

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lonedra Allen	:	
	:	
v.	:	C-2017-2627743
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
F. Joseph Brady  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses the formal Complaint of Loneda Allen against Philadelphia Gas Works because she failed to carry her burden of proving that she is entitled to a new or subsequent Commission-issued payment arrangement or an extension of the current payment arrangement.

**HISTORY OF THE PROCEEDING**

On October 4, 2017, Loneda Allen (Complainant) filed a formal Complaint against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant contends that PGW sent her notice that they are going to shut off her utility service and requests a payment arrangement.

The Complaint is an untimely appeal of the decision issued by the Commission's Bureau of Consumer Services (BCS) on September 12, 2017 at BCS Case No. 3545657. BCS

denied the Complainant's request for a payment arrangement and upheld PGW's terms for restoration of service.

The Respondent filed an Answer on October 25, 2017. The Respondent admits that it provided service to the Complainant at the address shown on the Complaint. The Respondent avers that the Complainant received a Commission-issued payment arrangement on June 11, 2015. The Respondent further avers that the Complainant broke that arrangement, and as a result, on July 12, 2017, it issued a 10-day Shut Off Notice to the Complainant for non-payment. The Respondent alleges the Complainant is not eligible for a new payment arrangement pursuant to 66 Pa.C.S. §1405(d) and requests that the Complaint be dismissed.

By Hearing Notice dated November 16, 2017, a hearing was scheduled for January 24, 2018 at 10:00 a.m., and the matter was assigned to me.

A Prehearing Order was issued on November 20, 2017, advising 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.

A hearing was held on January 24, 2018, as scheduled. The Complainant appeared *pro se*, testified in support of her Complaint, and presented the following two exhibits, which were entered into the record:

Complainant 1 – September 14, 2017 10-Day Shut Off Notice  
Complainant 2 – PGW Bills from September 2016 – 2017

Graciela C. Christlieb, Esquire represented the Respondent, and presented the testimony of Jessica Glace, who is a Senior Customer Review Officer at PGW. Attorney Christlieb also introduced the following five exhibits, which were entered into the record:

PGW 1 – Utility Service Agreement  
PGW 2 – Specific Service Agreement Statement of Account  
PGW 3 – Payment Arrangements  
PGW 4 – Printout of BCS Case #: 3545657  
PGW 5 – June 12, 2015 BCS Decision Letter for Case #: 3354281

The record closed on February 9, 2018, upon receipt of the transcript (N.T. pp. 1 – 49).

### FINDINGS OF FACT

1. The Complainant is Loneda Allen, who resides at 5055 North Franklin Street, Philadelphia, PA 19120 (Service Address). (N.T. p. 8).

2. The Respondent is Philadelphia Gas Works.

3. The Complainant's household consists of five people – three adults and two minors. (N.T. pp. 12-13).

4. The Complainant established service with PGW at the Service Address in 1996. (N.T. p. 31; PGW 1).

5. On June 9, 2015, the Complainant filed an informal complaint with the BCS at Case No. 3354281 seeking a payment arrangement. (N.T. p. 35; PGW 5).

6. On June 11, 2015, the BCS established a payment arrangement on behalf of the Complainant at BCS Case No. 3354281. (N.T. pp. 34-35; PGW 5).

7. The Commission-issued payment arrangement was based on a reported gross household income of \$3,412.50 per month for a five-person household. (N.T. pp. 36-37; PGW 3).

8. The Complainant defaulted on the payment arrangement on July 11, 2017. (N.T. pp. 10, 36).

9. On September 14, 2017, the Respondent sent a 10-Day Shut Off Notice to the Complainant. (N.T. pp. 10; Complainant 1).

10. The Complainant's total bill, as of January 13, 2018, is \$1,470.19. (N.T. p. 33; PGW 2).

11. The Complainant's current gross household income remains approximately \$3,400.00 per month for a five-person household. (N.T. p. 13).

12. Since 2010, the Complainant has defaulted on at least seven payment arrangements, including the June 11, 2015 Commission-issued payment arrangement. (N.T. p. 34; PGW 3).

### DISCUSSION

As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proving by substantial evidence that she is entitled to the requested relief. 66 Pa.C.S. § 332(a). To satisfy this burden, the Complainant must show that the named 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). This must be shown by a preponderance of the evidence, that is, by presenting evidence more convincing, by even the smallest amount, 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.*, 602 A.2d 863 (Pa. 1992); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 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*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. 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*, 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).

By law, a public utility is entitled to receive payment for the service it provides. *Scaccia v. West Penn Power Co.*, 55 Pa. PUC 637 (1982); *Kea v. Peoples Natural Gas Co.*, 60 Pa. PUC 215 (1985); *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. 1982). Consequently, the Respondent has the right to bill and receive payment for the utility service actually supplied. 66 Pa.C.S. § 1303; *Neal v. Philadelphia Gas Works*, Docket No. Z-00871874, (Final Order entered January 4, 2002); *Angie's Bar v. Duquesne Light Co.*, 72 Pa. PUC 213 (1990).

Additionally, all customers are obligated to pay for utility service. Otherwise, unpaid bills are included in the utility's uncollectible expenses, which all of its remaining customers must pay. *Bolt v. Duquesne Light Co.*, Docket No. Z-8721758 (Opinion and Order entered April 8, 1988). A payment arrangement, which prevents service termination as long as the Complainant complies with it, is a privilege, not a right. *Mandell v. Duquesne Light Co.*, Docket No. C-20030234, (Opinion and Order entered March 17, 2004).

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.

This law provides strict guidelines that the Commission must follow when determining whether a payment arrangement can be issued and the length of the payment arrangement.

Section 1405(d) of the Public Utility Code regarding payment arrangements reads in pertinent part:

**(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 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)(emphasis added). "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(emphasis added). Thus, the Commission may only order a second payment arrangement if the Complainant demonstrates a decrease in income.

In this case, the Complainant was already the beneficiary of a Commission-issued payment arrangement on June 11, 2015, which she admits she defaulted on when she failed to pay the amount due in July of 2017. (N.T. p. 10). The Complainant also confirmed that she has not experienced a decrease in household income since the Commission-issued payment arrangement. (N.T. p. 13). Therefore, pursuant to 66 Pa.C.S. § 1405(d), the Commission cannot establish or order PGW to issue another payment arrangement.

Also, the Complainant is not entitled to an extension of the Commission-issued payment arrangement. Section 1405(e) of the Public Utility Code regarding payment arrangements reads in pertinent part:

**(e) Extension of payment arrangements.**

If the customer defaults on a payment arrangement established under subsections (a) and (b) as a result of a significant change in circumstance, the commission may reinstate the payment arrangement and extend the remaining term for an initial period of six months. The initial extension period may be extended for an additional six months for good cause shown.

66 Pa.C.S. § 1405(e)(emphasis added). “Significant change in circumstance” is defined as:

Any of the following criteria when verified by the public utility and 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.

Here, the only “hardship” the Complainant stated she experienced was that her daughter went away to college and she incurred expenses such as renting a vehicle to transport her there. (N.T. pp. 11, 13, 48). This does not fall under any of the foregoing criteria the Commission considers a significant change in circumstance. Consequently, the Commission may not reinstate the payment arrangement issued on June 11, 2015 and extend the remaining term.

Based on the foregoing, I find that the Complainant has failed to carry her burden of proving that she is entitled to a second or subsequent Commission-issued payment arrangement or to an extension of the previous payment arrangement. Accordingly, Ms. Allen's Complaint against PGW is dismissed.

#### CONCLUSIONS OF LAW

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

2. The burden of proof in this proceeding is on the Complainant. 66 Pa.C.S. § 332(a).

3. The Responsible Utility Customer Protection Act, 66 Pa.C.S. Sections 1401-1418, applies to this proceeding.

4. The Commission is authorized to establish a payment arrangement between a public utility and a customer. 66 Pa.C.S. § 1405(a).

5. 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. 66 Pa.C.S. § 1405(d).

6. If a customer defaults on a payment arrangement established by the Commission under subsections 1405(a) and (b) as a result of a significant change in circumstance, the commission may reinstate the payment arrangement and extend the remaining term for an initial period of six months. The initial extension period may be extended for an additional six months for good cause shown. 66 Pa.C.S. § 1405(e).

7. “Significant change in circumstance” is defined as: “Any of the following criteria when verified by the public utility and 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.

8. The Complainant has failed to carry her burden of proving that she is entitled to a second or subsequent Commission-issued payment arrangement or to an extension of the previous payment arrangement. 66 Pa.C.S. §§ 1405(d), 1405(e).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the complaint of Loneda Allen against Philadelphia Gas Works at Docket No. C-2017-2627743 is dismissed; and

2. That the case at Docket No. C-2017-2627743 be marked closed.

Date: March 15, 2018

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/s/  
F. Joseph Brady  
Administrative Law Judge