

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Gloria Orsini	:	
	:	
v.	:	C-2018-3005230
	:	
West Penn Power Company	:	

INITIAL DECISION

Before
Gail M. Chiodo
Special Agent

INTRODUCTION

This decision grants the complaint of an electric service customer because the customer has met her burden by a preponderance of the evidence that she is eligible for reinstatement of a prior Commission-ordered payment arrangement based upon the onset of a chronic or acute illness resulting in a significant loss in the customer's household income.

HISTORY OF THE PROCEEDING

On October 4, 2018, Gloria Orsini (Complainant) filed a formal complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against West Penn Power Company (West Penn or Respondent) in which she alleged that Respondent is threatening to shut off her service or has already shut of her service and she requested a payment arrangement to prevent termination of her service.

The Complaint is an untimely appeal from a decision of the Commission's Bureau of Consumer Services (BCS) at case number 3632485, issued on August 7, 2018. The BCS

found that Ms. Orsini was eligible for a second Commission-issued payment arrangement due to a change of her income since a previously BCS-issued payment arrangement. The BCS decision granted Ms. Orsini a level one¹ payment arrangement and directed her to pay a total of \$581 per month, consisting of \$486 for her current budget bill usage, plus \$95 towards her arrearage of \$5,674.20, beginning with her September 2018 billing due date. In her Complaint, Ms. Orsini seeks a lower payment arrangement given her limited income.

On October 29, 2018, West Penn filed an answer in which it admitted that it had issued a termination notice to Complainant, but averred that it ceased termination efforts upon receipt of the Complaint. Further, the Respondent averred that the Complainant is not eligible for a payment arrangement because she has defaulted on a prior Commission-issued payment arrangement, has not alleged a change in income since the most recent Commission-issued payment arrangement, and has a poor payment history. The Respondent requested that the Commission dismiss the Complaint.

On November 5, 2018, the Commission issued a hearing notice setting an initial telephonic hearing for January 7, 2019. The case was assigned to me pursuant to 52 Pa. Code § 56.174.² On November 21, 2018, a prehearing order was issued which advised the parties of various procedures applicable to this hearing. On December 21, 2018, I granted Respondent's request for a continuance and the Commission sent a hearing notice rescheduling the hearing for February 21, 2019.

The hearing convened as scheduled on February 21, 2019. Ms. Orsini appeared *pro se*, testified on her own behalf, but did not offer any exhibits. Aron J. Beatty, Esquire, appeared on behalf of Respondent and presented the testimony of one witness, Tammy J. Taylor, Senior Customer Service Compliance Specialist for West Penn. Ms. Taylor sponsored the following four (4) exhibits, which were admitted into the record:

¹ A level one customer is defined as a household with a gross monthly income level not exceeding 150% of the Federal poverty level and is provided with a repayment period of not more than 60 months. 66 Pa.C.S. § 1405(b)(1).

² 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).

Exhibit 1 – Detailed Statement of Account 100090175389
Exhibit 2 – Detailed Statement of Account 100124361906
Exhibit 3 – Payment Arrangement History
Exhibit 4 – BCS Opening and Closing Reports, Case No. 3632485

The record³ closed following the conclusion of the hearing.

FINDINGS OF FACT

1. Complainant is Gloria Orsini, who resides at 93 McKinstry Hill Road, Apollo, Pennsylvania (service address).
2. Respondent is West Penn Power Company, which provides electric service to Complainant at the service address.
3. On August 1, 2011, residential service was established at the service address under West Penn account number 100090175389; Complainant is the ratepayer of record. (Exhibit 1).
4. On April 1, 2017, Ms. Orsini filed for protection under Chapter 7 of the United States Bankruptcy Code. (Exhibit 1).
5. After receiving notice of the filing of Complainant's Chapter 7 bankruptcy petition, Respondent closed Complainant's account and wrote off the account balance as of the filing date, which was \$16,571.59. (Exhibit 1).
6. On April 1, 2017, Complainant commenced service at the same service address under West Penn account number 100124361906 for charges accrued after the date of the filing of the bankruptcy petition. (Exhibit 2).

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

7. On August 10, 2017, in BCS Case No. 3541043, BCS awarded Complainant a payment arrangement on her post-bankruptcy petition arrears of \$1,132.17 based upon a gross monthly household income of \$1,020, which Ms. Orsini received from her employment. (Exhibit 3).

8. Complainant was diagnosed with cancer in approximately July of 2018.

9. After Complainant's medical diagnosis in July of 2018, Complainant continued to work but experienced a decrease in her gross monthly income from \$1,020 to \$776 due to working less hours.

10. On July 12, 2018, Ms. Orsini filed an informal complaint with BCS at BCS Case No. 3632485, seeking a second post-bankruptcy petition payment arrangement. (Exhibit 4, p.1).

11. On August 7, 2018, in BCS Case No. 3632485, BCS granted Ms. Orsini a second payment arrangement based on a change of Complainant's gross monthly household income from \$1,020 to \$776. (Exhibit 4, p. 4).

12. In BCS Case No. 3632485, BCS granted Ms. Orsini a level one payment arrangement and directed her to pay a total of \$581 per month, consisting of \$486 for her current budget bill usage, plus \$95 towards her arrearage of \$5,674.20, beginning with her September 2018 billing due date.

13. At BCS Case No. 3632485, Ms. Orsini reported a gross monthly household income of \$776 and a household size of four individuals, which includes two adults and two minors. (Exhibit 2).

14. Complainant defaulted on the BCS payment arrangement in BCS Case No. 3632485 by making no payments. (Exhibit 2).

15. On October 4, 2018, Ms. Orsini filed the instant formal complaint.

16. Ms. Orsini has had no income for the past two months due to the onset of medical issue associated with her cancer in which she was unable to work.

17. Ms. Orsini's current household size totals four individuals, which includes herself, another adult, and two minors.

18. The other adult in Ms. Orsini's household is self-employed but is not currently earning an income.

19. Since opening her post-bankruptcy petition account with Respondent on April 1, 2017, Ms. Orsini has had three payments credited towards her account, and one check returned for insufficient funds.

20. On June 9, 2017, Ms. Orsini submitted a check for \$242.92, which was returned on June 15, 2017 for insufficient funds.

21. On November 17, 2017, Complainant made a payment for \$390.25.

22. On February 19, 2018 and on April 2, 2018, Low-Income Home Energy Assistance Program (LIHEAP) grants of \$200 and \$500 respectively were credited towards Complainant's account.

23. Ms. Orsini's outstanding post-bankruptcy petition balance as of the date of the initial hearing was \$8,995.79. (Exhibit No. 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.Cmwlth. 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.Cmwlth. 1980).

Therefore, as the party seeking relief in the form of a second or subsequent payment arrangement, Ms. Orsini bears the burden of proof.

The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1419 (Act), applies to complainants alleging inability to pay and requesting a Commission-ordered payment arrangement. *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 . . . within the limits established by this chapter.”

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

(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).

In the instant case, Ms. Orsini seeks her third Commission payment arrangement on her post-bankruptcy petition arrears. On August 10, 2017, in BCS Case No. 3541043, BCS awarded Complainant a payment arrangement on her arrears of \$1,132.17 based upon a gross

monthly household income of \$1,020, which she received from her employment. (Exhibit 3). After being diagnosed with cancer in approximately July of 2018, Ms. Orsini worked less hours and her gross monthly income was reduced to \$776. On July 12, 2018, Ms. Orsini sought a second BCS payment arrangement. On August 7, 2018, in BCS Case No. 3632485, BCS granted Ms. Orsini a second payment arrangement based upon this change in her gross monthly income. The BCS found Ms. Orsini to be a level one customer and granted her a 60-month repayment term on her arrears. (Exhibit 4). The repayment term was directed to begin with Ms. Orsini's September 2018 billing due date.

Since Ms. Orsini did not timely appeal from the BCS decision issued on August 7, 2018 granting her a payment arrangement at BCS Case No. 3632485, this BCS payment arrangement became final.⁴ 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 [payment arrangement] is paid off." *Horinka v. Pa. 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. Orsini is eligible for another Commission-issued payment arrangement only if she 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

⁴ Pursuant to Section 56.172(a) of the Code, a Request for Review form was served with the BCS decision on August 7, 2018 and had directions that it must be returned to the Commission's Secretary within twenty days if Ms. Orsini chose to pursue a formal review of the BCS decision. *See*, 52 Pa. Code § 56.172(a) which provides that "[a] request for review of the decision of the Bureau of Consumer Services (BCS) shall be initiated in writing within 20 days of issuance." The form also has a hand-written note on it that it was due by August 27, 2018. Ms. Orsini's Request for Review form was received by the Commission's Secretary on August 29, 2018. Hence, Ms. Orsini's instant Complaint filed on October 4, 2018 is untimely. *See, Ruskey v. Pa. Electric Company*, Docket No. C-2018-3003153 (Opinion and Order entered March 13, 2019).

Further, 58 days have passed from when the BCS issued its decision on August 7, 2018 and when Complainant filed the instant Complaint on October 4, 2018, which is beyond the 50-day minimum period that would have been provided if Complainant timely returned the Request for Review form. *See, Ruskey, supra*.

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, “[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. Orsini testified about her household size and income. Ms. Orsini’s current household size totals four individuals, which includes herself, another adult, and two minors. Ms. Orsini testified that she has had no income for the past two months. Ms. Orsini explained that because her cancer had worsened her physical condition, she was not able to work for the past two months. Ms. Orsini stated that the other adult in her household is self-employed but is currently not working because his truck is inoperable; however, once his truck is repaired, Ms. Orsini expects him to begin to earn some income.

Ms. Orsini’s gross monthly income at the time of the August 7, 2018 BCS decision at Case No. 3632485 was \$776. Therefore, given her current income of zero, she has experienced a one hundred percent (100%) decrease in her household income, thereby establishing a change of income pursuant to 66 Pa.C.S. § 1405(d).

However, before awarding a subsequent payment arrangement, there also must be an examination as to whether Ms. Orsini has demonstrated some evidence of good faith efforts to pay her utility bills. As the Commission has made clear, while Section 1405 of the Act generally authorizes the Commission to issue a payment arrangement for a customer, it does not require it; rather, it is an exercise of the Commission’s discretion which should be exercised very judiciously. *Hayes v. Philadelphia Gas Works*, Docket No. C-2017-2634526 (Opinion and Order entered October 1, 2018), *citing Hewitt v. PECO Energy Co.*, Docket No. F-2011-2273271 (Opinion and Order entered September 12, 2013). Specifically, the Commission exercises its discretion only on behalf of customers who have demonstrated some evidence of good faith efforts to pay their utility bills. *Hayes, supra*.

A review of Complainant's payment history, or lack thereof, shows that the Complainant has not demonstrated a good faith effort to pay her utility bills since she opened her account in April of 2017. Complainant has demonstrated a poor payment history prior to her cancer diagnosis in July of 2018, and has made no payments after her diagnosis. Since opening her post-bankruptcy petition account with Respondent on April 1, 2017, Ms. Orsini has had only three payments credited towards her account, and one check returned for insufficient funds. On June 9, 2017, Ms. Orsini submitted a check for \$242.92, which was returned on June 15, 2017 for insufficient funds. On November 17, 2017, Complainant made a payment for \$390.25. On February 19, 2018 and on April 2, 2018, LIHEAP grants of \$200 and \$500 respectively were credit towards her account. Further, Ms. Orsini's outstanding post-bankruptcy petition balance as of the date of the hearing is \$8,995.79.

Therefore, I find that Complainant has failed to carry her burden of proving that she is eligible for a third Commission-issued payment arrangement based upon a change of income pursuant to 66 Pa.C.S. § 1405(d).

Next, while the Complainant is not eligible for a third Commission-issued payment arrangement, a provision of the Act provides that if the payment-defaulted customer establishes that such payment default was a result of a "significant change in circumstance," the Commission is authorized to reinstate, and extend the remaining term for a period of six months, the previously Commission-ordered payment arrangement. Specifically, the relevant portion of the Act 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

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.

Further, as in the case of awarding a second or subsequent payment arrangement based upon a change of income, in determining whether to reinstate and extend a prior Commission-ordered payment arrangement, the Commission will examine all relevant circumstances related to the payment-defaulted customer, to ensure that the granting of the appropriate relief is a prudent exercise of the Commission's discretion. *Maxwell v. Philadelphia Gas Works*, Docket No. C-2017-2607397 (Opinion and Order entered August 23, 2018).

Clearly, Ms. Orsini's current gross monthly household income of zero for a household of four is less than 300% of the Federal poverty level.⁵ Thus, Ms. Orsini is eligible for reinstatement and extension of her BCS payment arrangement issued on August 7, 2018 in BCS No. 3544235 if she defaulted on said arrangement as a result of one of the four prongs of the definition above. Only the first prong—namely, that the customer defaulted on a prior Commission-ordered payment arrangement as the result of the onset of a chronic or acute illness, is applicable.

Since the August 7, 2018 BCS decision, Ms. Orsini's gross monthly income decreased from \$776 to zero. When Ms. Orsini was diagnosed with cancer in July of 2018, she continued to work but at reduced her hours until her cancer had worsened her physical condition to the point that she unable to work. This event occurred between the issuance of the August 7, 2018 BCS payment arrangement and the date of the hearing. Therefore, I find that Ms. Orsini

⁵ See *Federal Register*, Vol. 84, No. 22, p. 1168 (February 1, 2019). Also available at <http://aspe.hhs.gov/poverty>.

defaulted on the August 7, 2018 BCS payment arrangement as a result of a significant change of circumstance—namely, the onset and worsening of her cancer, which resulted in a complete loss of her household income. *See*, 66 Pa.C.S. § 1403.

Next, discretion is warranted in granting Ms. Orsini an extension of the August 7, 2018 Commission-ordered payment arrangement. Although Ms. Orsini had no income at the time of the hearing, she had applications pending with state and federal agencies to determine her eligibility for public assistance and disability income. She also expected to be able to return to work shortly after the hearing, and the other adult in the household was waiting for repairs to his truck to be completed so that he could work and contribute an income to Complainant's household.

Therefore, I find that the Complainant has established by a preponderance of the evidence that she is eligible for reinstatement of her Commission-issued payment arrangement in BCS Case No. 3632485 pursuant to 66 Pa.C.S. § 1405(e).

Accordingly, following the entry of a Final Order in this case, Ms. Orsini's payment arrangement issued by BCS on August 7, 2018 will be reinstated for fifty-nine (59) months, which is the time remaining on the payment arrangement as of the September 2018 default.⁶ *See, Nolen v. PECO Energy Company*, Docket No. F-2014-2423854 (Final Order entered January 15, 2015, adopting the Initial Decision of the administrative law judge dated October 14, 2014), which reinstated a payment arrangement for twenty-two months, which was the time remaining on the payment arrangement as of Ms. Nolen's default. However, as in *Nolen*, discretion is not warranted to extend the payment arrangement for an additional six months given Ms. Orsini's immediate default resulting in a remaining repayment term of 59 months. *Compare, Nolen* wherein reinstatement of the prior BCS payment arrangement was ordered but not extended for six months as a result of a finding of a significant change in circumstance pursuant to 66 Pa.C.S. § 1405(e).

⁶ Ms. Orsini's 60-month repayment term was directed to begin on the September 2018 billing due date. Ms. Orsini defaulted on the BCS payment arrangement by making no payment in September 2018 and filed the instant Complaint on October 4, 2018.

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. §§ 1401-1419, 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 met her burden of proving that she is eligible for reinstatement of the remaining term of the Commission-issued payment arrangement issued on August 7, 2018 in BCS Case No. 3632485. 66 Pa.C.S. § 1405(e).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal Complaint of Gloria Orsini against West Penn Power Company at Docket No. C-2018-3005230 is granted.

2. That, in accordance with Section 1405(e) of the Public Utility Code, 66 Pa.C.S. § 1405(e), the payment arrangement issued by the Bureau of Consumer Services on August 7, 2018 in BCS Case No. 3632485 for the account balance owed by Gloria Orsini to West Penn Power Company, is reinstated for fifty-nine (59) months, following the entry of a final Commission order in this case.

3. That as long as Gloria Orsini maintains the terms of the reinstated payment arrangement, West Penn Power Company shall not suspend or terminate her utility service except for valid safety or emergency reasons or assess late payments or finance charges against her account.

4. That, if Gloria Orsini does not keep the reinstated payment arrangement, West Penn Power Company is authorized to suspend or terminate her service in accordance with the Commission's statutes and regulations.

5. That the docket at Docket No. C-2018-3005230 be marked closed.

Date: March 25, 2019

_____/s/
Gail M. Chiodo
Special Agent