

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Amber Cozart	:	
	:	
v.	:	C-2018-2646671
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Alphonso Arnold III
Special Agent

INTRODUCTION

This Initial Decision dismisses the Complaint because the Complainant failed to carry her burden of proving that she is entitled to a second Commission issued payment arrangement, or an extension of the first Commission issued payment arrangement.

HISTORY OF THE PROCEEDING

On February 5, 2018, Amber Cozart (Complainant) filed a Complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (Respondent or PGW). The Complainant seeks a payment arrangement. The Complaint is an untimely appeal from the Commission's Bureau of Consumer Services (BCS) decision issued on October 26, 2017 at BCS No. 3565873.

The Respondent filed an Answer on March 1, 2018. The Answer requests that the Commission deny the Complainant's Complaint.

By Hearing Notice dated March 15, 2018, the Commission scheduled this matter for a call-in telephonic hearing on Monday, April 23, 2018, at 10:00 a.m. and assigned the case to me.

I issued a Prehearing Order¹ on March 16, 2018, addressing, inter alia, the method by which the parties could call-in to participate in the hearing, the procedures applicable to the hearing, and the submission of documents prior to the hearing.

I conducted the telephonic hearing as scheduled on April 23, 2018, at 10:00 a.m. The Complainant appeared pro se and testified on her own behalf. The Complainant presented no exhibits for the record.

The Respondent was represented by Graciela Christlieb, Esquire, who presented the testimony of Tiffany Jones, a Senior Customer Review Officer at PGW. Attorney Christlieb also presented the following three exhibits, all of which were admitted into the record:

PGW Exhibit 1 – Statement of Account

PGW Exhibit 2 – Payment Arrangement History

PGW Exhibit 3 – BCS Complaint and Decision

The record² closed on April 23, 2018, following the conclusion of the telephonic hearing. For the reasons discussed below, the Complaint will be dismissed.

FINDINGS OF FACT

1. The Complainant is Amber Cozart.
2. The Respondent is Philadelphia Gas Works.

¹ The Prehearing Order contained an error with respect to the scheduled date of the telephonic hearing. An Amended Prehearing Order was issued to the parties on March 20, 2018, correcting the error.

² The telephonic hearing was recorded over the phone by means of a tape recorder. No Court Reporter was present.

3. Ms. Cozart filed an Informal Complaint with the BCS at No. 3565873 on September 27, 2017. (PGW Exhibit 3, pg. 1).

4. On October 26, 2017, the BCS established a payment arrangement for Ms. Cozart. (PGW Exhibit 3, pg. 3).

5. Under the payment arrangement Ms. Cozart was to pay an amount of \$109 (\$94 budget amount plus \$15 towards arrears) per month. (PGW Exhibit 3, pg. 3).

6. The payment arrangement was based on a reported household income amount of \$402 per month from public assistance for a four-person household. (PGW Exhibit 2, pg. 2).

7. Ms. Cozart defaulted on the BCS payment arrangement on January 5, 2018. (PGW Exhibit 2, pg. 2).

8. Ms. Cozart has been informed that she is eligible for PGW's Customer Assistance Program (CAP), known as the Customer Responsibility Program (CRP).

9. According to Senior Customer Review Officer Tiffany Jones, Ms. Cozart would be required to pay \$107 a month under PGW's CRP.

10. Ms. Cozart refused to be placed in PGW's CRP.

11. At the time of the hearing, Ms. Cozart still has a four-person household, consisting of herself and her three minor children, ages three, five, and ten.

12. Ms. Cozart has been unemployed since February 2014 following the birth of her youngest child and has stated that she currently is looking for work.

13. Ms. Cozart's current household income remains \$402 a month from public assistance.

14. Ms. Cozart receives social security income (SSI) in the amount of \$750 a month for her son.

15. Ms. Cozart's son has had a medical condition requiring multiple treatments at a hospital for the past two years.

16. In recent months, Ms. Cozart discovered bedbugs in her home, causing her to get rid of a bed and furniture to treat the bedbug infestation.

17. Ms. Cozart's total past due balance at the time of the hearing is \$1,901.72.

18. Since establishing her PGW account on February 2, 2017, Ms. Cozart has made one payment on her account in the amount of \$150 on October 12, 2017. (PGW Exhibit 1).

19. A LIHEAP grant of \$200 was applied to Ms. Cozart's account on February 28, 2018. (PGW Exhibit 1).

20. PGW does not consider Ms. Cozart to be a customer who has made good faith payments towards her account.

DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 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).

In this proceeding, Ms. Cozart filed a Complaint against PGW seeking legal relief in the form of a second Commission ordered payment arrangement. As a result, the burden of proof lies with Ms. Cozart to show that she is entitled to a second Commission ordered payment arrangement.

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 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).

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). Public utilities are entitled 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). 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. §§ 1401-1418, 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.

(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.

66 Pa.C.S. §§ 1405(a)-(b).

Ms. Cozart filed an Informal Complaint with the BCS on September 27, 2017 and was given a payment arrangement under 66 Pa.C.S. § 1405(a) and 66 Pa.C.S. § 1405(b)(1) on October 26, 2017. This decision was not timely appealed by Ms. Cozart, so this BCS payment arrangement became a formal Commission issued payment arrangement. 52 Pa. Code § 56.172(d). This Commission issued payment arrangement was defaulted upon because Ms. Cozart made no payments towards it. Thus, Ms. Cozart is seeking for the Commission to issue her a second payment arrangement. 66 Pa.C.S. § 1405(d) limits the circumstances by which the Commission can establish a second payment arrangement if a customer has defaulted on a previous Commission issued payment arrangement.

(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). “Changed of income” is defined as the following:

“Change in income.” 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. Additionally, “Household income” is defined as the following:

“Household income.” The combined gross income of all adults in a residential household who benefit from the public utility service.

66 Pa.C.S. § 1403.

To summarize, Ms. Cozart is not entitled to a second Commission issued payment arrangement unless she has suffered a decrease in household income. That decrease must be a decrease of 10%³ or more because Ms. Cozart's household income of \$402 is 200% or less of the Federal poverty level (FPL). There is no record evidence in this proceeding to demonstrate that Ms. Cozart has suffered a decrease in household income that would entitle her to a second Commission issued payment arrangement. When she filed her Informal Complaint with the BCS, Ms. Cozart reported a monthly household income amount of \$402. The \$402 that she reported came from public assistance. During the hearing, Ms. Cozart again reported a monthly household income amount of \$402 from public assistance. Thus, Ms. Cozart has not suffered a decrease in household income as her income remains the same following the time she filed her Informal Complaint with the BCS.⁴

The Responsible Utility Customer Protection Act provides the Commission with another method to assist customers who have defaulted on a previous Commission issued payment arrangement. The Act authorizes the Commission to reinstate and extend a Commission issued payment arrangement that has been defaulted.

(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). "Significant change in circumstance" is defined as the following:

"Significant change in circumstance." 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:

³ Ms. Cozart's reported household income amount of \$402 is approximately 19.2 % of the FPL. 200% of the FPL with a household of 4 = \$4,183.33. ($\$4,183.33 / 200 = 20.92$). ($\$402 / 20.92 = 19.2$).

⁴ Ms. Cozart receives SSI in the amount of \$750 per month for her son. This income is income attributed to the son who is not an adult. Thus, this income is not included in the calculations of Ms. Cozart's household income. See Leslie Janet Pellot v. PECO Energy Company, C-2013-236592 (Final Order entered December 9, 2013); Shantelle Thomas v. Philadelphia Gas Works, F-2017-2612646 (Final Order entered December 7, 2017).

- (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.

Ms. Cozart's household income is less than 300% of the FPL, but she has not defaulted on the Commission issued payment arrangement as a result of a significant change in circumstance. At the hearing Ms. Cozart provided two sets of facts, that I find to be credible, that could potentially fit under one of the criteria for "significant change in circumstance." First, Ms. Cozart testified that for the past two years, her son suffered from a medical condition requiring multiple treatments at a hospital over that span. Her son's medical condition negatively impacted Ms. Cozart financially. Ms. Cozart attributes part of her reasoning as to why she has not found new employment to the existence of her son's medical illness. However, her son suffered from his medical condition prior to the establishment of the Commission issued payment arrangement in October 26, 2017. In fact, her son suffered from his medical condition prior to the establishment of Ms. Cozart's PGW account on February 2, 2017. Thus Ms. Cozart's household has not experienced the "onset" of any illness impacting her financially following the issuance of the Commission payment arrangement. The medical condition of her son cannot be used here to excuse the default of the Commission issued payment arrangement because her son had his illness prior to the creation of the Commission issued payment arrangement. Furthermore, the medical condition of her son cannot be used to excuse the fact that Ms. Cozart has only made one payment towards her gas bill since establishing her gas account on February 2, 2017 because her son was ill prior to establishing her gas account. It is more probable that Ms. Cozart has failed to make payments on her gas bill or towards her Commission issued payment arrangement because of the fact that she has not been employed since February of 2014. Ms. Cozart established her gas account with PGW without employment

and without a method to pay her gas bills as they would become due. As stated previously in this Decision, a public utility is entitled to receive payment for the service that it provides.

It was additionally stated at the hearing by Ms. Cozart that she has suffered financially as a result of the discovery of bedbugs in her home. She stated that she had to expend money to treat her home as a result of the bedbugs. She stated at the hearing that she has had to get rid of beds and couches as a result of the existence of bedbugs in her home. I would not deny that bedbugs have damaged Ms. Cozart's residence causing her financial harm, but the law requires for the damage done to a residence to be "catastrophic" in nature. I would not categorize the damage that bedbugs did to Ms. Cozart's home as "catastrophic" in nature.

As a result, Ms. Cozart has not suffered a significant change in circumstance, thus she is not entitled to reinstatement and extension of her Commission issued payment arrangement.

In addition, Ms. Cozart inquired if anything can be done to prevent termination on her gas service because her son is medically ill. Ms. Cozart's gas service is not currently under termination proceedings. PGW, however, is authorized to terminate her service following notice due to nonpayment of her account balance. 66 Pa.C.S. § 1406(a)(1). Payment of her balance would prevent termination of her gas service in the future. If PGW desires to terminate her service in the future for nonpayment, Ms. Cozart may be able to postpone termination of her gas service through providing PGW with medical certifications. Section 56.113 of the Commission's regulations states as follows:

Certifications initially may be written or oral, subject to the right of the public utility to verify the certification by calling the physician or nurse practitioner or to require written verification within 7 days. Certifications, whether written or oral, must include the following:

- (1) The name and address of the customer or applicant in whose name the account is registered.
- (2) The name and address of the afflicted person and relationship to the customer or applicant.

(3) The nature and anticipated length of the affliction.

(4) The specific reason for which the service is required.

(5) The name, office address and telephone number of the certifying physician or nurse practitioner.

52 Pa.Code § 56.113.

It should be noted, however, that 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).

Although I am unable to issue a payment arrangement for the Complainant in this case, I can suggest that Ms. Cozart reignite discussions with PGW concerning eligibility for its Customer Responsibility Program (CRP). It was stated during the hearing that, prior to the hearing, Ms. Cozart was informed that she was eligible for CRP but was told that her monthly payments would be \$107. Ms. Cozart was not amicable to applying for PGW's CRP because her payments under CRP would be almost the same as the amount she could not afford under the Commission issued payment arrangement (\$109). Under the assumption that PGW used Ms. Cozart's household income to calculate the amount Ms. Cozart would pay per month under CRP, it might have factored in her son's SSI in its calculations. The caselaw that I cited previously in this Decision does not include a child's SSI in calculations for household income.

In view of all of the above, I find that the Complainant has not met her burden of proving by a preponderance of the evidence that she is entitled to a second Commission issued payment arrangement or to a reinstatement and an extension of the Commission issued payment arrangement. Since I have concluded that I lack the authority to order a payment arrangement in this case, or the authority to reinstate and extend the defaulted Commission issued payment arrangement, the full balance is due and payable.

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. §§ 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. The Complainant has not met her burden of proving that she is entitled to a second payment arrangement or to an extension of the first Commission issued payment arrangement. 66 Pa.C.S. §§ 1405(d)-(e).

