

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tyra Payne	:	
	:	
v.	:	F-2018-3005477
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Gail M. Chiodo
Special Agent

INTRODUCTION

This decision denies the complaint of a gas service customer because the customer 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. This decision also denies the customer’s request to amortize her arrearage for an unspecified term or indefinitely because the Commission is without authority to do so. This decision also denies the complaint because the customer has failed to establish that the utility violated the Public Utility Code, Commission's regulations, or an outstanding order of the Commission.

HISTORY OF THE PROCEEDING

On October 16, 2018, Tyra Payne (Complainant) filed a formal complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW or Respondent) in which she averred that the utility is threatening to shut off her service and she is currently “paying the current [charges]”. As relief, Ms. Payne

requested a new payment arrangement or alternatively, that Respondent be directed to issue her two bills each month, one for her current charges and a separate one for her past due amount.

This is a timely appeal from a decision of the Bureau of Consumer Services (BCS) dated September 28, 2018 in BCS case number 3598231 which dismissed Ms. Payne's informal complaint.

On November 8, 2018, PGW filed an answer in which it admitted that it issued Complainant a shut off notice for service at the service address for nonpayment. Respondent also averred that Complainant is not entitled to a new payment arrangement since she has defaulted on a prior Commission-issued payment arrangement for an arrears which is not satisfied. The Respondent requested that the Commission dismiss the Complaint.

On November 9, 2018, the Commission issued a Telephone Hearing Notice setting an initial telephonic hearing on January 16, 2019 at 10:00 a.m., and the case was assigned to me pursuant to 52 Pa. Code § 56.174.¹ On November 26, 2018, the undersigned issued a Prehearing Order addressing various procedures applicable to the hearing.

The hearing convened as scheduled on January 16, 2019 at 10:00 a.m. Ms. Payne appeared *pro se*, testified on her own behalf, but did not offer any exhibits. Graciela Christlieb, Esquire, appeared on behalf of Respondent and presented the testimony of one witness, Jessica Glace, Senior Customer Review Officer for PGW. Ms. Glace sponsored the following seven (7) exhibits, which were admitted into the record:

- PGW Exhibit 1 – Statement of Account
- PGW Exhibit 2 – Payment Arrangement History
- PGW Exhibit 3 – 2016 BCS Complaint and Decision No. 3449462
- PGW Exhibit 4 – 10-Day Shut Off Notice (March 20, 2018)
- PGW Exhibit 5 – 2018 BCS Complaint and Decision No. 3598231
- PGW Exhibit 6 – 10-Day Shut Off Notice (October 9, 2018)
- PGW Exhibit 7 – Meter Exchange Form

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).

The record closed by Interim Order on February 23, 2019 following my receipt of the transcript of the telephonic hearing.

FINDINGS OF FACT

1. The Complainant is Tyra Payne, who resides at 1105 East Stafford Street, Philadelphia, Pennsylvania (service address).

2. The Respondent is Philadelphia Gas Works, which provides service to Complainant.

3. On November 9, 2016, in BCS Case No. 3449462, BCS awarded Complainant a Level 2² payment arrangement and directed her to pay a total of \$355 per month, consisting of \$289 for her budget bill usage, plus \$66 towards her arrearage of \$2,354.48, beginning with her December 2016 billing due date. PGW Exhibit 3.

4. At BCS Case No. 3449462, Ms. Payne reported a gross monthly household income of \$2,000 and that she resided alone. PGW Exhibit 3.

5. Complainant defaulted on the BCS 2016 payment arrangement granted at BCS Case No. 3449462 and the balance has not been satisfied. PGW Exhibit 2.

6. On February 28, 2017, Ms. Payne filed a formal complaint against Respondent averring that her gas bill issued by Respondent was too high and requesting a lower payment arrangement than the one directed by the 2016 BCS decision; this complaint was docketed at *Tyra Payne v. Philadelphia Gas Works*, Docket No. C-2017-2591107.

² A Level 2 customer is defined as a household with a gross monthly income level exceeding 150% and not more than 250% of the Federal poverty level and is provided with a repayment period of not more than 36 months. 66 Pa.C.S. § 1405(b)(1).

7. By Final Order entered on December 5, 2017, the Commission adopted the Initial Decision of the administrative law judge dated October 11, 2017, which denied Ms. Payne's complaint. *Tyra Payne v. Philadelphia Gas Works*, Docket No. C-2017-2591107 (Final Order entered December 5, 2017).

8. On March 20, 2018, Respondent issued Ms. Payne a 10-day Shut Off Notice with an effective date on or after April 2, 2018. PGW Exhibit 4.

9. On April 4, 2018, Respondent filed an informal complaint with BCS at BCS Case No. 3598231 seeking another payment arrangement to maintain service and stating that she did not understand how her arrearage keeps increasing even though she makes payments every month. PGW Exhibit 5.

10. On September 28, 2018, BCS dismissed Ms. Payne's informal complaint at BCS No. 3598231. PGW Exhibit 5.

11. On October 9, 2018, Respondent issued Ms. Payne a 10-day Shut Off Notice, with an effective date on or after October 22, 2018. PGW Exhibit 6.

12. On October 16, 2018, Ms. Payne filed the instant Complaint, which is a timely appeal from the 2018 BCS decision at BCS Case No. 3598231.

13. Ms. Payne's current gross monthly household income is \$2,669.33, which she receives from her employment; Ms. Payne works at \$11.00 per hour for fifty-six (56) hours per week.³ Tr. 19-20.

14. Ms. Payne resides alone. Tr. 18.

³ \$11.00 per hour x 56 hours per week = \$616 per week x 52 weeks = \$32,032 per year ÷ 12 months = \$2,669.33 per month.

15. Ms. Payne's outstanding balance as of the date of the hearing was \$5,533.62. PGW Exhibit 1, p. 3; Tr. 24.

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*, 70 A.2d 854 (Pa. 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).

For a complainant to prevail, the offense alleged must be a violation of the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701

As a timely appeal from the decision at BCS Case No. 3598231, this is a *de novo* review of the BCS determination. 52 Pa. Code § 56.173. The term "*de novo*" simply means anew thereby requiring that the party with the burden of proof develop a record that contains substantial evidence that supports the desired outcome. *Stammel v. P.G. Energy*, Docket No. C-20027994 (Opinion and Order entered May 21, 2003).

Therefore, as the party seeking affirmative relief, Ms. Payne bears the burden of proof in this proceeding and must prove her case by a preponderance of the evidence.

Payment arrangement

First, Ms. Payne requests a lower payment arrangement than the one ordered in the 2016 BCS decision. 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 [C]ommission 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 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).

In the instant case, Ms. Payne seeks her second Commission payment arrangement. Since Ms. Payne did not timely appeal from the BCS decision issued at BCS Case No. 3449462 on November 9, 2016 granting her a level 2 payment arrangement, this BCS payment arrangement became final. As the Commission 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. Payne 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 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. Payne testified about her household size and income. Ms. Payne resides alone and her current gross monthly income is \$2,669.33 which she receives from her employment. Ms. Payne testified that she works as a nurse at \$11.00 per hour and for fifty-six (56) hours per week.⁴ Tr. pp. 19-20. In contrast, Ms. Payne’s gross monthly income at the time of the 2016 BCS payment arrangement was \$2,000 and she lived alone. PGW Exhibit 3. Therefore, given her current income of \$2,669.33, Ms. Payne has experienced an increase, not a decrease, in her gross monthly household income since her 2016 Commission-issued payment arrangement. Thus, Ms. Payne has not established a change in income, which requires a decrease in income, pursuant to 66 Pa.C.S. § 1405(d).

Accordingly, Ms. Payne is not eligible for a second Commission-issued payment arrangement.

Next, while the Complainant is not eligible for a second 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,

⁴ \$11.00 per hour x 56 hours per week = \$616 per week x 52 weeks = \$32,032 per year ÷ 12 months = \$2,669.33 per month.

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 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) the catastrophic damage to the customer's residence resulting in a significant net cost to the customer's household; (3) the loss of the customer's residence; or (4) the increase in the customer's number of dependents in the household. 66 Pa.C.S. § 1403. While Ms. Payne’s gross monthly income of \$2,669.33 places her less than 300% of the Federal poverty level,⁵ none of these criteria are applicable since there was no testimony to support any of them.

Thus, Ms. Payne has not established a significant change in circumstance pursuant to 66 Pa.C.S. § 1405(e). Accordingly, Ms. Payne is not eligible for a reinstatement and extension of her 2016 payment arrangement.

Separate bills

Second, Ms. Payne requests that the Commission direct Respondent to issue her two separate bills each month consisting of one bill for her current charges, which amount Ms. Payne proposes to pay, and a separate bill for her arrearages, which amount Ms. Payne proposes to pay what amount she can, perhaps \$10 or \$20 per month, until her arrearage is paid off. Tr.

⁵ See, *Federal Register*, Vol. 84, No. 22 at 1168 (February 1, 2019), also available at: <https://aspe.hhs.gov/poverty-guidelines> (providing that a gross monthly income of \$3,123 for a household of one is 300% of the Federal poverty guidelines).

10-13, 18. Ms. Payne explained at the hearing that she cannot afford to pay both her current charges and the portion of her arrearage as directed by the 2016 BCS decision, or any portion of her arrearage beyond \$10 or \$20 each month.⁶ *Id.*

Thus, by seeking to pay an amount she chooses each month on her arrearage, Ms. Payne is asking that the Commission defer or amortize her arrearage for an unspecified term or even indefinitely. The Act does not provide the Commission the authority to grant this request. As noted above, the Act provides strict guidelines that the Commission must follow in addressing payment arrangements. In addition to limiting the number of payment arrangements with limited exceptions as discussed above, the Act also limits the length of time for a customer to resolve an unpaid balance based upon a customer's household income in relation to where the customer falls on the Federal poverty level. See, 66 Pa.C.S. § 1405(b) (providing for repayments terms of either six months, one year, three years or five years based upon income level). Thus, the Commission is constrained by the Act to deny Ms. Payne's request for a payment arrangement to amortize her arrearage for an indefinite length of time.

Further, Respondent asserted at the hearing that it complies with applicable Commission regulations by issuing its residential customers, including Ms. Payne, one bill each month. Tr. 33. Section 56.11 of the Code provides that a public utility "shall render *a bill* once every billing period to every residential customer." 52 Pa. Code § 56.11(a) (emphasis added). Further, PGW's billing period is defined as monthly. Specifically, Section 4.1A of Respondent's Tariff states that "PGW shall render a bill once every month to Residential Customers." See Supplement No. 84 to PGW's Gas Service Tariff—Pa. P.U.C. No. 2, at 26, effective August 31, 2015. Thus, Ms. Payne has failed to prove, by a preponderance of the evidence, that PGW violated any applicable statute or Commission regulation.

⁶ At the time of the 2016 BCS decision, Ms. Payne's arrearage was \$2,354.48. As a Level 2 customer, Ms. Payne was granted a repayment period of three years or \$66 per month towards her arrearage in addition to her current charges. As noted above, Ms. Payne's outstanding balance as of the date of the hearing was \$5,533.62. PGW Exhibit 1, p. 3; Tr. 24.

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 (Order entered March 17, 2004). Public utilities are entitled to full payment for services they provided to their customers and all customers are obligated to pay for the utility services that are provided to them. Otherwise, a customer's unpaid bills are included in the utility's uncollectible expenses and ultimately paid for by other utility customers. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. 1982); *Scaccia v. West Penn Power Co.*, 55 Pa. PUC 637 (1982); *Bolt v. Duquesne Light Co.*, 66 Pa. PUC 463 (1988).

Increased arrearage

Finally, although not artfully raised in her Complaint, Ms. Payne stated at the hearing that she believes that the amount of her arrearage may be incorrect because she does not understand how her arrearage is increasing despite the fact that she is paying her current charges each month. In other words, Ms. Payne argues that, since she is paying the current charges, her arrearage should not be increasing at all. In support of her position, Ms. Payne points out that her arrearage went from approximately “\$2,000 . . . all the way up to \$5,600. And I’ve been paying the current, so why is that consistently keep gradually going up?” Tr. 16.

However, a review of Ms. Payne’s Statement of Account over the past two years contradicts Ms. Payne’s claim that she pays her current charges. Ms. Payne’s account statement reveals that Ms. Payne does not consistently pay her current charges in full and by the due date. *See*, PGW Exhibit 1 which is a statement of Ms. Payne’s account from January 10, 2017 to January 10, 2019. While Ms. Payne’s account statement shows that Ms. Payne, for the most part, consistently makes payments towards her account approximately every two weeks, the majority of the time the total amount of both payments each month does not fully cover the current monthly charges. Consequently, by making partial payments combined with late payment charges incurred for untimely payments, Ms. Payne’s total balance has gradually

increased from \$2,354.48 at the time of Ms. Payne's 2016 BCS payment arrangement to \$5,533.62 at the time of the hearing in the instant matter.⁷

According, Ms. Payne did not meet her burden of proof to show that PGW violated any applicable statute or Commission regulation; rather, Ms. Payne's arrearage has been increasing because of partial and untimely payments.

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

⁷ In her prior formal complaint, Ms. Payne made a similar claim that she did not understand why her arrearage was increasing and that PGW was billing her incorrectly, which claims were rejected in *Tyra Payne v. Philadelphia Gas Works*, Docket No. C-2017-2591107 (Final Order entered December 5, 2017).

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 proof that she is eligible for a second or subsequent Commission-issued payment arrangement due to a change in income. 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 proof that she is eligible for a reinstatement and extension of her prior Commission-issued payment arrangement issued on November 9, 2016 in BCS Case No. 3449462 due to a significant change in circumstance. 66 Pa.C.S. § 1405(e).

11. The length of time for a customer to resolve an unpaid balance is based upon a customer's gross monthly household income in relation to where the customer falls on the Federal poverty level and shall not extend beyond the terms provided by the Responsible Utility Customer Protection Act. 66 Pa.C.S. § 1405(b).

12. A public utility shall render a bill once every billing period to every residential customer. 52 Pa. Code § 56.11(a).

13. Respondent shall render a bill once every month to residential customers. Supplement No. 84 to Philadelphia Gas Works' Gas Service Tariff—Pa. P.U.C. No. 2, at 26, effective August 31, 2015.

14. The Complainant failed to carry her burden of proof that Respondent violated any applicable statutes, regulations or Commission orders.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal Complaint of Tyra Payne against Philadelphia Gas Works at Docket No. F-2018-3005477 is denied.
2. That the docket at Docket No. F-2018-3005477 be marked closed.

Date: April 2, 2019

_____/s/
Gail M. Chiodo
Special Agent