

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Marion Washington	:	
	:	
v.	:	C-2018-3002731
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Darlene D. Heep
Administrative Law Judge

INTRODUCTION

This Initial Decision finds that Philadelphia Gas Works did not bill the Complainant incorrectly and did not improperly exclude the Complainant from its low-income customer assistance program. Also, the Complainant defaulted on a previous Commission-issued payment arrangement and at this time is not eligible for another payment arrangement or reinstatement of the previous payment arrangement. The Complaint will be dismissed.

HISTORY OF THE PROCEEDING

On June 14, 2018, Marion Washington (Ms. Washington or Complainant) filed a formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission). On the Complaint form, Ms. Washington checked the boxes indicating that the utility was threatening to or had cut off her service and that she would like a payment arrangement. Handwritten on the Complaint form was an indication that her service was scheduled to be shut off on June 20, 2018. Ms. Washington also wrote on the Complaint form that she spoke to someone at PGW and entered into a verbal agreement with PGW

that she was to pay \$567 a month for the next three months and that PGW wanted her to pay \$1,169.00 by June 21, 2018 and that she could not afford it.

Under the Requested Relief section of the Complaint form, Ms. Washington stated that she was refused participation in Respondent's Customer Responsibility Program (CRP) because her gross income is \$300.00 over the income eligibility limit. She also requested that her gas remain on while she made three payments of \$567.00 because she will not be able to afford the reconnection fees and that she will make the first \$567.00 payment on June 20, 2018.

PGW filed an Answer on July 5, 2018. PGW admitted that a shut off notice was issued to the Complainant and also stated that service was established on May 19, 2015. PGW requested that the Commission find against the Complainant and dismiss the Complaint.

On July 8, 2018, a hearing Notice was mailed to the parties stating that the Initial In Person Hearing would be held on August 24, 2018.

A prehearing order was issued on July 13, 2018, advising the parties of various procedures applicable to the hearing.

On August 8, 2018, PGW filed a Motion for Continuance, stating that counsel for PGW was not available on the date the hearing was scheduled. The Complainant did not object to the continuance and the motion was granted on August 13, 2018.

A telephonic hearing was scheduled for December 3, 2018, by hearing Notice dated October 31, 2018.

The hearing began as scheduled on December 3, 2018. PGW was represented by Graciela Christlieb, Esq. The Complainant did not appear. PGW moved that the matter be dismissed for failure to prosecute. This motion was taken under advisement.

Upon review of the case and noting that the original matter was set for an in person hearing and the rescheduled hearing was telephonic, it was determined that the matter should be rescheduled given that the Complainant was acting *pro se*.

On February 6, 2019, a Hearing Notice was issued scheduling an Initial Call-In Telephone Hearing for March 12, 2019.

A Call-In Hearing Pre-Hearing Order was issued on February 12, 2019, setting forth various procedures for a telephonic hearing.

The hearing began as scheduled on March 12, 2019. Ms. Washington represented herself and presented no exhibits.

Ms. Christlieb represented PGW and presented the testimony of Patricia Bernard, a PGW Customer Review Officer, and three exhibits, admitted into the record and identified as follows:

PGW Exhibit 1	Statement of Account
PGW Exhibit 2	Payment Agreement History
PGW Exhibit 3	BCS Decision

The record closed on April 9, 2019, upon receipt of the 34-page transcript.

FINDINGS OF FACT

1. The Complainant is Marion Washington, who receives service at 617 Winton Street, Philadelphia, Pennsylvania (service address).
2. The Respondent is Philadelphia Gas Works, which provides gas service to the Complainant.

3. PGW did not shut off service and the Complainant had service at the time of the hearing. (Tr. 6).

4. Ms. Washington lives in a three-person household. (Tr. 8).

5. The Complainant's current gross household income per month is \$3,572.00. (Tr. 8).

6. On August 29, 2017, the Complainant was issued a payment arrangement by the Bureau of Consumer Services (BCS) of the Commission (Commission-issued payment arrangement), BCS Case No. 3557469. (PGW Exhibit 3; Tr. 20).

7. This Commission-issued payment arrangement required that the Complainant pay \$167.00 per month, consisting of \$122.00 regular budget amount plus \$45.00 towards the arrears. (PGW Exhibit 3).

8. At the time that the Commission-issued payment arrangement was awarded, the Complainant lived in a three-person household with gross monthly income of \$2,517.67. (PGW Exhibit 3).

9. The Commission-issued payment arrangement was broken on November 18, 2017. (Tr. 21).

10. The Complainant had to have the connector from her home to the Water Main replaced at a cost of \$4,000.00 in March or April of 2018. (Tr. 13; PGW Exhibit 3).

11. At the time of the hearing, the Complainant's balance was \$4,890.06. (Tr. 17).

12. Ms. Washington made a payment of \$334.00 in January of 2017 and a payment of \$340.00 in June of 2018. (PGW Exhibit 1).

13. Complainant's bill was \$22.06 in October of 2017 and \$31.34 in June of 2018. (PGW Exhibit 1).

14. The Complainant's balance increased from \$2,625.16 in October of 2017 to \$3,507.76 in June of 2018. *Id.*

DISCUSSION

The Complainant seeks a second Commission-issued payment arrangement and questions why her bill increased. She also states that PGW excluded her from its low-income program. (Tr. 11).

The Pennsylvania Public Utility Code (“Code”) requires each public utility to provide the following:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities . . . Such service and facilities shall be in conformity with the regulations and orders of the commission. . .

66 Pa.C.S. § 1501. Any offense alleged by the Complainant must be a violation of the Public Utility Code ("Code"), the Commission's regulations, or an outstanding order of the Commission.

66 Pa.C.S. § 701.

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 Code, 66 Pa.C.S. § 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 Code or a regulation or order of the Commission. 66 Pa.C.S. § 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, *vacated on other grounds*, 666 A.2d 744 (Pa.Cmwlth. 1995). 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).

As for billing disputes, in *Waldron*, the Commission adopted the Michigan Public Service Commission's (PSC's) policy as stated in *Hallifax v. O & A Electric Co-Op*, Case No. U-5825 (May 1979). There, the Michigan PSC stated that the billing history of the complainant, any change in the number of occupants residing at the household, the potential for energy utilization, and any other relevant facts or circumstances that are brought to light during the complaint proceeding will be considered. *Waldron* at 100. See also *Bennett v. Peoples Natural Gas Co.*, Docket No. C-2009-2122979 (Order entered October 13, 2010); *Thomas v. PECO Energy Company*, Docket No. C 2010-2187197 (Order entered November 15, 2011).

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).

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. Payment Arrangement

The Responsible Utility Customer Protection Act (Chapter 14) authorizes the Commission to establish payment arrangements between a public utility, customers and applicants within the limits established. 66 Pa.C.S. § 1405(a). Chapter 14 also provides rules regarding

whether a customer who defaults on a payment arrangement is eligible for another payment arrangement. In pertinent part, Chapter 14 provides:

§ 1405. Payment arrangements.

(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.

66 Pa.C.S. § 1405(a).

Where a customer has defaulted on a previous payment arrangement, Chapter 14 provides that absent a change in income, the Commission cannot establish or order a public utility to establish a second or subsequent payment arrangement. 66 Pa.C.S. § 1405(d). Change in income is:

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.

Section 1405(e) of the Code provides that if a customer defaults on a Commission payment arrangement as a result of a significant change of circumstance, the Commission may reinstate and extend the payment arrangement. 66 Pa.C.S. § 1405(e). "Significant change in circumstance" is defined in 66 Pa.C.S. § 1403 as follows:

"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; and

(4) Increase in the customer's number of dependents in the household.

The Complainant was awarded a BCS payment arrangement on August 29, 2017, which required that she pay \$167.00 per month, consisting of \$122.00 regular budget amount plus \$45.00 payment towards the arrears. (FOF 7, 8). The Complainant failed to pay as required and broke the agreement in November of 2017. (FOF 10). Because she has defaulted on a Commission-issued payment arrangement, the Complainant can receive another Commission-issued payment arrangement only if she meets the requirements of Chapter 14.

Under 66 Pa.C.S. § 1405(d) and 66 Pa.C.S. § 1403, the Complainant can receive another payment arrangement only if she has had a decrease in income meeting the Code restrictions. The Complainant's income increased from \$2,517.67 per month at the time the Commission payment arrangement was awarded to \$3,572.00 per month at the time of the hearing. (FOF 7, 13). Therefore, with an increase in income, the Complainant does not qualify for another Commission-issued payment arrangement under §§ 1405(d) and 1403.

Also, it has to be considered whether the Complainant falls under the "significant change in circumstance" exception, which would make her eligible for reinstatement and extension of the previously awarded payment arrangement. 66 Pa.C.S. § 1405(e). At \$3,572.00, the Complainant's monthly income meets the income requirement of the section because it is less than 300% of the federal poverty level for a household of three, which is \$5,333.¹ 66 Pa.C.S. § 1403.

As for the circumstances, the Complainant testified that she was unable to pay her gas bills because she had to have her home water connector pipe to the Water Main replaced, at a cost of thousands of dollars. (FOF 11). This circumstance could fall under the "Catastrophic damage to the customer's residence resulting in a significant net cost to the customer's household" definition. *See* 66 Pa.C.S. § 1403. However, the Complainant defaulted on her Commission-payment arrangement in November of 2017. Her connector pipe had to be repaired in March or April of 2018. (FOF 11). As the "significant net cost to the customer's household" event did not

¹ *Federal Register*, Vol. 84, No. 22 at 1168 (February 1, 2019); <https://aspe.hhs.gov/poverty-guidelines>.

take place until months after the default on the payment arrangement, it cannot be a basis upon which to reinstate her previous payment arrangement.

B. Billing

During the hearing the Complainant also questioned why her bill increased from \$167.00 in October of 2017 to over \$3000.00 in June of 2018. (Tr. 11). There was no evidence presented to support this allegation by the Complainant. Considering the *Waldron* factors, there was no the billing history of the complainant; any change in the number of occupants residing at the household; anything pertaining to the potential for energy utilization; nor any other relevant facts or circumstances that supports a finding that there was a problem with billing.

Also, there was nothing in the billing history of the Complainant that supported a billing claim; it was to the contrary. The Statement of Account of the Complainant introduced into evidence through PGW Customer Review Officer Patricia Bernard shows that the Complainant's bill was \$22.06 in October of 2017 and \$31.34 in June of 2018. (PGW Exhibit 1). The Complainant's *balance* increased from \$2,625.16 in October of 2017 to \$3,507.76 in June of 2018 because the Complaint only made two payments during this period.² *Id.*

There is no basis upon which to find for the Complainant here.

C. Customer Responsibility Program Eligibility

Although she did not directly raise it at the hearing, the Complainant stated in her Complaint that PGW excluded her from its low-income Customer Assistance Program, PGW's CRP, because her income is \$300.00 above the income eligibility limit.

Customer Assistance Program design is addressed in 52 Pa. Code § 69.265. It provides as an eligibility criterion that the " Household income is verified at or below 150% of the

² Ms. Washington made a payment of \$334.00 in January of 2017 and a payment of \$340.00 in June of 2018. (PGW Exhibit 1).

federal poverty income guidelines." 52 Pa. Code § 69.265(4)(ii). The federal poverty-level for a three-person household is \$1,778.00 per month and 150% of the federal poverty level for a household of three is \$2,666. With gross monthly income of \$3,572.00 for a three-person household, the Complainant's income is greater than 150% of the poverty level and therefore she is not eligible for a Customer Assistance Program. PGW committed no violations here.

D. Conclusion

The evidence does not support finding that the Complainant is eligible for another or reinstatement and extension of a Commission-issued payment arrangement. The evidence also does not establish that Ms. Washington has been billed incorrectly by PGW or that PGW violated the Code, regulations or any Commission Order when it denied her participation in its CRP program. The Complainant cannot prevail, and the Complaint will be dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to and subject matter of this proceeding. 66 Pa.C.S. § 701.
2. Pursuant to 66 Pa.C.S. § 332(a), the burden of proof in this proceeding is upon the Complainant. 66 Pa.C.S. § 332(a).
3. There were no relevant facts or circumstances, including billing history and number of occupants and potential for energy utilization, that support a finding that there was billing error. *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980).
4. The Commission is authorized to establish payment arrangements between a public utility, customers and applicants within the limits established. 66 Pa.C.S. § 1405(a).

5. The Responsible Utility Customer Protection Act provides strict rules regarding whether a customer who defaults on a payment arrangement is eligible for another payment arrangement. 66 Pa.C.S. §§ 1405(d), (e).

6. The Complainant had an increase in income rather than a decrease and therefore is not eligible for another payment arrangement under 66 Pa.C.S. § 1405(d).

7. The Complainant has not had a "significant change in circumstance" as defined under 66 Pa.C.S. § 1403 and therefore under 66 Pa.C.S. § 1405(e) is not eligible for reinstatement or extension of her prior Commission-issued payment arrangement.

8. A customer is eligible for a Customer Assistance Program if the household income is verified at or below 150% of the Federal poverty income guidelines. 52 Pa. Code § 69.265(4)(ii).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Marion Washington against Philadelphia Gas Works at Docket No. C-2018-3002731 is denied and dismissed.

2. That this matter be marked closed.

Date: May 10, 2019

/s/
Darlene Heep
Administrative Law Judge