

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

James Rich	:	
	:	
v.	:	F-2018-3002258
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the formal Complaint of James Rich against Philadelphia Gas Works because he failed to carry his burden of proving that he is entitled to a new or subsequent Commission-issued payment arrangement, or a hold on his account pursuant to a medical certification.

HISTORY OF THE PROCEEDING

On May 22, 2018, James Rich (Mr. Rich or Complainant) filed a formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, Mr. Rich placed checkmarks in the boxes indicating “[t]he utility is threatening to shut off my service or has already shut off my service,” and “I would like a payment agreement.” Mr. Rich also placed a checkmark in the box indicating “Other,” explaining that he seeks a hold on his account pursuant to a medical certification.

The Complaint is a timely appeal of the decision issued by the Commission's Bureau of Consumer Services (BCS) on April 30, 2018, at BCS Case No. 3604139. BCS dismissed the Complainant's informal complaint.

On May 31, 2018, PGW filed an Answer to the Complaint. In its Answer, PGW admitted that it has provided service to the Complainant at 1144 E. Mount Airy Avenue, 2F, Philadelphia, PA (Service Address). PGW also averred that it has already honored one medical certification hold and two renewals on the Complainant's account. PGW further averred that the Complainant has already received two Commission-issued payment arrangements, which he has failed to satisfy. PGW requests the Complaint be dismissed.

By Hearing Notice dated June 1, 2018, a hearing was scheduled for July 6, 2018, and the matter was assigned to me.

A Prehearing Order was issued on June 6, 2018, advising the parties of the date and time of the scheduled hearing and informing them of the procedures applicable to this proceeding.

By Hearing Cancellation/Reschedule Notice dated June 12, 2018, the hearing was rescheduled for August 1, 2018.

On July 31, 2018, Mr. Rich appeared at the Philadelphia Office of Administrative Law Judge (OALJ) in-person and submitted a hand-written note that stated: "I would like to reschedule my hearing for Aug. 1, 2018 [due] to my sister's death." I instructed my legal assistant to inform Mr. Rich that I would consider his request if he provided verification of his sister's passing. Also, as a courtesy, I forwarded a copy of Mr. Rich's request to Counsel for PGW, Graciela Christlieb, Esquire.

Later, on July 31, 2018, Counsel for PGW submitted PGW's objection to Mr. Rich's request for a continuance. PGW argued, *inter alia*, that Mr. Rich's request is pretextual and was only being made as an attempt to delay this matter and avoid collection

activity on his account. PGW pointed out the fact that Mr. Rich already filed a formal Complaint requesting a payment arrangement on April 13, 2017. The Initial Decision in that matter denied his request and dismissed his Complaint. The Commission adopted that Initial Decision and issued its final Opinion and Order on March 1, 2018, which was during the winter moratorium on collection activity. Once the moratorium ended on March 31, 2018, PGW issued a 10-Day Shut Off notice on April 12, 2018. This Complaint is in response to that Notice. Thus, it appears Mr. Rich's issues may have already been litigated.

At the end of the day on July 31, 2018, after I had left the office, Mr. Rich returned to the OALJ and submitted a letter that read: "Please excuse James Rich for his absence from work on 7/31/2018. His family member is currently in the hospital and she [*sic*] has been attending to her." The letter contained a return address of "Tjuh 4e Gibbon" and the phone number: 215-955-7030, which was out of service.

On the morning of August 1, 2018, my legal assistant contacted Mr. Rich and informed him that the documentation submitted the night before was insufficient as it failed to contain any verification of his sister's passing, the return address was nonsensical, and the phone number listed was out of service.

At around 9:00 a.m., on August 1, 2018, Mr. Rich appeared in-person at the OALJ with another letter that read: "Please excuse the absence of Mr. James Rich due to the sudden passing of his sister Juanita Collins on 7/31/18 for which he was present at the bedside. An official letterhead was unavailable because the file of this patient has been closed." The letter was signed: Matthew Francis, MD. My legal assistant instructed Mr. Rich this letter was still unacceptable as it was not on letterhead, gave a strange reason for not being on letterhead, and no one at Thomas Jefferson University Hospital could verify that Mathew Francis, MD was employed there. Nevertheless, Mr. Rich stated he could return with a note on letterhead.

Around 9:40 a.m., Mr. Rich returned to the OALJ. I met Mr. Rich in the lobby and informed him that while he was away, PGW had arrived, along with the court reporter, and since he was present, we could go forward with the hearing. Mr. Rich stated he could not go

forward with the hearing. I told Mr. Rich that any further discussion of his continuance request must take place in the courtroom with all parties present and on the record.

The hearing convened at 9:45 a.m. on August 1, 2018. At the outset of the hearing, Mr. Rich reiterated his Motion for a Continuance, arguing that he could not be there for the hearing. Counsel for PGW reiterated her objection to the request. Given the fact that Mr. Rich was present at the hearing, I found his argument that “he could not be there” unconvincing and denied his continuance request.

The hearing proceeded, and the Complainant appeared *pro se* and testified on his own behalf. The Complainant offered the following exhibit, which was entered into the record:

Complainant 1: June 28, 2018 Pay Stub (1 page)

The Respondent appeared and was represented by Graciela Christlieb, Esquire, who presented the testimony of Tiffany Jones, a Senior Customer Review Officer at PGW. During the hearing, the Respondent offered the following five exhibits, all of which were entered into the record:

PGW 1: Statement of Account (4 pages)
PGW 2: History of Payment Arrangements (3 pages)
PGW 3: April 12, 2018 10-Day Shut Off Notice (1 page)
PGW 4: BCS Informal Complaint (#3604139) (4 pages)
PGW 5: Record of Holds (3 pages)

The record closed on September 4, 2018, when I received a copy of the transcript.

FINDINGS OF FACT

1. The Complainant is James Rich.
2. The Respondent is Philadelphia Gas Works.
3. In his Complaint, Mr. Rich requests a new payment arrangement and another medical certificate renewal.
4. The Complainant receives service at 1144 E. Mount Airy Avenue, 2F, Philadelphia, PA (Service Address). Tr. 23.
5. The Complainant resides alone at the Service Address. Tr. 23.
6. The Complainant's current gross monthly income is \$3,200.00. Tr. 23; Complainant 1.
7. On September 18, 2015, the Complainant received a Commission-issued payment arrangement, based on a gross monthly income of \$1,600.00 and a household size of one. Tr. 29-30; PGW 2.
8. On December 23, 2015, the Complainant defaulted on that Commission-issued payment arrangement. Tr. 29-30; PGW 2.
9. On April 13, 2017, the Complainant filed a formal Complaint against PGW seeking a payment agreement, which was Docketed at C-2017-2599266.
10. On March 1, 2018, the Commission issued an Opinion and Order upholding the Initial Decision dismissing the Complaint at Docket No. C-2017-2599266. *James Rich v. PGW*, Docket No. C-2017-2599266 (Opinion and Order entered March 1, 2018).

11. On April 12, 2018, PGW sent a 10-day Shut Off Notice to the Complainant based on a past due balance. Tr. 30; PGW 3.

12. The Complainant has received one medical certification hold and two renewals on his current outstanding balance. Tr. 30; PGW 5.

13. As of the date of the hearing, the Complainant had accumulated an outstanding balance of \$4,622.15. Tr. 29; PGW 1.

DISCUSSION

As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proving by substantial evidence that he 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 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). 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).

Payment Arrangement

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 subsequent 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 September 18, 2015, which was based on a gross monthly income of \$1,600.00 and a household size of one. The Complainant defaulted on this Commission-issued payment arrangement on December 23, 2015. During the hearing, the Complainant confirmed that he has not experienced a decrease in household income since the Commission-issued payment arrangement, but rather, a significant increase from \$1,600.00 to \$3,400.00 per month. 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). Further, “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 Complainant did not offer any evidence that he defaulted on the Commission-issued payment arrangement as a result of a significant change in circumstance. Consequently, the Commission may not reinstate the payment arrangement issued on September 18, 2015 and extend the remaining term.

Medical Certification

The Complainant seeks a hold on his account pursuant to a medical certification.

Relevant Commission regulations regarding medical certifications are as follows:

52 Pa.Code § 56.111. General provision.

A public utility may not terminate service, or refuse to restore service, to a premise when a licensed physician or nurse practitioner has certified that the customer or an applicant seeking restoration of service under § 56.191 (relating to payment and timing) 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. The customer shall obtain a letter from a licensed physician verifying the condition and promptly forward it to the public utility. The determination of whether a medical condition qualifies for the purposes of this section resides entirely with the physician or nurse practitioner and not with the public utility. A public utility may not impose any qualification standards for medical certificates other than those specified in this section.

52 Pa. Code § 56.114. Length of postponement; renewals.

Service may not be terminated for the time period specified in a medical certification; the maximum length of the certification shall be 30 days.

(1) *Time period not specified.* If no length of time is specified or if the time period is not readily ascertainable, service may not be terminated for at least 30 days.

(2) *Renewals.* Certifications may be renewed in the same manner and for the same time period as provided in §§ 56.112 and 56.113 (relating to postponement of termination pending receipt of certificate; and medical certifications) and this section if the customer has met the obligation under § 56.116 (relating to duty of customer to pay bills). In instances when a customer has not met the obligation in § 56.116 to equitably make payments on all bills, the number of renewals for the customer's household is limited to two 30-day certifications filed for the same set of arrearages. In these instances the public utility is not required to honor a third renewal of a medical certificate and is not required to follow § 56.118(3) (relating to right of public utility to petition the

Commission). The public utility shall apply the dispute procedures in §§ 56.151 and 56.152 (relating to public utility company dispute procedures). When the customer eliminates these arrearages, the customer is eligible to file new medical certificates.

(emphasis added).

In this case, the Complainant has already received one medical certification hold and two renewals on his account, but he has failed to make payment on all of his outstanding bills. Thus, pursuant to 52 Pa. Code § 56.114(2), PGW cannot be required to honor a third renewal of a medical certificate.

Conclusion

Based on the foregoing, I find that the Complainant has failed to carry his burden of proving that he is eligible for a second or subsequent Commission-issued payment arrangement or to an extension of the previous payment arrangement, nor is he entitled to a further hold on his account pursuant to a third medical certification renewal. Accordingly, the Complaint 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. §§ 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 his burden of proving that he 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).

9. In instances when a customer has not met the obligation in Section 56.116 to equitably make payments on all bills, the number of renewals for the customer’s household is limited to two 30-day certifications filed for the same set of arrearages. In these instances, the public utility is not required to honor a third renewal of a medical certificate. 52 Pa. Code § 56.114(2).

10. The Complainant has failed to carry his burden of proving that he is entitled to a hold on his account pursuant to a third medical certification renewal.

