

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Vivian Figueiredo

v.

Philadelphia Gas Works

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C-2018-3004507

INITIAL DECISION

Before
Gail M. Chiodo
Special Agent

INTRODUCTION

This decision denies the complaint because the complainant has failed to establish by a preponderance of the evidence that she is eligible for a second Commission-issued payment arrangement or an extension of her prior one.

HISTORY OF THE PROCEEDING

On September 5, 2018, Vivian Figueiredo (Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW or Respondent) in which she complained that Respondent is threatening to shut off her service or has already shut off her service. As relief, Complainant requested a payment arrangement (PAR).

On September 27, 2018, Respondent filed an Answer in which it admitted that it issued a shut off notice for service. Respondent further averred that Complainant is not eligible for a second Commission-issued PAR since Complainant defaulted on a previous Commission-issued-PAR. Respondent requested that Ms. Figueiredo's complaint be dismissed.

On October 10, 2018, the Commission issued a hearing notice setting an initial telephonic hearing for November 2, 2018 at 10:00 a.m. The case was assigned to me pursuant to 52 Pa. Code § 56.174.¹ On October 18, 2018, a prehearing order was issued which advised the parties of the procedures applicable to this proceeding.

The hearing convened as scheduled on November 2, 2018. Ms. Figueiredo appeared *pro se* and testified on her own behalf. Ms. Figueiredo did not offer any exhibits. Ms. Graciela Christlieb, Esquire, appeared on behalf of PGW and presented the testimony of one witness, Tiffany Jones, Senior Customer Review Officer for PGW. Ms. Jones sponsored three (3) exhibits, which were admitted into the record. They are:

PGW Exhibit 1 – Statement of Account (3 pages)
PGW Exhibit 2 – Payment Arrangement History (3 pages)
PGW Exhibit 3 – BCS Complaints and Decisions (5 pages)

The record closed following the conclusion of the hearing.²

FINDINGS OF FACT

1. Complainant is Vivian Figueiredo, who resides at 616A Mayfair Street, Philadelphia, Pennsylvania (service address).
2. Respondent is Philadelphia Gas Works, which provides service to Complainant at the service address.
3. From 2005 to 2015, Respondent provided Complainant with eleven Company-issued PARs; Complainant defaulted on all of them. (PGW Exhibit 2).

¹ 52 Pa. Code § 56.174 (providing for review by a special agent of decisions of the BCS and any other case in which the issue is solely the ability to pay).

² Pursuant to 52 Pa. Code § 56.174(3), the hearing was tape recorded. No court reporter was present.

4. On June 9, 2015, Complainant filed an informal complaint with the Commission's Bureau of Consumer Services (BCS) at Case No. 3353927 seeking a Commission-issued PAR. (PGW Exhibit 3).

5. By decision dated June 9, 2015, at BCS Case No. 3353927, BCS granted Complainant a level two³ PAR on an outstanding balance of \$1,215.77. (PGW Exhibit 3).

6. The June 9, 2015 BCS-PAR directed Ms. Figueiredo to pay her monthly budget bill of \$64 plus an additional \$34 towards her arrearage, for a total of \$98, beginning with the due date of her July 2015 bill. (PGW Exhibit 3, p. 2).

7. The June 9, 2015 BCS-PAR was based on Ms. Figueiredo's reported gross monthly household income of \$3,600 and a household size of four individuals consisting of Complainant, another adult and two minors. (PGW Exhibit 3).

8. Ms. Figueiredo defaulted on the June 9, 2015 BCS-PAR. (PGW Exhibits 1 and 2).

9. On May 7, 2018, Ms. Figueiredo filed a second informal complaint with BCS at Case No. 3630878 seeking another Commission-issued PAR on an outstanding balance of \$1,087.34. (PGW Exhibit 3).

10. At BCS Case No. 3630878, Ms. Figueiredo reported a gross monthly household income of \$3,504.80 and a household size of three adults. (PGW Exhibit 3).

11. By decision dated August 9, 2018, at BCS Case No. 3630878, BCS denied Ms. Figueiredo's informal complaint. (PGW Exhibit 3).

12. On September 5, 2018, Ms. Figueiredo filed the instant formal complaint.

³ A level two customer is defined as a household with a gross monthly income level not exceeding 150% and not more than 250% of the Federal poverty level and is provided with a repayment period of not more than thirty-six months. 66 Pa.C.S. § 1405(b)(2).

13. Ms. Figueiredo's current gross monthly household income totals \$4,044.67, consisting of Ms. Figueiredo's income of \$3,438 per month and her adult son's income of \$606.67 per month.

14. Ms. Figueiredo's current household size totals three individuals, consisting of Complainant and her two adult children.

15. Ms. Figueiredo's outstanding balance as of the date of the initial hearing is \$947.48. (PGW Exhibit 3).

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). "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 54, 70 A.2d 854 (1950); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlt. 1990). 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.Cmwlt. 1980).

In her complaint, Ms. Figueiredo seeks another Commission-issued PAR. Therefore, as the party seeking relief, Ms. Figueiredo bears the burden of proof. Complainant does not dispute that she defaulted on eleven (11) Company-issued PARs and the most recent PAR issued by BCS on June 9, 2015 at Case No. 3353927.

Ms. Figueiredo is seeking a new PAR on her outstanding balance of \$947.48. The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1418 (Act), applies to complainants alleging inability to pay and requesting a Commission-issued PAR. See, 66

Pa.C.S. § 1405(a), which provides that, “[t]he commission is authorized to investigate complaints regarding payment disputes between a public utility, applicants and customers.”

However, the Act provides strict guidelines that the Commission must follow, including the provision that generally permits the Commission to grant only one payment agreement with limited exceptions. Specifically, this provision of the Act provides, in relevant part:

(d) Number of Payment Agreements.—*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) (emphasis added).

Complainant failed to comply with the terms of the June 9, 2015 BCS decision at Case No. 3353927 which directed a payment arrangement on her account with PGW. (PGW Exhibit 3). Since Ms. Figueiredo did not appeal the BCS decision and failed to make the payments ordered by the BCS decision, she has defaulted on the payment agreement. As the Commission recently explained, when a BCS decision is not timely appealed, “then the BCS payment arrangement becomes final and the complainant must prove a change in income to be awarded a different payment arrangement before the BCS PAR is paid off.” *See, Horinka v. Pennsylvania Power Company*, Docket No. C-2017-2582842, p. 3 (Opinion and Order entered August 4, 2017).

Therefore, pursuant to 66 Pa.C.S. § 1405(d), Ms. Figueiredo is eligible for another Commission-issued PAR only if she had has suffered a change in income.

The Act defines a “change in income” as follows:

“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 (emphasis added).

Additionally, “household income” is defined as, “[t]he combined gross income of all adults in a residential household who benefit from the public utility service.” 66 Pa.C.S. § 1403.

Ms. Figueiredo testified about her household size and income. Ms. Figueiredo’s current household size totals three individuals, consisting of Complainant and her two adult children. Ms. Figueiredo’s current gross monthly household income totals \$4,044.67. Ms. Figueiredo stated that her monthly gross income from her employment is \$3,438 and her adult son works part-time from ten to fifteen hours per week at the rate of \$14.00 per hour. Even using the lower end of ten hours, the monthly income of Complainant’s son is \$606.67.⁴ Together, this totals \$4,044.67 (\$3,438 + \$606.67), which places Complainant above 200% of Federal poverty level.⁵

Thus, pursuant to 66 Pa.C.S. § 1403, Ms. Figueiredo is eligible for a second Commission-issued PAR if she has experienced a decrease in household income of 20% or more. Ms. Figueiredo’s gross monthly income at the time of the BCS decision dated June 9, 2015, at Case No. 3353927 was \$3,600; therefore, she has experienced an increase in income given her current income of \$4,044.67. Therefore, since Complainant has not suffered a decrease in her household income, she is not eligible for a second Commission-issued PAR.

While the Complainant is not eligible for a second Commission-issued PAR, a provision of the Act provides that the Commission may reinstate and extend a previously ordered payment arrangement in limited circumstances where the customer has defaulted on that payment arrangement. Specially, section 1405(e) provides:

(e) Extension of payment arrangements.--If the customer defaults on a payment arrangement . . . 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

⁴ (\$14.00 per hour) x (10 hours per week) = (\$140.00 per week) x 52 weeks = \$7,280 ÷ 12 = \$606.67.

⁵ See *Federal Register*, Vol. 83, No. 12, pp. 2642-2644 (January 18, 2018). Also available at <http://aspe.hhs.gov/poverty> (providing that a gross monthly income of more than \$3,463.33 for a household of three is above 200% of the Federal poverty level).

66 Pa.C.S. § 1405(e) (emphasis added). Further, “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:

- (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. Figueiredo’s current gross monthly household income of \$4,044.67 for a household of three is less than 300% of the Federal poverty level.⁶ Thus, Ms. Figueiredo is eligible for reinstatement and extension of her June 9, 2015 PAR at BCS No. 3353927 if she defaulted on said arrangement as a result of at least one of the four prongs of the definition above. None of these prongs are applicable. There was no evidence that Complainant defaulted on her BCS-PAR as the result of the onset of a chronic or acute illness, catastrophic damage to her residence, or loss of residence. Further, there was no increase in Complainant’s number of dependents in the household; in fact, her household size decreased from a total of four individuals to three individuals.

Complainant failed to honor the terms of the June 9, 2015 PAR at BCS No. 3353927 and thus has defaulted on it. Therefore, the Commission may not reinstate the payment arrangement ordered on June 9, 2015.

⁶ See *Federal Register*, Vol. 83, No. 12, pp. 2642-2644 (January 18, 2018). Also available at <http://aspe.hhs.gov/poverty> (providing that a gross monthly income of less than \$5,195.00 for a household of three is below 300% of the Federal poverty level).

Consequently, I conclude that the Complainant has failed to establish by a preponderance of the evidence that she is eligible for a second Commission-issued PAR or an extension of the prior one. Therefore, I am constrained to conclude that the Commission lacks authority to order a second PAR in these circumstances.

CONCLUSIONS OF LAW

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

2. 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).

3. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 54, 70 A.2d 854 (1950).

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

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

6. 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 or applicant has defaulted on a previous payment arrangement established by a commission order or decision. 66 Pa.C.S. § 1405(d).

7. A "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.

8. Complainant has failed to carry her burden of proving that she is eligible for a second or subsequent Commission-issued payment arrangement. 66 Pa.C.S. § 1405(d).

9. If the customer defaults on a payment arrangement 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. 66 Pa.C.S. § 1405(e).

10. Complainant has failed to carry her burden of proving that she is eligible for a reinstatement of the Commission-issued payment arrangement at BCS No. 3353927. 66 Pa.C.S. § 1405(e).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the complaint of Vivian Figueiredo against Philadelphia Gas Works at Docket No. C-2018-3004507 is denied.

2. That the docket at Docket No. C-2018-3004507 be marked closed.

Date: November 19, 2018

_____/s/
Gail M. Chiodo
Special Agent