

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tricia Mayo	:	
	:	
v.	:	C-2019-3011288
	:	
Peoples Natural Gas Company LLC	:	

INITIAL DECISION

Before
Alphonso Arnold III
Special Agent

INTRODUCTION

This Initial Decision denies the Complainant’s request for a second Commission-issued payment arrangement, because the Complainant has not made a good faith effort to pay her gas bill. The Complainant is also not eligible for reinstatement and extension of her first Commission-issued payment arrangement.

HISTORY OF THE PROCEEDINGS

On June 28, 2019, Tricia Mayo (Complainant or Ms. Mayo) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against Peoples Natural Gas Company LLC (Respondent or Peoples) seeking a payment arrangement. Ms. Mayo asserted in her Complaint that she is suffering from a hardship and that she had to replace her gas line after having a gas line leak. The Complaint is a timely appeal of a decision made by the

Commission's Bureau of Consumer Services (BCS) at BCS No. 3637450 by which Ms. Mayo was granted a payment arrangement.¹

On July 23, 2019, Peoples filed its Answer to Ms. Mayo's Complaint, alleging that the Complainant has a poor payment history and has defaulted on two Company payment plans. Peoples requested for the Complainant to be directed to pay in accordance with the payment arrangement issued to her by the BCS on May 22, 2019, at BCS No. 3637450.

By Hearing Notice served on the parties on July 29, 2019, the Commission scheduled this matter for a telephonic hearing on September 30, 2019 and assigned the case to me as presiding officer.

A Prehearing Order was served on the parties on August 30, 2019, addressing, inter alia, the procedures applicable to the hearing.

I conducted the September 30, 2019 telephonic hearing as scheduled. Ms. Mayo was present for the hearing and testified on her own behalf. Ms. Mayo sponsored no exhibits for the record. Attorney Jennifer L. Petrisek was present at the hearing on behalf of Peoples and presented the testimony of Dawn Vashie, a customer relations specialist employed by Peoples. Ms. Vashie sponsored the following two exhibits, which were both admitted into the record:

- Peoples Exhibit A – Statement of Account
- Peoples Exhibit B – Payment Arrangements

The record² closed on September 30, 2019, upon conclusion of the telephonic hearing. For the reasons discussed below, the Complaint will be denied.

¹ This Formal Complaint is docketed with a "C" docket, which is the docket letter used for new complaints and complaints that are untimely appeals from BCS. The docket letter of "F" is used for Formal Complaints that are timely appeals from a BCS Informal Complaint decision. The reason why this Formal Complaint is being treated as a timely appeal is discussed more at length later in this Initial Decision.

² The telephonic hearing was recorded over the phone by means of a tape recorder. No Court Reporter was present.

FINDINGS OF FACT

1. The Complainant is Tricia Mayo.
2. The Respondent is Peoples Natural Gas Company LLC.
3. Ms. Mayo receives gas service from Peoples at 46 Thorncrest Drive, Pittsburgh, Pennsylvania (service address).
4. Ms. Mayo resides at the service address with her adult son and daughter.
5. Ms. Mayo has a gross monthly income of \$4,200.
6. Ms. Mayo's son has a gross monthly income of \$945.09.³
7. Ms. Mayo's daughter has no income.
8. Ms. Mayo has been suffering from a medical condition that she has had since 2015.
9. Ms. Mayo recently separated from her husband, purchased a new car in February 2019 due to a tree damaging her old car, and was out of work for a week in April 2019.
10. Ms. Mayo's customer-owned service line had a leak which cost her \$5,000 to repair in June 2019.
11. Ms. Mayo defaulted on two Company-issued payment arrangements. (Peoples Exhibit B).

³ Ms. Mayo testified that her son works thirty hours per week at minimum wage (\$7.25). Therefore, (30 hrs. per/week) * (\$7.25 per/hr.) = \$217.50 per/week; (\$217.50 per/week) * (365 days/year / 7 days/week) = \$11,341.07 per/year. (\$11,341.07 / 12 months) = \$945.09 per/month.

12. Ms. Mayo filed an Informal Complaint with the BCS at BCS No. 3607375 and was granted a payment arrangement, that began on June 5, 2018. (Peoples Exhibit B).

13. The payment arrangement issued at BCS No. 3607375 was based on a gross monthly household income of \$7,930 for a household of four.

14. Ms. Mayo defaulted on the payment arrangement issued at BCS No. 3607375. (Peoples Exhibit B).

15. Ms. Mayo filed an Informal Complaint with the BCS at BCS No. 3637450 and was granted a payment arrangement, beginning with the July 2019 bill due date. (Peoples Exhibit B).

16. No good payments have been made towards Ms. Mayo's account during the period of the Statement of Account (July 2017 – September 2019). (Peoples Exhibit A).

17. As of the date of the hearing, Ms. Mayo had an unpaid balance with Peoples of \$5,682.43. (Peoples Exhibit A).

DISCUSSION

Section 701 of the Public Utility Code (Code) provides that any person may complain, in writing, about any act or thing done or omitted to be done by a public utility in violation, or claimed violation, of any law which the Commission has the jurisdiction to administer, or of any regulation or order of the Commission. 66 Pa.C.S. § 701.

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). To satisfy this burden, the Complainant must show that the named utility is responsible or accountable for the problem described in the Complaint. Patterson v. Bell Telephone Co. of Pa., 72 Pa. PUC 196 (1990); Feinstein v. Philadelphia Suburban Water Co., 50 Pa. PUC 300 (1976). This must be shown by a

preponderance of the evidence, that is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n, 578 A.2d 600 (Pa.Cmwlt. 1990), alloc. den., 602 A.2d 863 (Pa. 1992); Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the Complainant will prevail. If the utility rebuts the Complainant's evidence, the burden of going forward with the evidence shifts back to the Complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on the Complainant. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlt. 2001); see also, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa.Cmwlt. 1982).

Additionally, this Commission's decision must be supported by substantial evidence in the record. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 413 A.2d 1037 (Pa. 1980).

In this matter, Ms. Mayo filed a Complaint requesting a payment arrangement. Therefore, the burden of proof is on Ms. Mayo to show that she is eligible for a payment arrangement.

Payment Arrangement

Requests for payment arrangements are governed by The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1419 (Chapter 14). This law provides strict guidelines that the Commission must follow when determining whether a payment arrangement can be issued and the length of the payment arrangement.

§ 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.

(b) Length of payment arrangements.--The length of time for a customer to resolve an unpaid balance on an account that is subject to a payment arrangement that is investigated by the commission and is entered into by a public utility and a customer shall not extend beyond:

(1) Five years for customers with a gross monthly household income level not exceeding 150% of the Federal poverty level.

(2) Three years for customers with a gross monthly household income level exceeding 150% and not more than 250% of the Federal poverty level.

(3) One year for customers with a gross monthly household income level exceeding 250% of the Federal poverty level and not more than 300% of the Federal poverty level.

(4) Six months for customers with a gross monthly household income level exceeding 300% of the Federal poverty level.

66 Pa.C.S. §§ 1405(a)-(b). “Household income” is defined as the following:

§ 1403. Definitions

“Household income.” The combined gross income of all adults in a residential household who benefit from the public utility service.

66 Pa.C.S. § 1403.

Generally, the Commission is permitted to establish only one payment arrangement between a customer and a utility. The Commission may only issue a second or subsequent payment arrangement under a specific set of circumstances.

§ 1405. Payment arrangements

(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). “Change in income” is defined as the following:

§ 1403. Definitions

“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.

Additionally, the Commission may reinstate and extend a defaulted upon payment arrangement under a specific set of circumstances.

§ 1405. Payment arrangements

(e) Extension of payment arrangements.--If the customer defaults on a payment arrangement established under subsections (a) and (b) 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. The initial extension period may be extended for an additional six months for good cause shown.

66 Pa.C.S. § 1405(e). “Significant change in circumstance” is defined as the following:

§ 1403. Definitions

“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.

In order to determine whether Ms. Mayo is eligible for a Commission-issued payment arrangement, it must first be determined whether this present Formal Complaint is a timely appeal of the BCS decision at BCS No. 3637450.

Prior to the present Formal Complaint, Ms. Mayo made two requests for a Commission-issued payment arrangement. The first request was made through the filing of an Informal Complaint with the BCS at BCS No. 3607375. Ms. Mayo's request was granted; however, she defaulted on this payment arrangement.

Ms. Mayo's second request for a Commission-issued payment arrangement, at BCS No. 3637450, was also granted. This payment arrangement was to begin with the July 2019 bill due date. The date this payment arrangement was issued by the BCS is not part of the record evidence; however, the Answer filed in this matter asserts that the BCS issued this payment arrangement on May 22, 2019. Answer ¶4. Ms. Mayo filed the instant Formal Complaint on June 28, 2019, and on the Formal Complaint form Ms. Mayo checked the box indicating that her Complaint was an appeal from a decision of the BCS.

Regarding BCS decisions, a BCS Informal Complaint decision becomes final in one of two ways: (1) following the expiration of the appeal period without the filing of an appeal; or (2) following the withdrawal of a Formal Complaint that appeals the BCS Informal Complaint. Ruskey v. Pennsylvania Electric Company, Docket No. C-2018-3003153 (Opinion and Order entered March 13, 2019) (Ruskey). Commission staff resolution of Informal Complaints is binding upon the parties unless formal proceedings are initiated under §§ 56.171-56.174 (relating to formal complaints). 52 Pa. Code § 56.163(3)

Appeals from informal BCS decisions are addressed in Section 56.172 of the Commission's regulations.

§ 56.172. Filing.

- (a) A request for review of the decision of the Bureau of Consumer Services (BCS) shall be initiated in writing within 20 days of issuance.
- (b) Upon receipt of a request for review of the decision of the BCS, the Secretary of the Commission will mail a formal complaint form to the requesting person.
- (c) Within 30 days of the mailing of the formal complaint form, the party requesting review of the decision of the BCS shall file the completed complaint form with the Secretary.
- (d) Upon the filing of a formal complaint within the 30-day period and not thereafter except for good cause shown, there will be an automatic stay of the informal complaint decision.
- (e) The failure to request review of the BCS decision by filing a formal complaint within the 30-day period does not foreclose a party from filing a formal complaint at a later time except as otherwise may be provided in 66 Pa.C.S. (relating to Public Utility Code).

52 Pa. Code § 56.172.

Therefore, if Ms. Mayo did not timely appeal the decision at BCS No. 3637450, then the payment arrangement issued through that decision became a binding Commission-issued payment arrangement and Ms. Mayo must show that she experienced a change of income from the income provided at that decision⁴ to be eligible for a new Commission-issued payment arrangement. If Ms. Mayo timely appealed the decision at BCS No. 3637450, then Ms. Mayo must show that she experienced a change of income from the income provided at BCS No. 3607375 (\$7,930) to be eligible for a new Commission-issued payment arrangement.

Ms. Mayo did not follow the appeal path delineated in Section 56.172 of the Commission's regulations. Ms. Mayo did not return the request for review form that she

⁴ The Answer filed in this matter asserts that the income provided at BCS No. 3637450 was \$5,712. Answer Exhibit B.

received with the BCS No. 3637450 decision to the Secretary of the Commission, but instead proceeded directly to filing a Formal Complaint with the Secretary. Despite Ms. Mayo's decision to forego the submission of the request for review form, Ms. Mayo filed the present Formal Complaint thirty-seven days after the decision at BCS No. 3637450 was issued, which is within the fifty-day minimum period that would have been provided to her had she returned the request for review form and filed a Formal Complaint consistent with Sections 56.172(a) and (c) of the Commission's regulations. See Ruskey.

In summary, Ms. Mayo's appeal of the decision made at BCS No. 3637450 was timely. As such, the payment arrangement issued through that decision was stayed and has not converted into a Commission-issued payment arrangement. Review of BCS No. 3637450 will be de novo, meaning that Ms. Mayo's eligibility for a payment arrangement will be based on the record made at this formal proceeding and not the record made at the BCS informal proceeding. 52 Pa. Code § 56.173(a). Ms. Mayo defaulted on one Commission-issued payment arrangement issued to her at BCS No. 3607375 and must show that she has experienced a change in income to be eligible for a second Commission-issued payment arrangement.

The gross monthly household income reported for Ms. Mayo's household at BCS No. 3607375 was \$7,930 for a household of four. Ms. Mayo testified at the hearing that her gross monthly household income was \$5,145.09⁵ for a household of three. Thus, Ms. Mayo has experienced a decrease in her household income of 35%⁶ since her last Commission-issued payment arrangement. As 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, Ms. Mayo has experienced the change in income necessary to be eligible for a second Commission-issued payment arrangement in this matter. 66 Pa.C.S. § 1403. Ms. Mayo's

⁵ \$4,200 + \$945.09 = \$5,145.09.

⁶ $(\$7,930 - \$5,145.09) / (\$7,930) = 0.35$.

household income and size places her between 250% and 300%⁷ of the Federal poverty level, making her eligible for a one-year payment arrangement. 66 Pa.C.S. § 1405(b)(3).

In cases where the Commission is authorized by law to establish a payment arrangement between a customer and a utility, it has the responsibility to exercise its authority very judiciously. Specifically, the Commission will exercise its discretion to issue payment arrangements only on behalf of customers who have demonstrated some evidence of a good faith effort to pay their utility bills. The Commission has refused to award payment arrangements for those who have a poor payment history and/or inability or unwillingness to comply with payment arrangements established by the utility. Getz v. Metropolitan Edison Company, Docket No. C-2014-2459964 (Order entered May 28, 2015); Hewitt v. PECO Energy Company, Docket No. F-2011-2273271 (Order entered September 12, 2013) (Hewitt).

The record evidence shows that Ms. Mayo has not demonstrated a good faith effort to pay her gas utility bill. The evidence shows that Ms. Mayo has a poor payment history. No good payments have been made towards Ms. Mayo's account during the period of the Statement of Account provided in this matter (July 2017 – September 2019). Ms. Mayo additionally defaulted on two Company-issued payment arrangements. Given Ms. Mayo's poor payment history and unwillingness to comply with Company-issued payment arrangements, discretion is not warranted to award Ms. Mayo a payment arrangement.

Lastly, in support of her request for a payment arrangement, Ms. Mayo testified that she was suffering from hardships which hurt her ability to pay her gas bills. The hardships include her recent separation from her husband, buying a new car in February 2019 due to a tree damaging her old car, being out of work for a week in April 2019, and suffering from a medical condition that she has had since 2015. Additionally, her customer-owned service line had a leak which cost her \$5,000 to repair in June 2019. A payment arrangement can be reinstated and extended if the arrangement was defaulted upon as a result of a significant change in

⁷ Federal Register, Vol. 84, No. 22 at 1168 (February 1, 2019). Also available at <http://aspe.hhs.gov/poverty> (providing that 250% of the Federal poverty level for a household of three is \$4,444, and 300% of the Federal poverty level for a household of three is \$5,333).

circumstance. 66 Pa.C.S. § 1405(e). The only hardship listed above that fits a significant change in circumstance criteria, per 66 Pa.C.S. § 1403, is the \$5,000 gas leak repair. The gas leak repair might classify as catastrophic damage to Ms. Mayo's residence resulting in a significant net cost to her household. However, because the gas leak repair occurred in June 2019, it did not cause Ms. Mayo to default on the payment arrangement issued to her in 2018 at BCS No. 3607375. Instead, the payment arrangement issued at BCS No. 3607375 defaulted because Ms. Mayo never made any payments under its terms.

In conclusion, Ms. Mayo is not eligible for a Commission-issued payment arrangement in this matter.

CONCLUSIONS OF LAW

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

2. The burden of proof in this proceeding is on the Complainant. 66 Pa.C.S. § 332(a).

3. The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1419, applies to this proceeding. 66 Pa.C.S. §§ 1401-1419.

4. The Commission is authorized to establish a payment arrangement between a public utility, customers and applicants. 66 Pa.C.S. § 1405(a).

5. A customer's gross monthly household income in relation to the Federal poverty level determines the length of the payment arrangement that the Commission may issue. 66 Pa.C.S. § 1405(b).

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 has

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

7. The Commission will exercise its discretion to issue payment arrangements only on behalf of customers who have demonstrated some evidence of a good faith effort to pay their utility bills. The Commission has refused to award payment arrangements for those who have a poor payment history and/or inability or unwillingness to comply with payment arrangements established by the utility. Getz v. Metropolitan Edison Company, Docket No. C-2014-2459964 (Order entered May 28, 2015); Hewitt v. PECO Energy Company, Docket No. F-2011-2273271 (Order entered September 12, 2013).

8. If the customer defaults on a payment arrangement established by the Commission 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. The initial extension period may be extended for an additional six months for good cause shown. 66 Pa.C.S. § 1405(e).

9. The Complainant has not met her burden of proving that she is eligible for a second Commission-issued payment arrangement or to reinstatement and extension of her first Commission-issued payment arrangement.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Tricia Mayo against Peoples Natural Gas Company LLC at Docket No. C-2019-3011288 is denied.

2. That the docket at Docket No. C-2019-3011288 is marked closed.

Date: November 25, 2019

_____/s/
Alphonso Arnold III
Special Agent