

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jarma Washington	:	
	:	
v.	:	F-2019-3012014
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Complainant’s Formal Complaint as she was not able to meet her burden of establishing that her bills were incorrect. This Initial Decision also denies the Complainant’s request for a payment arrangement because she did not satisfy her burden under the Public Utility Code to demonstrate that she is eligible for a second or subsequent Commission-issued payment arrangement or an extension of her prior Commission payment arrangement.

HISTORY OF THE PROCEEDING

On July 29, 2019, Jarma Washington (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against the Philadelphia Gas Works (PGW or Respondent). In the Complaint, Ms. Washington alleged that there were incorrect charges on her bills and sought a payment arrangement. She also alleged that she had repeatedly requested that PGW come out to check her meter and when they did check her meter that they found a leak.

On August 27, 2019, PGW filed an Answer, denying the material allegations of the Complaint.

The Complaint is a timely appeal of a Bureau of Consumer Services' (BCS) decision at Case No. 3658015 dated June 10, 2019, which denied the Complainant's Informal Complaint and found that the bills were correct as rendered and that the Complainant was not entitled to a payment arrangement.

On September 3, 2019, a Hearing Notice was issued for an initial in-person hearing on Thursday, October 17, 2019, at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on September 4, 2019, which provided the parties with the procedures for the hearing.

On October 1, 2019, a Cancel/Reschedule Hearing Notice was issued indicating the October 17, 2019 hearing was cancelled¹ and the matter was rescheduled for Monday, November 25, 2019 at 10:00 a.m.

The hearing convened as scheduled on November 25, 2019. The Complainant represented herself and testified on her own behalf. PGW was represented by counsel, Laureto Farinas, Esquire. PGW also presented the testimony of Joyshalyn Moore, a customer review officer, and offered five exhibits which were entered into the record.

The record closed on January 2, 2020, when I received my copy of the 57-page hearing transcript.

FINDINGS OF FACT

1. The Complainant is Jarma Washington, who lives at 5007A Hazel Avenue, Philadelphia, Pennsylvania 19143 (Service Address). Tr. 7.

¹ The hearing on October 17, 2019 was cancelled due to a conflict in the presiding officer's schedule.

2. The Respondent is Philadelphia Gas Works.
3. The Complainant resides at the Service Address with her two sons, ages 22 and 20. Tr. 15.
4. The Complainant works full time at Rick's Funeral and Cremation Services. Tr. 14.
5. The Complainant receives \$950.00 per week in salary. Tr. 14.
6. The Complainant's sons are not employed as they are currently students. Tr. 15.
7. The Complainant's current gross household income of \$4,117.00² per month with three household members places the household at 227% of the Federal Poverty guidelines.³
8. The Complainant was granted a Commission-issued payment arrangement by Bureau of Consumer Services' decision at Case No. 3472122 on September 7, 2016 which was broken on January 19, 2017. Tr. 29; PGW Exh. 1.
9. Under BCS case No. 3472122, the Complainant reported a gross household income of \$2,816.67 per month for three household members. PGW Exh. 1.
10. Under BCS case No. 3472122, the Complainant was granted a Level 2 payment arrangement of \$100.00 Budget Billing + \$133.00 Arrears = \$233.00 per month. Tr. 25; PGW Exh. 1.

² Monthly income is calculated as follows: $\$950.00 \times 52 = \$49,400 / 12 = \$4,117.00$.

³ *Federal Register*, Vol. 85, No. 12, pp. 3060-3061 (January 17, 2020). See <http://aspe.hhs.gov/poverty>.

11. The Complainant has had five Company-issued payment arrangements, issued on April 2014, November 2015, April 2016, March 2017, and September 2017; all of which have been broken by the Complainant. Tr. 30; PGW Exh. 4.

12. The meter at the Service Address was exchanged on May 13, 2016. Tr. 35.

13. Meter No. 1941831 was replaced with Meter No. 2009320. Tr. 35.

14. Meter No. 2009320 was tested prior to installation and was working properly. Tr. 35.

15. From the period of December 2017 through October 2018, no payments were made to the Complainant's account. Tr. 35; PGW Exh. 2.

16. The Complainant's current account balance is \$4,681.50. Tr. 36; PGW Exh. 2.

17. A PGW technician visited the Service Address on July 5, 2018 on the report of a gas leak. Tr. 38; PGW Exh. 5.

18. The technician found a leak before the meter and repaired the issue and made all checks and left the gas on. Tr. 38; PGW Exh. 5.

19. The technician also found no evidence of foreign load at the Service Address, during the investigation on July 5, 2018. Tr. 39-40; PGW Exh. 5.

DISCUSSION

The Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of a rule or order. As the proponent of a rule or order, Complainant has the burden of proof in this matter pursuant to 66 Pa.C.S. § 332(a).

To establish a sufficient case and satisfy the burden of proof, the Complainant must show that the respondent public 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). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa.Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992). That is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. 1993); 2 Pa.C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 194 Pa.Super. 278, 166 A.2d 96 (1960); *Murphy v. Pa. Dep't of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa.Cmwlth. 1984).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the Complainant shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight, the Complainant has not satisfied his burden of proof. The Complainant would be required to provide additional evidence to rebut the evidence of the Respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa.Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).

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).

High Bill Dispute

The Complainant asserts that her bills were too high. She contends that this has been an ongoing issue, going back many years. The Complainant did not present any evidence to show a change in her billing or an increase in her bills. Moreover, the meter at the Service Address was exchanged on May 13, 2016. Tr. 35. Meter No. 1941831 was replaced with Meter No. 2009320. Tr. 35. Meter No. 2009320 was tested prior to installation and was working properly. Tr. 35.

Further, a PGW technician visited the Service Address on July 5, 2018 on the report of a gas leak. Tr. 38; PGW Exh. 5. According to PGW's witness, the technician found a leak before the meter, repaired the issue, made all checks and left the gas on. Tr. 38; PGW Exh. 5. The technician also found no evidence of foreign load at the Service Address, during the investigation on July 5, 2018. Tr. 39-40; PGW Exh. 5.

The Complainant has not presented any evidence that her bills are too high, other than her own testimony. "Mere bald assertions ... do not constitute evidence." *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 516 Pa. 75, 532 A.2d 12 (1987); *Mid-Atlantic Power Supply Association of Pennsylvania v. Pa. Pub. Util. Comm'n*, 746 A.2d 1196, 1200 (Pa.Cmwlth. 2000); see also, *Steffy's Pattern Shop v. Frontier Communications of Pennsylvania, Inc.*, Docket No. R-00994808 (Opinion and Order entered March 3, 2000). The meter at the Service Address was exchanged in May 2016 and was tested before it was installed and found to be working within the Commission's guidelines at 52 Pa.Code § 57.20(c).⁴ PGW visited the Service Address in July 2018 and found a leak before the meter, which would not affect the Complainant's bills. There was also no evidence of foreign load at the Service Address. Based

⁴ "...that meter was not tested to be faulty, or that meter didn't have any fact percentages. That one was actually recording in the standard percentage." Tr. 47.

on the above, there does not appear to be any issues with the Complainant's billing and she has failed to meet her burden of proof in this regard.

Request for Payment Arrangement

The Complainant also requests a payment arrangement for her outstanding balance. The Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401 *et seq.* (the Act or Chapter 14), applies to complaints alleging inability to pay and requesting a Commission-issued payment arrangement. This law provides strict guidelines that the Commission must follow in handling customer complaints. Section 1405(a) of the Public Utility Code reads as follows:

§ 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).

However, Section 1405(d) of the Public Utility Code prohibits the Commission from establishing a second or subsequent payment arrangement if the customer has defaulted on a Commission-issued payment arrangement, absent a change in income. 66 Pa.C.S. § 1405(d). Under Section 1403, a "change in income" is defined as a decrease in household income of 20% or more if the customer's household income level is greater than 200% of the Federal poverty level. 66 Pa.C.S. § 1403.

Section 1405(e) of the Public Utility Code allows for an extension by six months of a payment arrangement in default if the customer defaulted on the payment arrangement as a result of a significant change in circumstance. 66 Pa.C.S. § 1405(e). "Significant change in

circumstance” is defined as any of the following circumstances which are 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.

The Complainant resides at the Service Address with her two sons, ages 22 and 20. Tr. 15. Her one son resides on campus during the scholastic year but comes home every weekend. Tr. 21. The Complainant works full time at Rick’s Funeral and Cremation Services. Tr. 14. The Complainant receives \$950.00 per week in salary. Tr. 14. The Complainant’s sons are not employed as they are currently students. Tr. 15. The Complainant’s current gross household income of \$4,117.00 per month with three household members places the household at 227% of the Federal Poverty guidelines. This makes the Complainant a Level 2 customer. *See* 66 Pa.C.S. § 1405(b)(2)⁵.

However, in this instance, the Complainant was granted a Commission-issued payment arrangement by BCS at Case No. 3472122 on September 7, 2016 which was broken on January 19, 2017. Tr. 29; PGW Exh. 1. Under the BCS case, the Complainant reported a gross monthly household income of \$2,816.67 for three household members. PGW Exh. 1. The Complainant was granted a Level 2 payment arrangement of \$100.00 Budget Billing + \$133.00 Arrears = \$233.00 per month. Tr. 25; PGW Exh. 1.

Thus, the Complainant’s gross household monthly income has increased since the 2016 Commission-issued payment arrangement. Therefore, the Complainant does not meet the

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

“change of income” criteria set out in Section 1403 of the Public Utility Code. The Complainant has income greater than 200% of the Federal Poverty Level at 227% of the Federal Poverty Level and has not experienced a decrease in income of 20% or more. *See* 66 Pa.C.S. § 1403.

Next, the Complainant did not present any evidence that would meet any of the “significant change in circumstance” criteria that is enumerated in Section 1403 of the Public Utility Code. Further, the Complainant is simply seeking more favorable payment arrangement terms than the one she previously received from the Commission. However, the Commission is constrained by the Public Utility Code as to the number of payment arrangements it may issue a customer and under what circumstances it may reinstate a prior Commission payment arrangement.

Based on all of the above, the Complainant’s request for a payment arrangement must be denied and the Complaint must be dismissed in this regard. The Complainant is not eligible for a new payment arrangement or reinstatement of her prior Commission payment arrangement.

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. Any finding of fact necessary to support the Commission’s adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm’n*, 447 A.2d 1100 (Pa.Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm’n*, 623 A.2d 6 (Pa.Cmwlth. 1993); 2 Pa.C.S. § 704.

4. “Mere bald assertions ... do not constitute evidence.” *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 516 Pa. 75, 532 A.2d 12 (1987); *Mid-Atlantic Power Supply Association of Pennsylvania v. Pa. Pub. Util. Comm’n*, 746 A.2d 1196, 1200 (Pa.Cmwlth. 2000); *see also, Steffy’s Pattern Shop v. Frontier Communications of Pennsylvania, Inc.*, Docket No. R-00994808 (Opinion and Order entered March 3, 2000).

5. The Complainant has not met her burden of demonstrating that her bills were incorrect.

6. The Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401 *et seq.* (the Act or Chapter 14), applies to complaints alleging inability to pay and requesting a Commission-issued payment arrangement.

7. The Commission has the authority to establish a payment arrangement of one year for a customer if the customer is exceeding 250% of the Federal poverty level and not more than 300% of the Federal poverty level. 66 Pa.C.S. § 1405(b)(3).

8. Section 1405(d) of the Public Utility Code prohibits the Commission from establishing more than one payment arrangement unless there is a change in income. 66 Pa.C.S. § 1405(d).

9. Under Section 1403, a “change in income” is defined as a decrease in household income of 20% or more if the customer's household income level is greater than 200% of the Federal poverty level. 66 Pa.C.S. § 1403.

10. Section 1405(e) of the Public Utility Code allows for an extension by six months of a payment arrangement in default if the default was caused by a significant change in circumstance. 66 Pa.C.S. § 1405(e).

