

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Marquitta Burton	:	
	:	
v.	:	C-2019-3013304
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Kailey B. Maguire
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.

HISTORY OF THE PROCEEDING

On September 23, 2019, Marquitta Burton (Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW or Respondent). In her complaint, Ms. Burton averred PGW was threatening to shut off her service or had already shut off her service. As relief, Complainant requested an affordable payment arrangement.

On October 22, 2019, PGW filed an answer to the complaint asserting, *inter alia*, it issued a shut off notice for the service at 521 N. 64th Street, Philadelphia, Pennsylvania

(service address), on September 16, 2019. PGW denied all other material allegations in the complaint. PGW concluded its answer by requesting dismissal of the complaint.

On October 23, 2019, the Commission issued a hearing notice to the Parties, establishing an initial telephonic hearing for December 12, 2019, at 10:00 a.m. and assigning the undersigned as Presiding Officer.¹ On October 24, 2019, a Prehearing Order was issued reminding the Parties of the date and time of the hearing and addressing, *inter alia*, the procedures applicable to the hearing.

The hearing convened as scheduled on December 12, 2019, at 10:00 a.m. Ms. Burton appeared *pro se*, testified on her own behalf, and offered no exhibits into the record. 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,

The record² closed following the conclusion of the hearing. For the reasons discussed below, the complaint will be denied.

FINDINGS OF FACT

1. The Complainant is Marquitta Burton, who resides at 521 N. 64th Street, Philadelphia, Pennsylvania (service address).

2. The Respondent is Philadelphia Gas Works, a jurisdictional public utility, which provides gas service to Complainant at the service address.

¹ 52 Pa. Code § 56.174 provides for review by a special agent of any 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.

3. On May 20, 2011, Respondent issued Complainant a payment arrangement; Complainant defaulted on this payment arrangement. PGW Exhibit 2.

4. On April 21, 2015, and April 29, 2015, Respondent issued Complainant a payment arrangement; Complainant defaulted on these payment arrangements.³ PGW Exhibit 2.

5. On September 3, 2015, Complainant filed an informal complaint with the Commission's Bureau of Consumer Services (BCS) at BCS Case No. 3380829 seeking a payment arrangement. PGW Exhibit 3, p.1.

6. By decision dated October 2, 2015, at BCS Case No. 3380829, BCS granted Complainant a sixty-month, level one payment arrangement,⁴ which directed Ms. Burton to pay her monthly budget bill of \$46 plus an additional \$15, for a total of \$61 per month, beginning with the due date of her November 2015 bill. Additionally, late payment charges assessed against Ms. Burton's account were waived. PGW Exhibits 2 and 3, p. 2.

7. At BCS Case No. 3380829, Complainant reported a gross monthly household income of \$1,160 and a household size of three individuals, PGW Exhibit 3, p. 1.

8. Complainant defaulted on the payment arrangement at BCS Case No. 3380829 and the balance has not been satisfied. PGW Exhibits 1 and 2.

9. Complainant did not timely appeal or seek Commission review of the decision at BCS Case No. 3380829.

³ It is not clear from the evidence presented by PGW why the parties entered into two company payment agreements within eight days of each other.

⁴ 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 five years (60 months). 66 Pa.C.S. § 1405(b)(1).

10. On October 31, 2016, Respondent issued Complainant a payment arrangement; Complainant defaulted on this payment arrangement. PGW Exhibit 2.

11. On February 22, 2017, May 26, 2017, August 25, 2017, and August 31, 2017, Respondent issued Complainant a payment arrangement; Complainant defaulted on these payment arrangements. PGW Exhibit 2.

12. On May 22, 2018, Respondent issued Complainant a payment arrangement; Complainant defaulted on this payment arrangement. PGW Exhibit 2.

13. On August 1, 2018, Complainant entered into Respondent's Customer Responsibility Program (CRP). PGW Exhibit 1.

14. At the time of the hearing, Complainant was still enrolled in Respondent's CRP. PGW Exhibit 1.

15. On April 26, 2019, Complainant filed an informal complaint with BCS at BCS Case No. 3696137 seeking a payment arrangement. PGW Exhibit 3, p. 3.

16. On July 10, 2019, BCS dismissed the informal complaint at BCS Case No. 3696137. PGW Exhibit 3, p.5.

17. On July 29, 2019, Complainant filed an informal complainant with BCS at BCS Case No. 3720811 seeking a payment arrangement. PGW Exhibit 3, p. 6.

18. On August 9, 2019, BCS dismissed the informal complainant at BCS Case No. 3720811. PGW Exhibit 3, p. 8.

19. On September 23, 2019, Complainant filed the instant formal complaint.

20. Complainant's current household size is three individuals, which includes herself and two minors.

21. Complainant's current gross monthly household income totals \$1,204, which is derived from unemployment payments of \$556 bi-weekly.

22. Complainant's gross monthly household income places the household at less than 100% of the Federal Poverty guidelines.⁵

23. Complainant made four payments towards her gas service account over the time period of the Statement of Account (December 6, 2017 – December 6, 2019). PGW Exhibit 1.

24. Two of the four payments made by Complainant towards her gas service account were returned due to insufficient funds on May 21, 2018, in the amount of \$371.94 and on September 27, 2019, in the amount of \$918. PGW Exhibit 1.

25. The two successful payments made towards Complainant's gas service account were made on May 31, 2018, in the amount of \$88.09 and October 10, 2018 in the amount of \$30.50. PGW Exhibit 1.

26. During the time period of the Statement of Account there have been six payments made on Complainant's account from grants. PGW Exhibit 1.

27. Complainant's outstanding balance as of the date of the initial hearing was \$2,034 of which \$1,190.23 is comprised of CRP arrears. PGW Exhibit 1.

⁵ See Federal Register, Vol. 84, No.22 at 1168 (February 1, 2019). Also available at <http://aspe.hhs.gov/poverty> (providing that a gross monthly income of less than \$1,778 for a household of three is less than 100% of the Federal poverty level.) Under the 2020 guidelines, the Complainant's household income would also be categorized as less than 100% of the Federal poverty level.

DISCUSSION

The proponent of any request for relief from the Commission bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S. § 332(a). To satisfy this burden, a complainant, as the proponent of the request for relief, must show 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 presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

Additionally, the Commission's decision must be supported by substantial evidence in the record. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence 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 the case *sub judice*, Complainant requests a second Commission-issued payment arrangement. Therefore, as the proponent of the request for relief, Ms. Burton bears the burden of proof. Ms. Burton owes \$1,190.23 in CRP arrears and \$843.77 in non-CRP arrears, totaling in an outstanding balance of \$2,034.

The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1419 (Act or Chapter 14), applies to complainants alleging inability to pay and requesting a Commission-issued payment arrangement. 66 Pa.C.S. § 1405(a). The Act provide strict guidelines that the Commission must follow in handling customer complaints including the length of payment arrangements it may issue, the number of payments arrangements the Commission may issue, and what types of customer accounts may be subject to payment arrangements. As to the length of payments arrangement, Section 1405 provides, in pertinent part:

§ 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.

66 Pa.C.S. §§ 1405(a)-(b)(1).

Additionally, the Act limits the number of payments arrangements it may issue a customer or applicant. Generally, the Commission is permitted to establish only one payment arrangement between a customer or applicant and a public utility. The Commission may only issue a second or subsequent payment arrangement if there has been a change of income since the prior Commission-issued payment arrangement. Specifically, Section 1405(d) 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).

Therefore, pursuant to 66 Pa.C.S. § 1405(d), Ms. Burton is eligible for another Commission-issued payment arrangement if she 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.*

Ms. Burton seeks a second Commission payment arrangement after defaulting on her first one. The first Commission-issued payment arrangement was awarded on October 2, 2015, at BCS Case No. 3380829. Complainant was issued a payment arrangement based upon a gross monthly household income of \$1,160 and a household size of three. PGW Exhibits 2 and 3, p. 3. Since Ms. Burton did not timely appeal the 2015 BCS decision granting her a payment arrangement, the BCS payment arrangement became final. A BCS decision not timely appealed converts into a Commission-issued payment arrangement.⁶ Ms. Burton defaulted on the payment arrangement and the arrearage has not been satisfied. PGW Exhibits 1 and 2.

Ms. Burton testified that her current gross monthly household income is \$1,204 derived from unemployment payments of \$556 bi-weekly. The record evidence shows that Ms. Burton has not suffered a change in income as defined by the Act because her household income at the time of the hearing increased, not decreased, since her 2015 BCS payment arrangement. In contrast, Ms. Burton's gross monthly household income at the time of the October 2015 BCS payment arrangement at BCS Case No. 3380829 was \$1,160. Therefore, I am constrained by the Act to conclude that Ms. Burton did not satisfy her burden of proving that she is eligible for a second or subsequent Commission-ordered payment arrangement based upon a change of income pursuant to 66 Pa.C.S. § 1405(d).

⁶ (3) Resolution. 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).

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.

Complainant’s gross monthly household income of \$1,204 is less than 300% of the Federal poverty level. Thus, Complainant is eligible for reinstatement and extension of her October 2015 Commission-issued payment arrangement, if she meets one of the aforementioned four prongs. None of the four prongs have been satisfied– the onset of a chronic or acute illness, catastrophic damage to her residence, the loss of residence, or an increase in the customer’s number of dependents⁷, as no evidence was presented to support any of these circumstances.

In conclusion, Ms. Burton has not satisfied her burden that she is eligible for a second Commission-issued payment arrangement, nor is she eligible for reinstatement and extension of her first Commission-issued payment arrangement. Accordingly, the complaint will be dismissed.

CONCLUSIONS OF LAW

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

⁷ “Dependent” has been defined by the Commission as someone who is dependent on the customer for utility service. *Parrish v. Pa. Power Company*, Docket No. F-2018-3000956 (Order entered March 7, 2019).

2. As the proponent of the request for relief, Complainant bears the burden of proof by a preponderance of the evidence standard. 66 Pa.C.S. § 332(a); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

3. The Commission is authorized to establish a payment arrangement between a public utility and a customer. 66 Pa.C.S. § 1405(a).

4. 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).

5. 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.

6. 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).

7. 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).

8. Complainant has failed to carry her burden of proving that she is eligible for reinstatement of the remaining term of the Commission-issued payment arrangement issued on October 2, 2015 in BCS Case No. 3380859. 66 Pa.C.S. § 1405(e).

