of all adults in a residential household who benefit from the public utility service." 66 Pa.C.S. § 1403. Under the definition of household income, the Complainant's household income is \$0.00. An income is \$0.00 is less than \$2,700.00. The Complainant's change in income fits the statutory definition for change in income.

While I find the Complainant's testimony credible, the Complainant was directed to substantiate and corroborate her testimony regarding her income with paystubs or other employment documents. The Complainant failed to provide these documents and failed to appear at the scheduled hearing where the documents would be examined. The Complainant offered no excuse to date for why she failed to appear at the further hearing or corroborate her income testimony. Under these circumstances, I cannot find that the Complainant sustained her burden of proof.

In the alternative, if it is deemed that the Complainant's testimony alone is enough to satisfy the Complainant's burden of proof, a further analysis by Commission precedent is applicable if the Complainant's evidence of change in income is deemed substantiated.

A. Whether a payment arrangement is warranted

In *Crawford v. National Fuel Gas Distribution Corp.*, Docket No. C-20066348 (entered December 6, 2007) the Commission clarified subsection 1405(a) of the Code finding that the Commission has authority to establish payment agreements between public utilities and customers but that authority is limited by the restrictions of 1405(b)-(f). In *Crawford*, the Commission concluded that if the customer had not received a prior payment arrangement from it, subsection 1405(a) grants the authority to the Commission to issue a payment arrangement for customers. 66 Pa.C.S. § 1405(a). The Commission stated,

the Commission has a responsibility to exercise its authority very judiciously when a utility has lawfully terminated a customer for non-payment. Specifically, this Commission should exercise discretion only on behalf of customers who have demonstrated some evidence of good faith efforts to pay their utility bills, or who have experienced a significant change of circumstance outside of their control.

Crawford, Docket No. C-20066348 (entered December 6, 2007) at 15-16. Hence, the Commission precedent warrants an examination of the Complainant's payment history to determine if a Commission-issued payment arrangement is warranted.

B. Complainant's payment history

The Complainant has made nine payments on the service account over the period from June 30, 2014, to September 5, 2017, the date of the evidentiary hearing where the Complainant did appear. Tr. 27-28, PGW Exhibit 2. Specifically, over the course of approximately 38 months (June 30, 2014, to September 5, 2017) the following payments were made to the Complainant's gas service account:

- a. December 8, 2014, for \$149.73;
- b. February 23, 2015, for \$449.19;
- c. September 21, 2015, for \$898.38;
- d. November 5, 2015, for \$150.00;
- e. March 16, 2016, for \$200.00;
- f. April 6, 2016, for \$162.00; (LIHEAP grant)
- g. April 6, 2016, for \$70.00; (LIHEAP grant)
- h. July 6, 2016, for \$65.00; (LIHEAP grant)
- i. August 16, 2016, for \$200.00;
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- l. February 9, 2017, for \$200.00;
- m. April 24, 2017, for \$200.00; and
- n. August 18, 2017, for \$100.00.

Id. The Complainant has had a total of 14 payments to her service account over the 38-month period with five payments from grants. *Id.*

The PGW witness testified that the payment history of the Complainant was not that of a good faith payer. Nine payments out of 38 months is less than 25% of the months billed. Furthermore, only on February 23, 2015, over the 38-month period did the Complainant satisfy the balance due. PGW Exhibit 1. On February 23, 2015, the Complainant was participating in the CRP program and therefore \$3,188.86 was frozen due to her participation in

CRP. Due to the significant amount frozen, the amount for the current balance on February 23, 2015 was significantly less. *Id.*

I find that the Complainant's payment history was poor over the 38-month period. Her payment record shows payments received from her for only nine months billed. Such a record does not reflect good faith efforts to pay utility bills.

The Complainant has failed to provide evidence that she made good faith efforts to pay her bills for gas service that she received. Consistent with Commission precedent, the Complainant has failed to provide evidence to warrant the Commission to exercise its discretion to grant the Complainant a payment arrangement.

CONCLUSIONS OF LAW

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

2. "Burden of proof" means a duty to establish one's case by a preponderance of the evidence, which requires that the evidence be more convincing by even the smallest degree, than the evidence presented by the other side. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

3. The Commission is authorized to establish a payment arrangement between a customer and a public utility within certain limitations. 66 Pa.C.S. § 1405(a) and *Crawford v. National Fuel Gas Distribution Corp.*, Docket No. C-20066348 (entered December 6, 2007).

4. "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.

