

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Rodger Fernandez	:	
	:	
v.	:	C-2019-3009251
	:	
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 not met his burden of proof that he is eligible for a second Commission-issued payment arrangement or reinstatement of a prior Commission payment arrangement.

HISTORY OF THE PROCEEDING

On April 17, 2019, Rodger Fernandez filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW or Respondent) in which he requested a payment arrangement that he could afford.

The complaint is an appeal from a decision of the Commission's Bureau of Consumer Services (BCS) at case number 3679128, issued on March 29, 2019, which dismissed the informal complaint because the Complainant did not satisfy a prior Commission payment arrangement.

On May 7, 2019, PGW filed an answer denying that the Complainant is eligible for another Commission payment arrangement and requested that the complaint be dismissed.

On May 21, 2019, the Commission issued a hearing notice setting an initial telephonic hearing for June 26, 2019. The case was assigned to me pursuant to 52 Pa. Code § 56.174.¹ On June 12, 2019, a prehearing order was issued which advised the parties of various procedures applicable to this hearing.

The hearing convened on June 26, 2019. Mr. Fernandez appeared *pro se*, testified on his own behalf, but did not offer any exhibits. Graciela Christlieb, Esquire, appeared on behalf of Respondent and presented the testimony of one witness, Jessica Antonetti, a PGW customer review officer. Ms. Antonetti sponsored the following three exhibits which were admitted into the record:

PGW Exhibit 1 – Statement of Account
PGW Exhibit 2 – Payment Arrangement History
PGW Exhibit 3 – BCS Complaints and Decisions,
Nos. 3591422 and 3679128

The record² closed following the conclusion of the hearing.

FINDINGS OF FACT

1. The Complainant is Rodger Fernandez.
2. The Respondent is Philadelphia Gas Works, which provides gas service to Complainant at 9541 Clark Street, Philadelphia, Pennsylvania (service address).
3. On March 8, 2018, Mr. Fernandez filed an informal complaint with BCS at BCS case number 3591422 seeking a payment arrangement. PGW Exhibit 3, p.1.

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 March 9, 2018, at BCS case number 3591422, BCS granted Mr. Fernandez a level two payment arrangement³ and directed him to pay a total of \$164 per month, beginning with the April 2018 bill due date, for the budget bill amount of \$139, plus \$25 towards the outstanding balance. PGW Exhibits 2, 3, p. 3.

5. In BCS case number 3591422, Mr. Fernandez reported a gross monthly household income of \$2,075 and a household size of two adults. PGW Exhibit 3, p. 1.

6. Mr. Fernandez defaulted on the payment arrangement in BCS case number 3591422 and the balance has not been satisfied. PGW Exhibits 1, 2.

7. On February 22, 2019, Mr. Fernandez filed an informal complaint at BCS case number 3679128 seeking a payment arrangement. PGW Exhibit 3, p. 4.

8. On March 29, 2019, BCS dismissed the informal complaint at BCS case number 3679128. PGW Exhibit 3, p.6.

9. Mr. Fernandez's current household size is two individuals, which includes himself and his spouse.

10. Mr. Fernandez's current gross monthly household income totals \$2,403; Mr. Fernandez and his spouse each receive monthly social security payments in the amounts of \$1,223 and \$1,180 respectively.

11. Mr. Fernandez's total outstanding balance as of the date of the initial hearing was \$947.33. PGW Exhibit 1.

³ A level two 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 thirty-six months. 66 Pa.C.S. § 1405(b)(2).

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).

Therefore, as the party seeking relief in the form of a second or subsequent payment arrangement, Mr. Fernandez bears the burden of proof by a preponderance of the evidence.

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. 66 Pa.C.S. § 1405(a). However, the Act limits the authority of the Commission to grant payments arrangements under certain circumstances. One of the limits established by the Act is the number of payment arrangements that the Commission may authorize. In general, the Act permits the Commission to grant only one payment arrangement with limited exceptions. Specifically, this provision 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*

66 Pa.C.S. § 1405(d) (emphasis added).

Mr. Fernandez seeks a second Commission payment arrangement after defaulting on his first one. The first Commission payment arrangement was awarded in 2018. On March 9, 2018, in BCS case number 3591422, BCS awarded Mr. Fernandez a payment arrangement based upon a gross monthly household income of \$2,075 and a household size of two adults. The BCS directed Mr. Fernandez to pay a total of \$164 per month, beginning with the April 2018 bill due date, for the current budget bill amount of \$139, plus \$25 towards the outstanding balance. PGW Exhibits 2, 3. Mr. Fernandez defaulted on this payment arrangement and the arrearage has not been satisfied. PGW Exhibits 1, 2.

Since Mr. Fernandez did not timely appeal from the 2018 BCS decision granting him a 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*, No. C-2017-2582842, p. 3 (Opinion and Order entered August 4, 2017).

Therefore, pursuant to 66 Pa.C.S. § 1405(d), Ms. Fernandez is eligible for another Commission payment arrangement if he has suffered a change in income. The Act defines a “change in income” as some decrease in household income. Specifically, a decrease of 20% or more is required if the customer's household income level exceeds 200% of the Federal poverty level or a decrease of 10% or more is required 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.” *Id.*

The evidence shows that Mr. Fernandez has not suffered a change in income as defined by the Act because his household income has increased, not decreased, since 2018. Mr. Fernandez testified that his current gross monthly household income totals \$2,403. Mr. Fernandez and his spouse each receive monthly social security payments in the amounts of \$1,223 and \$1,180 respectively. In contrast, Mr. Fernandez's gross monthly income at the time of the 2018 BCS payment arrangement was \$2,075.

Consequently, having experienced no decrease in household income, I am constrained by the Act to conclude that Mr. Fernandez did not carry his burden of proving that he is eligible for a second or subsequent Commission 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 second Commission 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 “may reinstate the payment arrangement and extend the remaining term for an initial period of six months” 66 Pa.C.S. § 1405(e). “Significant change in circumstance” is defined as a customer with a household less than 300% of the Federal poverty level and who has experienced any of the following four circumstances: (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 Complainant's household income is less than 300% of the Federal poverty level,⁴ none of the four circumstances is applicable because there was no testimony that supported any of them. Therefore, since Mr. Fernandez did not default on his prior Commission-ordered payment arrangement as the result of a significant change in circumstance as defined by the Act, he is not eligible for reinstatement of his prior Commission payment arrangement.

Consequently, I am constrained by the Act to conclude that Mr. Fernandez did not carry his burden of proving that he is eligible for reinstatement and an extension of his prior Commission-issued payment arrangement pursuant to 66 Pa.C.S. § 1405(e).

Accordingly, the complaint will be dismissed.

⁴ See, See *Federal Register*, Vol. 84, No. 22, p. 1168 (February 1, 2019) (providing that a gross monthly income of less than \$4,228 for a household of two is below 300% of the Federal poverty level); also available at <http://aspe.hhs.gov/poverty>.

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 his burden of proving that he 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 his burden of proving that he is eligible for reinstatement of the remaining term of the Commission-issued payment arrangement issued on March 29, 2018 in BCS case number 3591422. 66 Pa.C.S. § 1405(e).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint of Rodger Fernandez against Philadelphia Gas Works at Docket No. C-2019-3009251 is denied and dismissed.

2. That the docket at Docket No. C-2019-3009251 be marked closed.

Date: July 29, 2019

_____/s/
Gail M. Chiodo
Special Agent