

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Patricia Fleckenstein	:	
	:	
v.	:	C-2020-3019293
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Alphonso Arnold III
Special Agent

INTRODUCTION

This Initial Decision dismisses the Complaint, finding that the Complainant did not meet her burden of proving that she is eligible for a second Commission-issued payment arrangement, or for reinstatement and extension of her first Commission-issued payment arrangement.

HISTORY OF THE PROCEEDING

On March 6, 2020, Patricia Fleckenstein (Complainant or Ms. Fleckenstein) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (Respondent or PGW), seeking a payment arrangement.

The Complaint is an untimely appeal of a decision made by the Commission's Bureau of Consumer Services (BCS) at BCS No. 3749295, wherein Ms. Fleckenstein's Informal Complaint seeking a payment arrangement was denied.

On April 8, 2020, PGW filed its Answer to the Complaint, admitting and denying the averments in the Complaint and requesting that the Commission dismiss the Complaint.

By Hearing Notice served on the parties on May 11, 2020, the Commission scheduled this matter for a telephonic hearing on June 23, 2020 and assigned the case to me as presiding officer.

A Prehearing Order was served on the parties on June 9, 2020, addressing, inter alia, the procedures applicable to the hearing.

I conducted the June 23, 2020 telephonic hearing as scheduled. Ms. Fleckenstein was present for the hearing and testified on her own behalf. Ms. Fleckenstein sponsored no exhibits for the record. Attorney Graciela Christlieb was present at the hearing on behalf of PGW and presented the testimony of Adrian Pinkney, a customer review officer employed by PGW. Ms. Pinkney sponsored the following three exhibits all of 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 record closed on June 24, 2020, the date the undersigned received the 29-page electronic transcript of the June 23, 2020 hearing. For the reasons explained below, the Complaint will be dismissed.

FINDINGS OF FACT

1. The Complainant is Patricia Fleckenstein.
2. The Respondent is Philadelphia Gas Works.
3. Ms. Fleckenstein resides at 3261 Gaul Street, Philadelphia, Pennsylvania.

4. PGW terminated Ms. Fleckenstein's gas service around September 2018. (Tr. 8).

5. Ms. Fleckenstein resides alone at her residence. (Tr. 6).

6. Ms. Fleckenstein's monthly income is comprised of \$1,600 in Social Security payments and \$238 in pension payments. (Tr. 7, 9).

7. On June 15, 2015, Ms. Fleckenstein filed an Informal Complaint with the BCS at BCS No. 3356057, seeking a payment arrangement. (PGW Exhibit 3, p. 1).

8. On June 17, 2015, Ms. Fleckenstein's Informal Complaint at BCS No. 3356057 was granted, and Ms. Fleckenstein was provided with a payment arrangement on her account balance. (PGW Exhibit 3, p. 2).

9. The payment arrangement issued at BCS No. 3356057 was based upon a reported income of \$1,590 for a household of one. (PGW Exhibit 3, p. 1).

10. Ms. Fleckenstein defaulted on the payment arrangement issued at BCS No. 3356057. (Tr. 19, 20).

11. The outstanding balance on Ms. Fleckenstein's PGW account is \$2,280.65. (PGW Exhibit 1).

12. The amount that PGW is seeking to restore service to Ms. Fleckenstein's residence is \$2,417.02, which includes Ms. Fleckenstein's balance plus a reconnection fee and a security deposit. (Tr. 15).

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 a 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).

Ms. Fleckenstein's gas service was terminated around September 2018. To restore Ms. Fleckenstein's service, PGW requests a payment of \$2,417.02. Ms. Fleckenstein seeks reduced payment terms through receiving a payment arrangement from the Commission. Thus, the burden is on Ms. Fleckenstein to prove that she is eligible for a 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/applicant and a utility. The Commission may only issue a second or subsequent payment arrangement under a specific set of circumstances.

(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.

A previous Commission-issued payment arrangement was established for Ms. Fleckenstein by the BCS at BCS No. 3356057. The payment arrangement established through this BCS decision became a Commission-issued payment arrangement once Ms. Fleckenstein failed to appeal the decision through filing a Formal Complaint.¹ Ms. Fleckenstein defaulted upon this Commission-issued payment arrangement. Given her default on this prior Commission-issued payment arrangement, Ms. Fleckenstein in this instant Formal Complaint is seeking a second Commission-issued payment arrangement. A second Commission-issued payment arrangement can be established for Ms. Fleckenstein only if she has experienced a change in income since the prior Commission-issued payment arrangement was issued and made final. 66 Pa.C.S. § 1405(d).

Ms. Fleckenstein testified at the hearing that her gross monthly household income is \$1,838² for a household of one. Ms. Fleckenstein's gross monthly household income reported at BCS No. 3356057 was \$1,590 for a household of one. Thus, Ms. Fleckenstein's gross monthly household income has increased following the issuance of her Commission-issued payment arrangement. As cited above, "change in income" is defined as having experienced a decrease in household income, not an increase in household income. 66 Pa.C.S. § 1403. Therefore, Ms. Fleckenstein has not experienced the change of income required to be granted a second Commission-issued payment arrangement.

Although the Commission cannot establish a second Commission-issued payment arrangement for Ms. Fleckenstein, the Commission-issued payment arrangement at BCS No. 3356057 can be reinstated and extended if Ms. Fleckenstein defaulted on the payment arrangement as a result of a significant change in circumstance. 66 Pa.C.S. § 1405(e). Ms.

¹ (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).

² \$1,600 social security + \$238 pension = \$1,838.

Fleckenstein provided no evidence at the hearing that would lead to a finding that Ms. Fleckenstein defaulted on her Commission-issued payment arrangement as a result of a significant change in circumstance. Therefore, Ms. Fleckenstein has not experienced a significant change in circumstance making her eligible for reinstatement and extension of her Commission-issued payment arrangement.

Given the analysis above, Ms. Fleckenstein is not eligible for a second Commission-issued payment arrangement, nor is she eligible for reinstatement and extension of her first Commission-issued payment arrangement. As such, Ms. Fleckenstein's Complaint will be dismissed.

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 Commission is authorized to establish a payment arrangement between a public utility, customers and applicants. 66 Pa.C.S. § 1405(a).
4. A customer's gross monthly household income in relation to the Federal poverty level determines the length of the payment arrangement that the Commission can issue. 66 Pa.C.S. § 1405(b).
5. 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).

6. If a customer defaults on a Commission-issued 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).

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

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Patricia Fleckenstein against Philadelphia Gas Works at Docket No. C-2020-3019293 is dismissed.

2. That the docket at Docket No. C-2020-3019293 is marked closed.

Date: August 3, 2020

/s/
Alphonso Arnold III
Special Agent