

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Shante Jackson	:	
	:	
v.	:	C-2018-3000220
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Eranda Vero  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision grants, in part, and denies, in part, Shante Jackson’s formal Complaint against Philadelphia Gas Works at Docket No. C-2018-3000220. Shante Jackson’s Complaint is denied with regard to her claim of improper removal from Philadelphia Gas Works’ Customer Responsibility Program because she failed to carry her burden of proof. Shante Jackson’s formal Complaint is granted to the extent that it requests a Commission-issued payment arrangement.

**HISTORY OF THE PROCEEDING**

On March 2, 2018, Shante Jackson (Complainant or Ms. Jackson) filed a formal Complaint (Complaint) against Philadelphia Gas Works (PGW, Respondent or the Company) with the Pennsylvania Public Utility Commission (Commission) alleging that the Respondent is threatening to shut off her gas service, that she is unable to pay her gas bills to PGW, and that she was improperly removed from PGW’s Customer Responsibility Program (CRP). As relief, Ms.

Jackson requested that the Commission order PGW to reinstate her in the CRP program or, in the alternative, establish a payment arrangement for her.

On March 26, 2018, PGW filed an Answer denying all material allegations of fact and conclusions of law in the Complaint.

A Hearing Notice dated April 2, 2018, notified the parties that an initial hearing was scheduled for Friday, May 25, 2018, at 10:00 a.m.

A Prehearing Order was issued on April 12, 2018, 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 May 25, 2018. The Complainant appeared *pro se* and testified in support of the Complaint. Graciela Christlieb, Esq., represented the Respondent, and presented the testimony of Leon Lubiejewski, who is a security and loss prevention investigator for PGW, and Tiffany Jones, who is a senior customer review officer for PGW. The Respondent sponsored six exhibits, which were admitted into the record.

The record in this matter closed upon receipt of the transcript on June 28, 2018.

#### FINDINGS OF FACT

1. The Complainant is Shante Jackson, who resides at 6467 Ross Street, Philadelphia, PA 19119 (Service Address). Tr. 6.
2. Complainant resides at the Service Address with her two children who are ten and 11 years old. Tr. 10, 18.
3. Ms. Jackson was first enrolled in PGW's CRP program in 2014. Tr. 7.

4. Ms. Jackson had to recertify into the CRP program annually. Tr. 8-9.

5. Prior to September 2016, Ms. Jackson was employed on a temporary basis through employment agencies. Tr. 13.

6. In September of 2016, Ms. Jackson was hired by Health Partners at a pay rate of \$19.93 per hour, working 40 hours per week as a Claims Examiner. Tr. 11-13.

7. Ms. Jackson's payrate with Health Partners increased to \$20.95 per hour before she became employed by Helping Hand Home Health (Helping Hand) early in 2018. Tr. 12-13.

8. There was no gap in Ms. Jackson's employment between Health Partners and Helping Hand. Tr. 12.

9. As of the day of the hearing, Complainant was employed full time by Helping Hand, working 40 hours per week at a pay rate of \$25.00 per hour. Tr. 9.

10. At the time of the hearing, the Complainant was the sole source of income for her household. Tr. 11.

11. On February 14, 2017, PGW received a CRP Application/Recertification Form on behalf of Ms. Jackson. Tr. 23, PGW Exhibit 1.

12. Following the submittal of the February 14, 2017 CRP Recertification application, PGW billed Ms. Jackson's account at the discounted CRP rate, commensurate with the income information provided in that form. Tr. 34.

13. The form contained the Complainant's full name, her Social Security Number, her date of birth, the service address, and the PGW account number for the Service Address. Tr. 24, PGW Exhibit 1.

14. Pursuant to the information entered on the form, the applicant was 31 years old at the time the form was submitted to PGW. PGW Exhibit 1.
15. The form indicated that the applicant received no food stamps or housing subsidy at the time of the application. PGW Exhibit 1.
16. The form did not include any information on Ms. Jackson's children. PGW Exhibit 1.
17. The form indicated that Ms. Jackson's household income was \$524.00 per month at the time of filing. PGW Exhibit 1.
18. The income verification document attached to the form consisted of a letter dated February 14, 2017, purporting to be issued to Ms. Jackson from the East Cheltenham Avenue office of the Social Security Administration. Tr. 25, PGW Exhibit 1.
19. The letter contains a Claim Number consisting of Ms. Jackson's Social Security Number and the Code "DI." Tr. 26, PGW Exhibit 1.
20. The Code "DI" indicates that the claimant is an aged widower, 60 years old and older. Tr. 26, PGW Exhibit 1.
21. Because of typos and inconsistencies in the letter, PGW flagged Ms. Jackson's CRP application for possible fraud. Tr. 26-27.
22. Mr. Lubiejewski and his director, Johnny Ferrera, hand-delivered the letter to Diane Mortonson at the Aramingo Avenue Social Security Office. Tr. 27, 31.
23. The Social Security Administration confirmed that the letter was fraudulent. Tr. 27, 31.

24. PGW was unable to locate any other CRP recertification application from Ms. Jackson for 2017. Tr. 27-28.

25. Ms. Jackson was the only person who would benefit from the discounted CRP rate for gas service at the Service Address. Tr. 34-35.

26. By letter dated August 21, 2017, PGW informed Ms. Jackson of the results of its fraud investigation concerning her 2017 CRP recertification and of her removal from the program. Tr. 35, PGW Exhibit 2.

27. With a gross income of \$3,454.53<sup>1</sup> per month for a household of three individuals, Ms. Jackson would not have qualified for CRP participation in February of 2017. Tr. 43-44.

28. On August 18, 2017, PGW rebilled Ms. Jackson's account by replacing the CRP charges following recertification on February 14, 2017 with charges at the regular rate. Tr. 36, PGW Exhibit 3.

29. The total amount of the rebill was \$728.84. *Id.*

30. As of the date of the hearing, Ms. Jackson's account with PGW had an outstanding balance of \$2,137.04. Tr. 38, PGW Exhibit 3.

31. Ms. Jackson has defaulted on two payment arrangements issued by PGW but has not received a prior Commission-issued payment arrangement. Tr. 39-42, 50.

32. Ms. Jackson's entire outstanding balance consists of non-CRP arrearages. Tr. 50-51.

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<sup>1</sup> \$19.93/hr x 40 hrs/week x 52 weeks/yr ÷ 12 months/yr = \$3,454.53 per month.

33. During the period from November 21, 2015, to May 15, 2018, Ms. Jackson made 13 payments towards her account with PGW. PGW Exhibit 3.

### DISCUSSION

In her formal Complaint, Ms. Jackson alleged that the Respondent is threatening to shut off her gas service, that she is unable to pay her gas bills to PGW, and that she was improperly removed from PGW's CRP program. As relief, Ms. Jackson requested that the Commission order PGW to reinstate her in the CRP program or, in the alternative, establish a payment arrangement for her.

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 (December 9, 1994), *vacated on other grounds*, 666 A.2d 744 (Pa.Cmwlth. 1995) (*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 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).

**a) Improper removal from CRP**

At the hearing Ms. Jackson testified that in September of 2016, she was hired by Health Partners at a pay rate of \$19.93 per hour, working 40 hours per week as a Claims Examiner. Tr. 11-13. Prior to her employment with Health Partners, Ms. Jackson was employed on a temporary basis through employment agencies. Tr. 13. Her payrate with Health Partners increased to \$20.95 per hour before she became employed by Helping Hand early in 2018. Tr. 12-13. There was no gap in Ms. Jackson's employment between Health Partners and Helping Hand. Tr. 12. As of the day of the hearing, Ms. Jackson was employed full time by Helping Hand, working 40 hours per week at a pay rate of \$25.00 per hour. Tr. 9.

Complainant testified that she resides at the Service Address with her two children who are ten and 11 years old. Tr. 10, 18. She testified that she and her children never received any type of benefits from the Social Security Administration. Tr. 17. At the time of the hearing, Ms. Jackson was the sole source of income for her household. Tr. 11.

Ms. Jackson testified that she was first enrolled in PGW's CRP program in 2014 and that she had to recertify into the program annually. Tr. 7-9. She stated that in 2017, she

applied for recertification into the CRP program by submitting to PGW the names, dates of birth and Social Security Numbers for her and her children. In addition, she stated that she submitted the pay stubs for the last 30 days from her employment with Health Partners. Tr. 20-21. Yet, Ms. Jackson explained that in the summer of 2017, she was removed from CRP on the suspicion of having submitted fraudulent documents. Tr. 8

In response to Ms. Jackson's testimony, PGW presented the testimony of Leon Lubiejewski and Tiffany Jones. Mr. Lubiejewski testified as a security and loss prevention investigator for PGW. Tr. 22. He explained that on February 14, 2017, PGW received a CRP Application/Recertification Form on behalf of Ms. Jackson. Tr. 23, PGW Exhibit 1. The form contained the Complainant's full name, her Social Security number and date of birth, the service address, and the PGW account number for the Service Address. Tr. 24, PGW Exhibit 1. The form indicated that the applicant received no food stamps or housing subsidy at the time of the application. PGW Exhibit 1. The form did not include any information on Ms. Jackson's children, but indicated that Ms. Jackson's household income was \$524.00 per month at that time. PGW Exhibit 1.

Mr. Lubiejewski further testified that the income verification document attached to the form consisted of a letter dated February 14, 2017, purporting to be issued to Ms. Jackson from the East Cheltenham Avenue office of the Social Security Administration. Tr. 25, PGW Exhibit 1. The letter contained a Claim Number consisting of Ms. Jackson's Social Security Number and the Code "DI". Tr. 26, PGW Exhibit 1. Mr. Lubiejewski explained that the Code "DI" indicates that the claimant is an aged widower, 60 years and older. Tr. 26, PGW Exhibit 1.

Because of typos and inconsistencies in the letter, PGW flagged Ms. Jackson's CRP application for possible fraud. Tr. 26-27. In the course of PGW's fraud investigation, Mr. Lubiejewski and his director, Johnny Ferrera, hand-delivered the letter to Diane Mortonson at the Aramingo Avenue Social Security Office. Tr. 27, 31. The Social Security Administration confirmed that the letter was fraudulent. Tr. 27, 31.

Tiffany Jones testified as a senior customer review officer for PGW in charge of investigating informal and formal complaints. Tr. 33. Ms. Jones testified that following the submittal of the February 14, 2017 CRP recertification application, PGW billed Ms. Jackson's account at a discounted CRP rate, commensurate with the income information provided in that form. Tr. 34. By letter dated August 21, 2017, PGW informed Ms. Jackson of the results of its fraud investigation concerning her 2017 CRP recertification and of her removal from the program. Tr. 35, PGW Exhibit 2. On August 18, 2017, PGW rebilled Ms. Jackson's account by replacing the CRP charges following recertification on February 14, 2017, with charges at the regular rate. Tr. 36, PGW Exhibit 3. The total amount of the rebill was \$728.84. *Id.* As of the date of the hearing, Ms. Jackson's account with PGW had an outstanding balance of \$2,137.04. Tr. 38, PGW Exhibit 3.

At the hearing, Ms. Jackson did not deny that the CRP recertification Application submitted to PGW on February 14, 2017, included her date of birth and Social Security Number. Tr. 16. Instead, she insisted that she did not file the 2017 CRP application that PGW presented as PGW Exhibit 1. Ms. Jackson testified that the signature on the CRP application is not hers and pointed out that the CRP application in PGW Exhibit 1 contains no information with regard to her children (names, social security numbers or dates of birth), nor does it reflect the fact that she was receiving food stamps and housing assistance in 2017. Tr. 16, 17.

In rebutting her testimony, Mr. Lubiejewski testified that PGW had been unable to locate another CRP recertification application from Ms. Jackson for 2017. Tr. 27-28. In addition, Ms. Jones explained that Ms. Jackson was the only person who would benefit from the discounted CRP rate for gas service at the Service Address. Tr. 34-35. Ms. Jones further explained that with a gross income of \$3,454.53<sup>2</sup> per month for a household of three individuals, Ms. Jackson would not have qualified for CRP participation in February of 2017. Tr. 43-44.

The Complainant has failed to provide additional evidence to rebut the evidence of the Respondent. In view of the above, I find that the Complainant failed to carry her burden of

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<sup>2</sup> \$19.93/hr x 40 hrs/week x 52 weeks/ yr ÷ 12 months/yr = \$3,454.53 per month.

proving by a preponderance of the evidence that PGW improperly removed her from the CRP program in 2017.

**b) 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.

66 Pa.C.S. §§ 1405(a), (b). In addition, "household income" is defined in section 1403 of 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.

At the evidentiary hearing, Ms. Jones testified that Ms. Jackson's entire outstanding balance consists of non-CRP arrearages. Tr. 50-51. Additionally, although Ms. Jackson has defaulted on two Company-issued payment arrangements, she has not received a prior Commission-issued payment arrangement. Tr. 39-42, 50. Ms. Jackson's outstanding balance of \$2,137.04 is the result of several missed and late payments. Tr. 38, PGW Exhibit 3. Nevertheless, she made 13 payments during the period from November 21, 2015 to May 15, 2018, which is evidence of a good faith effort on her part to control her outstanding balance with the Respondent. PGW Exhibit 3. In view of the above, I find that the establishment of a payment arrangement is appropriate in this case.

At the time of the hearing, Complainant was the sole source of income for her household. Tr. 11. With a current gross household income of \$4,333.33<sup>3</sup> per month for a household of three individuals, Ms. Jackson's income falls between 250% and 300% of the federal poverty level. She is level 3 income customer and as such she is required to retire her outstanding balance within a period of one year or twelve months pursuant to 66 Pa.C.S. § 1405(b)(3).

#### CONCLUSIONS OF LAW

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

2. The party filing the Complaint bears the burden of proving that she is entitled to relief from the Commission. 66 Pa.C.S.A. § 332(a).

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<sup>3</sup> \$25.00/hr x 40 hr/week x 52 weeks/yr ÷ 12 months/yr = \$4,333.33/month from Ms. Jackson's current employment with Health Partners.

3. "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).

4. The Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401 *et seq.*, applies to this proceeding.

5. The Commission is authorized to establish payment arrangements between a public utility, customers and applicants within the limits established in Chapter 14 of the Pennsylvania Public Utility Code. 66 Pa.C.S. § 1405.

6. "Household income" is defined as "[t]he combined gross income of all adults in a residential household who benefit from the public service" 66 Pa.C.S. § 1403.

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Shante Jackson against Philadelphia Gas Works at Docket No. C-2018-3000220 is granted in part and denied in part.

2. That Shante Jackson's formal Complaint against Philadelphia Gas Works at Docket No. C-2018-3000220 is denied, in part, with regard to her claim that she was improperly removed from Philadelphia Gas Works' Customer Responsibility Program.

