

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lydia Lamar	:	
	:	
v.	:	C-2017-2629985
	:	
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 sustained her burden of proof regarding reconnection of gas service. The Complainant is to enroll in the Respondent’s customer assistance program (CAP) if it is financially beneficial to the Complainant which will provide a payment arrangement. This decision grants the Complaint.

HISTORY OF THE PROCEEDING

On October 12, 2017, Lydia Lamar (Complainant) filed a Complaint with the Pennsylvania Public Utility Commission (Commission) against the Respondent. The Complainant requested a payment arrangement and restoration of her gas service.

The Complaint was served electronically (eService) by the Commission's Secretary on October 20, 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, Graciela Christlieb, Esquire, filed an Answer on November 9, 2017. The Answer admitted that the Complainant seeks a payment arrangement. The Answer also stated that the Complainant contacted the Respondent to restore service at 5234 Walton Avenue, Philadelphia, Pennsylvania (service address) on August 16, 2017, and on October 2, 2017. In both instances, the Complainant was informed of her options to restore service, but service was not restored. The Respondent requested that the Commission find against the Complainant and dismiss the Complaint.

By Hearing Notice dated December 1, 2017, the matter was scheduled for an initial call-in hearing on Thursday, February 8, 2018, at 10:00 a.m. The matter was assigned to the undersigned Administrative Law Judge (ALJ), Angela T. Jones.

A Prehearing Order dated December 4, 2017, provided the parties with the procedural rules for the initial call-in hearing.

The undersigned received by facsimile on December 21, 2017, a request from the Complainant to schedule the initial call-in hearing earlier than February 8, 2018. The undersigned sent the facsimile to counsel for the Respondent because there was no evidence that it was sent to her.

By electronic mail on January 4, 2018, counsel for the Respondent stated she did not object to scheduling the initial call-in hearing earlier.

By Hearing Notice dated January 4, 2018, the February 8, 2018, initial call-in hearing was rescheduled for January 19, 2018.

The initial call-in hearing convened as scheduled. The Complainant was present and represented herself. The Complainant testified and offered the testimony of one witness, Marsenia Lamar. Marsenia Lamar is the daughter of the Complainant and the ratepayer of record at the service address. The Complainant sponsored one exhibit which was identified as Complainant Exhibit 1. Complainant Exhibit 1 was admitted without objection.

The Respondent was represented by Attorney Christlieb. The Respondent chose not to present any witnesses or any exhibits.

The transcript consisted of 66 pages of transcribed testimony. The record closed on February 9, 2018, when the transcript was received.

By Order dated March 6, 2018, the undersigned determined it was in the public interest to reopen the record pursuant to 52 Pa.Code § 5.571(d)(1)¹ for further evidence regarding the ownership interest of the service address.

A further telephonic Hearing Notice dated March 8, 2018, was sent to the parties scheduling a further call-in telephonic evidentiary hearing for Wednesday, May 9, 2018 at 10:00 a.m.

The further call-in telephonic evidentiary hearing convened as scheduled. The Complainant and Attorney Christlieb were present. Testimony was taken from the Complainant about ownership of the service address. The transcript was received on June 5, 2018 and consisted of 11 pages of additional transcribed testimony for a total of 77 pages of transcribed testimony for this dispute.

¹ 52 Pa.Code § 5.571(d)(1) states,

(d) The record may be reopened upon notification to the parties in a proceeding for the reception of further evidence if there is a reason to believe that conditions of fact or law have so changed as to require, or that the public interest requires, the reopening of the proceeding.

(1) The presiding officer may reopen the record if the presiding officer has not issued a decision or has not certified the record to the Commission.

By Order dated June 15, 2018, the undersigned determined that the record did not contain critical information about the household income of the Complainant's daughter in 2013. Germane to the requested payment arrangement in the Complaint is the Commission-issued payment arrangement in 2013. The Order directed a further telephonic hearing be scheduled to obtain further record evidence.

A further call-in telephonic Hearing Notice dated June 14, 2018, was sent to the parties scheduling a further call-in telephonic evidentiary hearing for Monday, August 6, 2018 at 10:00 a.m.

The further call-in telephonic evidentiary hearing convened as scheduled. The Complainant was accompanied by her daughter, Marsenia Lamar, and Attorney Christlieb was accompanied by one witness, Jessica Glace. Testimony was obtained from Ms. Glace and Ms. Marsenia Lamar. The transcribed testimony consisted of 17 pages for a total of 94 pages of transcribed testimony in this dispute. The transcript was received on September 4, 2018, and the record closed when the transcript was received.

FINDINGS OF FACT

1. The Complainant is Lydia Lamar, who currently resides at 5234 Walton Avenue, Philadelphia, Pennsylvania. Tr. 7-8, 10.
2. The Respondent is Philadelphia Gas Works, a city natural gas distribution company operated by the City of Philadelphia under the jurisdiction of the Commission.
3. Gas service was terminated at the service address on April 25, 2017, for non-payment, with an arrearage of \$12,950.52. Tr. 10, 12-13, 34, 35
4. The Complainant pays the bills for the service address. Tr. 11, 55-56.

5. Ms. Marsenia Lamar, the daughter of the Complainant, is the ratepayer of record at the service address. Tr. 11-12, 48.

6. Ms. Marsenia Lamar lives at the service address. Tr. 12, 48.

7. Ms. Marsenia Lamar is bed bound, with cerebral palsy, gait disorder, seizure disorder, anxiety, constriction of upper and lower extremities, hypertension, hyperthyroidism and congenital heart problems, malaise and fatigue. Tr. 15-16, Complainant Exhibit 1.

8. Ms. Marsenia Lamar has been disabled since she was 5 months old. Tr. 16.

9. Ms. Marsenia Lamar is 42 years old. Tr. 16.

10. The Complainant is willing to pay \$400.00 per month towards the arrearage. Tr. 20.

11. There are six occupants of the household at the service address:

- a. the Complainant;
- b. the Complainant's adult daughter (Marsenia Lamar);
- c. the Complainant's adult grandson (Omar Lamar) age 22;
- d. the Complainant's adult grandson (Malik Lamar) age 20;
- e. the Complainant's minor grandchild age 14; and
- f. the Complainant's minor grandchild age 10.

Tr. 22-26, 51.

12. The monthly household income is:

- a. \$2,000.00 per month or about \$24,000.00 per year is the income received by the Complainant as the caregiver of Marsenia Lamar;
- b. \$755.00 per month social security disability received by Marsenia Lamar;
- c. No income received by Omar Lamar;

- d. \$755.00 per month received by Malik Lamar as social security income; for
- e. a grand total of \$3,510.00 per month household income ($\$2,000.00 + \$755.00 + \$755.00 = \$3,510.00$).

Tr. 20-24, 26-28, 51-54.

13. Ms. Marsenia Lamar has lived with the Complainant at the service address for the entire time the Complainant has leased the service address. Tr. 29, 72.

14. The gas service has never been in the name of the Complainant at the service address; the gas service has always been in Ms. Marsenia Lamar's name. Tr. 29-30, 54.

15. The Complainant requests a payment arrangement for the service account corresponding to the service address. Tr. 30.

16. Ms. Marsenia Lamar was not aware that the Respondent sent a shut off notice to the service address. Tr. 56-57.

17. Ms. Marsenia Lamar is aware that the gas service has been shut off at the service address. Tr. 57.

18. The Complainant began leasing the service address in 2012 with Ms. Marsenia Lamar and her children as occupants. Tr. 71-72.

19. The Complainant continues to lease the service address and pays rent monthly in the amount of \$925.00. Tr. 74.

20. The Complainant has been the caregiver of Ms. Marsenia Lamar for several years and as the caregiver of Ms. Marsenia Lamar she receives compensation in the amount of \$2,000.00 per month. Tr. 54.

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. Margulies*, 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 to Reconnect Service

There is no record evidence that the Complainant disputes termination of service at the service address or alleges the termination was unlawful. Tr. 18.

Section 1403 defines, “applicant” as,

A natural person not currently receiving service who applies for residential service provided by a public utility or **any adult occupant whose name appears on the mortgage, deed or lease of the property for which the residential utility service is request.** The term does not include 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 (emphasis added).

The Complainant is the lessee of the service address. Tr. 71-72, 74. The Complainant is an adult occupant of the service address. Tr. 7-8, 10, 22-26, 51. Service was terminated on April 25, 2017. FOF 3. There is no record evidence of a request for service prior to the instant Complaint which was filed on October 12, 2017. The Complainant fits the definition of an applicant who is seeking to restore service more than 30 days after service was terminated. The Complainant is an applicant of the Respondent’s utility service.

Section 1407(c)(2) of the Code states,

(2) A public utility may require:

(i) Full payment of any outstanding balance incurred together with any reconnection fees by the customer or applicant prior to reconnection of service if the customer or applicant has an income exceeding 300% of the Federal poverty level [(FPL)] or has defaulted on two or more payment arrangements. If a customer or applicant with household income exceeding 300% of the [FPL] experiences a life event, the customer shall be permitted a period of not more than three months to pay the outstanding balance required for reconnections. For purposes of this subparagraph, a life event is:

(A) A job loss that extended beyond nine months.

(B) A serious illness that extended beyond nine months.

(C) Death of the primary wage earner.

(ii) Full payment of any reconnection fees together with repayment over 12 months of any outstanding balance incurred by the customer or applicant if the customer or applicant has an income exceeding 150% of the [FPL] but not greater than 300% of the [FPL].

(iii) Full payment of any reconnection fees together with payment over 24 months of any outstanding balance incurred by the customer or applicant if the customer or applicant has an income not exceeding 150% of the [FPL]. A customer or applicant of a city natural gas distribution operation whose household income does not exceed 135% of the [FPL] shall be reinstated pursuant to this subsection only if the customer or applicant enrolls in the customer assistance program of the city natural gas distribution operation except that this requirement shall not apply if the financial benefits to such customer or applicant are greater if served outside of the assistance program.

66 Pa.C.S. § 1407(c)(2).

It has been established that the Complainant is an applicant. See *supra* at 8. The Complainant has resided at the service address while Ms. Marsenia Lamar has been the ratepayer of record and has benefited from the gas service while Ms. Marsenia Lamar has been the ratepayer of record. FOF 13.

Section 1407(d) of the Code states,

A public utility may also require the payment of any outstanding balance or portion of an outstanding balance if the applicant resided at the property for which service is requested during the time the outstanding balance accrued and for the time the applicant resided there.

66 Pa.C.S. § 1407(d).

Consequently, the Complainant by application of the statute, 66 Pa.C.S. §1407(d), would be given the responsibility of Ms. Marsenia Lamar's balance because she has lived at the service address and has benefited from the gas service provided by the Respondent at the service address. The gesture of responsibility assumed by the Complainant is something that the law requires of her.

A "city natural gas distribution operation" is defined as, "A collection of real and personal assets used for distributing natural gas to retail gas customers owned by a city or a municipal authority, nonprofit corporation or public corporation formed pursuant to section 2212(m) (relating to city natural gas distribution operations)." 66 Pa.C.S. § 102. The Respondent meets the definition of a city natural gas distribution operation.

Section 1407(c)(2)(iii) of the Code requires a customer's household income to be no greater than 135% of the FPL to have service reinstated or reconnected by the Respondent, a city natural gas distribution operation. 66 Pa.C.S. § 1407(c)(2)(iii). The Complainant is a customer. See *supra* at 8. The household income of the Complainant for the month is \$3,510.00. Tr. Tr. 20-24, 26-28, 51-54. The household has six occupants:

- (1) the Complainant;
- (2) the Complainant's daughter;
- (3) two adult grandsons; and
- (4) two minor grandchildren.

FOF 11. The Complainant's monthly household income is \$3,510.00, which is less than 135% of the FPL because 135% of the FPL for a household size of six is \$3,795.75 per month. 83 Fed.Reg. 2642-44 (January 18, 2018), FOF 12. According to Section 1407(c)(2)(iii) of the Code,

the Complainant's gas service shall be reconnected, and the Complainant must enroll in the Respondent's CAP unless it is determined that the financial benefits to the Complainant are greater if served outside of the Respondent's CAP. 66 Pa.C.S. § 1407(c)(2)(iii).

66 Pa.C.S. § 1407(a) states, "A public utility may require a reconnection fee based upon the public utility's cost as approved by the commission prior to reconnection of service following lawful termination of the service." Consequently, pursuant to Section 1407(a) the Respondent may require the Complainant to pay a reconnection fee to reinstate gas service to the service address. 66 Pa.C.S. § 1407(a).

III. Whether a Commission-issued Payment Arrangement is Warranted

The Complainant requested a payment arrangement in her Complaint.

As mentioned above, Section 1407(c)(2)(iii) of the Public Utility Code provides that gas service shall be restored only if the Complainant enrolls in the Respondent's CAP program if that program is financially beneficial to her. See *supra* at 8-11.

A "CAP" is defined as,

A plan or program sponsored by a public utility for the purpose of providing universal service and energy conservation ... in which customers make monthly payment based on household income and household size and under which customers must comply with certain responsibilities and restrictions in order to remain eligible for the program.

66 Pa.C.S. § 1403.

The CAP program is a payment arrangement and is specified by statute, 66 Pa.C.S. § 1407(c)(2)(iii), as part of restoring service to the Complainant at the service address. See *supra* at 9. The Complainant's request for the Commission to issue a payment arrangement is resolved because she will obtain a payment arrangement through the restoration of her service by statute.

The Commission has provided guidance in interpreting Section 1407(c)(2)(iii) of the Code, 66 Pa.C.S. § 1407(c)(2)(iii), through the *Chapter 14 Implementation Order*, by stating,

Although reasonable minds can disagree over the proper interpretation of § 1407(c)(2)(iii), we believe that the General Assembly intended to provide additional protection to a PGW customer whose income is less than 135% of the Federal poverty level. In addition, according to the Declaration of Policy as stated in § 1402(3), the General Assembly intended to “ensure that service remains available to all customers on reasonable terms and conditions.” Therefore, we interpret § 1407(c)(2)(iii) to mean that a customer who enrolls in CRP² for the first time may have service restored upon payment of the Company’s reconnection fee, regardless of the number of prior broken payment agreements – no payment toward outstanding balance is required. Once in the CRP program, the customer’s monthly payment will be determined by the requirements of the program rather than paying the outstanding balance over 24 months. We also interpret § 1407(c)(2)(iii) to mean that any payments required by CRP customers must be the most beneficial to the customer, whether the payments are for restoration or for catching up missed payments. The customer must always receive the most beneficial payment treatment.

Docket No. M-00041802F002 at 42 (Order entered September 12, 2005) (footnote added).

The Complainant would receive a payment arrangement coincident to the restoration of service under Section 1407(c)(2)(iii) of the Code. 66 Pa.C.S. § 1407(c)(2)(iii). Consequently, if enrollment in the Respondent’s CAP does not benefit the Complainant financially, then the Complainant is to be placed on the payment arrangement that was compared to the CAP that proved more beneficial to the Complainant pursuant to the Commission comments in *Chapter 14 Implementation*, supra.

IV. Conclusion

The Complainant sustained her burden of proof for reconnection of gas service. The Complainant by statute is eligible, as long as it is to the Complainant’s financial benefit, to enroll in the Respondent’s CAP program which is a payment arrangement. Therefore, the

² “CRP” is the Respondent’s CAP entitled, “Customer Responsibility Program.”

Complaint is granted regarding the reconnection of service and regarding the request for a payment arrangement, which is coincident with restoration of service.

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. A utility may require a reconnection fee based upon the public utility’s cost as approved by the Commission prior to reconnection of service following lawful termination of the service. 66 Pa.C.S. § 1407(a).

4. An applicant is 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 does not include 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.

5. A customer or applicant of a city natural gas distribution operation whose household income does not exceed 135% of the Federal poverty level shall be reinstated pursuant to this subsection only if the customer or applicant enrolls in the customer assistance program of the city natural gas distribution operation except that this requirement shall not apply if the financial benefits to such customer or applicant are greater if served outside of the assistance program. 66 Pa.C.S. § 1407(c)(2)(iii).

6. The Complainant sustained her burden of proof regarding reconnection of gas service at the service address.

7. A customer assistance plan is a plan or program sponsored by a public utility for the purpose of providing universal service and energy conservation ... in which customers make monthly payment based on household income and household size and under which customers must comply with certain responsibilities and restrictions in order to remain eligible for the program. 66 Pa.C.S. § 1403.

8. The Complainant obtains a payment arrangement coincident with restoration of service through the public utility's customer assistance program or outside the customer assistance program—whichever best benefits the Complainant financially. 66 Pa.C.S. § 1407(c)(2)(iii); *Chapter 14 Implementation*, Docket No. M-00041802F0002 (Order entered September 12, 2005).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal Complaint filed by Lydia Lamar against Philadelphia Gas Works at Docket No. C-2017-2629985 is granted.

2. That Ms. Lydia Lamar is to pay Philadelphia Gas Works the requisite reconnection fee to restore gas service.

3. That Ms. Lydia Lamar is to enroll in the customer assistance program of Philadelphia Gas Works for the outstanding balance of \$12,950.52 unless Ms. Lydia Lamar would benefit more without enrolling in the customer assistance program of Philadelphia Gas Works.

4. That a payment arrangement on the outstanding balance of \$12,950.52 is established through the customer assistance program of Philadelphia Gas Works and is to be paid to Philadelphia Gas Works for gas service restored at 5234 Walton Avenue, Philadelphia, Pennsylvania consistent with above ordering paragraph 3.

5. That the Secretary's Bureau mark this docket closed.

Date: September 10, 2018

/s/

Angela T. Jones
Administrative Law Judge