

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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|------------------------|---|----------------|
| Gina Johnson | : | |
| | : | |
| v. | : | F-2022-3034495 |
| | : | |
| Philadelphia Gas Works | : | |

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This Initial Decision grants Gina Johnson’s Formal Complaint against Philadelphia Gas Works because she successfully carried her burden of proving that she qualifies for a subsequent Commission-issued payment arrangement and a waiver of late payment charges assessed after July 5, 2022.

HISTORY OF THE PROCEEDING

On August 18, 2022, Gina Johnson (Complainant or Ms. Johnson) filed a Formal Complaint (Complaint) against Philadelphia Gas Works (Respondent or PGW), at Docket No. F-2022-3034495. In her Complaint, Ms. Johnson alleged that her payment arrangement amount is “extremely high.” Complaint ¶ 4. As relief, she requests the Commission’s assistance in establishing a more affordable payment arrangement.

This Complaint is a timely appeal of a decision issued by the Commission’s Bureau of Consumer Services (BCS) at BCS Case # 3834719.

On September 7, 2022, Respondent filed an Answer denying the material allegations of the Complaint.

A Hearing Notice dated September 19, 2022, notified the parties that an initial hearing was scheduled for November 3, 2022, at 10:00 a.m.

A Prehearing Order was issued on October 19, 2022, reminding the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to this proceeding, and directing the submission of documents prior to the hearing.

The initial hearing convened as scheduled on November 3, 2022. Ms. Johnson appeared *pro se* and testified in support of the Complaint. She sponsored one exhibit which was admitted into the record. Graciela Christlieb, Esq. represented the Respondent, and presented the testimony of David Kauffman, who is a customer review officer in charge of investigating formal and informal complaints filed against PGW. The Respondent sponsored three exhibits which were admitted into the record.

At the hearing, Ms. Johnson requested and was granted permission to submit late-filed exhibits. The proffered documents were received on November 14 and 17, 2022, and were marked for identification as Complainant late-filed Exhibits 1 and 2, respectively.

The Respondent objected only to the admission of Complainant late-filed Exhibit 1 into the record. Complainant late-filed Exhibits 1 and 2 are both admitted into the record in this matter consistent with the discussion below.

The record in this matter closed upon receipt of the hearing transcript on November 30, 2022.

FINDINGS OF FACT

1. The Complainant is Gina Johnson, who resides at 3522 West Allegheny Avenue, Philadelphia, Pa 10132 (Service Address). Tr. 13.
2. The Respondent is Philadelphia Gas Works.
3. Ms. Johnson resides at the Service Address with her 12-year-old daughter and 11-year-old son. Tr. 15.
4. Ms. Johnson is currently employed by the Philadelphia Housing Authority, at a pay rate of \$25.52 per hour. Tr. 18-19, Complainant late-filed Exhibit 2.
5. Ms. Johnson normally works 35 hours per week. Tr. 18-19, Complainant late-filed Exhibit 2.
6. Ms. Johnson's employment is the sole source of income in the household. Tr. 19-20.
7. From October 29, 2020, to February 1, 2022, Ms. Johnson made 10 debit card payments on 16 monthly bills from PGW. PGW Exhibit 1.
8. The debit card payments made during the period October 29, 2020, to February 1, 2022, range from \$221.00 to \$290.00, totaling \$2,469.52 paid within that period. PGW Exhibit 1.
9. On or about October 29, 2021, Ms. Johnson received a Commission-issued payment arrangement at BCS Case # 3808336, on a reported income of \$3,600.00 per month. PGW Exhibits 2 and 3.

10. On January 8, 2022, Ms. Johnson suffered the loss of her three-year old grandson in tragic circumstances. Complainant late-filed Exhibits 1 and 2.

11. On March 24, 2022, Ms. Johnson suffered a miscarriage. Tr. 15, 26, Complainant late-filed Exhibit 2.

12. On or about March of 2022, Ms. Johnson defaulted on the Commission-issued payment arrangement. Tr. 14, 38-39, PGW Exhibits 1 and 2.

13. Following the death of her grandson in January of 2022, and the loss of her pregnancy in March of 2022, Ms. Johnson is experiencing health and emotional issues. Tr. 18, 26.

14. Following the death of her grandson in January of 2022, and the loss of her pregnancy in March of 2022, Ms. Johnson is not always able to work a full 35-hour week. Tr. 18, 26, 42-43, Complainant late-filed Exhibit 2.

15. For the pay period March 18-24, 2022, Ms. Johnson's gross income was \$794.99. Complainant late-filed Exhibit 2.

16. For the pay period March 25-31, 2022, Ms. Johnson's gross income was \$737.63. Complainant late filed Exhibit 2.

17. For the pay period April 1-7, 2022, Ms. Johnson's gross income was \$565.10. Complainant late-filed Exhibit 2.

18. For the pay period April 8-14, 2022, Ms. Johnson's gross income was \$857.07. Complainant late-filed Exhibit 2.

19. Ms. Johnson made no payments to PGW from March 2, 2022, to October 25, 2022. PGW Exhibit 1.

20. On April 28, 2022, Ms. Johnson filed an informal complaint with the Commission's Bureau of Consumer Service at BCS Case # 3834719, alleging her inability to pay her gas bills to PGW and requesting a payment arrangement. PGW Exhibit 3.

21. On June 23, 2022, BCS issued a written determination on Ms. Johnson's informal complaint at BCS Case #3834719 based on Ms. Johnson's reported household income of \$3,179.96 per month for three individuals. PGW Exhibit 3.

22. In its decision on BCS Case # 3834719, BCS found that Ms. Johnson had experienced a decrease in income, from \$3,600.00 to \$3,179.96, and was now a level 1 income customer. PGW Exhibit 3.

23. In its decision on BCS Case # 3834719, BCS ordered PGW to waive Ms. Johnson's late payment charges and established a payment arrangement consisting of budget billing amount of \$254.00 per month, plus \$74.00 per month towards the arrearages, beginning with the July 2022 due date. PGW Exhibit 3.

24. On July 5, 2022, PGW waived \$132.94 in assessed late payment charges in Ms. Johnson's account, in accordance with the informal decision of BCS in BCS Case # 3834719. PGW Exhibits 1 and 3.

25. On August 18, 2022, Ms. Johnson filed the present Formal Complaint as a timely appeal of BCS informal determination at BCS Case # 3834719.

26. As of the day of the hearing, Ms. Johnson had an outstanding balance of \$4,842.11 in her account with PGW. Tr. 37, PGW Exhibit 1.

DISCUSSION

As a preliminary matter, I will address PGW's objection to the admission of Complainant late-filed Exhibit 1 into the record in this case. Complainant late-filed Exhibit 1 is a document titled "Findings and Opinions" prepared by the Office of Medical Examiner for the City of Philadelphia. The document is dated January 8, 2022, and pertains to the death of Adonis Lee Purvis, Ms. Johnson's grandson. PGW objects to the admission of this document into the record on the basis of relevancy. Upon careful consideration, I find the Document to be relevant to the matter at hand. The tragic death of her grandson has impacted Ms. Johnson's physical and emotional well-being. It has had serious consequences and has disrupted her ability to work and earn an income. For these reasons, Complainant late-filed Exhibit 1 is relevant to Ms. Johnson's request for a payment arrangement and will be admitted into the record in this case. Complainant late-filed Exhibit 2 was unobjected to and will also be admitted into the record.

In the present Complaint, Ms. Johnson alleged her inability to pay her gas bills to PGW. As relief, she requested a reasonable payment arrangement.

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S. § 332(a). In *Waldron v. Philadelphia Electric Co.*, 54 Pa.P.U.C. 98 (1980) (*Waldron*), the Commission explained the process for initially meeting the burden of proof. A complainant must first establish a *prima facie* case, showing that the utility breached some duty owed to the complainant, in that the utility violated the Public Utility Code or a regulation or order of the Commission. 66 Pa.C.S. § 701. If the complainant establishes a *prima facie* case, then the burden of going forward with the evidence, but not the ultimate burden of proof, shifts to the utility to rebut the *prima facie* case with evidence which is at least co-equal. If the utility presents co-equal evidence, the burden of going forward shifts back to the complainant, to rebut the utility's case by a preponderance of the evidence. *Poorbaugh v. West Penn Power Co.*, 1994 Pa.P.U.C. LEXIS 95 (*Poorbaugh*). Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *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 W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

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).

By law, a public utility is entitled to receive payment for the service it provides. *Scaccia v. W. Penn Power Co.*, 55 Pa.P.U.C. 637 (1982); *Kea v. Peoples Nat. Gas Co.*, 60 Pa.P.U.C. 215 (1985); *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982). Consequently, the Respondent has the right to bill and receive payment for the utility service actually supplied. 66 Pa.C.S. § 1303; *Neal v. Metro. Edison Co.*, Docket No. Z-00871874 (Final Order entered Jan. 4, 2002); *Angie's Bar v. Duquesne Light Co.*, 72 Pa.P.U.C. 213 (1990).

Additionally, all customers are obligated to pay for utility service. Otherwise, unpaid bills are included in the utility's uncollectible expenses, which all of its remaining customers must pay. *Bolt v. Duquesne Light Co.*, Docket No. Z-08721758 (Opinion and Order entered Apr. 8, 1988). A payment arrangement, which prevents service termination as long as the Complainant complies with it, is a privilege, not a right. *Mandell v. Duquesne Light Co.*, Docket No. C-20030234 (Opinion and Order entered Mar. 17, 2004).

This proceeding is a *de novo* review of the BCS determination of an appropriate payment arrangement for Ms. Cole's account. 52 Pa. Code § 56.403(a). *De novo* review involves full consideration of the case anew. *Young v. Dep't of Env't Res.*, 600 A.2d 667 (Pa. Cmwlth. 1991). The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1419, applies to complainants alleging inability to pay and requesting a Commission-issued payment arrangement. This law provides strict guidelines that the Commission must follow when determining whether a payment arrangement can be issued. 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) Subsection (b) provides:

(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(b).

Section 1405(d) of the Responsible Utility Customer Protection Act also reads in pertinent part:

(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). In addition, "Household income" is defined in section 1403 as "[t]he combined gross income of all adults in a residential household who benefit from the public service." 66 Pa.C.S. § 1403 (Definition of "Household income"). The same section defines "Change in income" 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 (Definition of "Change in income").

Based on the record collected in this case, I find that Ms. Johnson's payment history with PGW reflect a good faith effort on her part to pay her gas bills to PGW, until March of 2022. From October 29, 2020, to February 1, 2022, Ms. Johnson made 10 debit card payments to PGW for a total of \$2,496.52. PGW Exhibit 1. Then, on January 8, 2022, Ms. Johnson's three-year old grandson was murdered. Complainant late-filed Exhibits 1 and 2. Ms. Johnson testified credibly that, in the turmoil of this tragedy, she forgot to pay her gas bill due March 2, 2022. See Tr. 17, PGW Exhibit 1. On March 24, 2022, Ms. Johnson suffered a miscarriage. Tr. 14-15, 26, Complainant late-filed Exhibit 2.

On or about March of 2022, Ms. Johnson defaulted on the Commission-issued payment arrangement at BCS Case #3808336. Tr. 14, 38-39, PGW Exhibits 1 and 2.

During the hearing, Ms. Johnson testified credibly that the death of her grandson in January of 2022, and the loss of her baby in March of 2022 has taken a toll on her physical and mental health. Tr. 18, 26. She explained that, following these two losses, she has not always been able to work a full 35-hour week. Tr. 18, 26, 42-43, Complainant late-filed Exhibit 2. She submitted her pay stubs for four consecutive pay periods. For the pay period March 18-24, 2022, Ms. Johnson's gross income was \$794.99. Complainant late-filed Exhibit 2. For the pay period March 25-31, 2022, Ms. Johnson's gross income was \$737.63. Complainant late-filed Exhibit 2. For the pay period April 1-7, 2022, Ms. Johnson's gross income was \$565.10. Complainant late-filed Exhibit 2. For the pay period April 8-14, 2022, Ms. Johnson's gross income was \$857.07.

Complainant late-filed Exhibit 2. The total household gross income for the period March 18, 2022, to April 14, 2022, was \$3,014.49, for a household of three individuals.

On April 28, 2022, Ms. Johnson filed an informal complaint with the Commission's Bureau of Consumer Service at BCS Case # 3834719, alleging her inability to pay her gas bills to PGW and requesting a new payment arrangement. PGW Exhibit 3. On August 18, 2022, Ms. Johnson filed the present Complaint appealing the informal decision of BCS at BCS Case # 3834719.

With a gross household income of \$3,014.49 per month, Ms. Johnson has experienced a decrease \$585.51 per month, representing a 16.26% decrease from the gross household income of \$3,600.00 per month reported to BCS at BCS Case # 3808336. Ms. Johnson's income is below the 150% of the federal poverty level for a household of three. Because her household income does not exceed 200% of the federal poverty level and the decrease in income exceeds 10%, Ms. Johnson qualifies for a subsequent Commission-issued payment arrangement.

In addition, Ms. Johnson is a level 1 income customer. Consequently, she will be awarded a payment arrangement requiring her to make monthly payments consisting of her budget bill plus one sixtieth (1/60th) of the balance accrued on her account, beginning with the first billing due date following the entry of a final Commission Order in this case.

Finally, I find that Ms. Johnson qualifies for a waiver of the late payment charges assessed against her account after July 5, 2022. See PGW Exhibits 1 and 3. The Pennsylvania Public Utility Code (Code) and the Commission's regulation allow the Commission to "order a waiver of any late payment charges levied by a public utility as a result of a delinquent account for customers with a gross monthly household income not exceeding 150% of the Federal poverty level." 66 Pa.C.S. § 1409, 52 Pa. Code § 56.22(d).

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. § 701.
2. The Complainant had the burden of proof. 66 Pa.C.S. § 332(a).
3. The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401–1419, applies to this proceeding.
4. Absent a change in income, the commission shall not establish or order a public utility to establish a second or subsequent payment agreement if a customer has defaulted on a previous payment agreement. 66 Pa.C.S. § 1405(d).
5. 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. "Household income" is defined as "[t]he combined gross income of all adults in a residential household who benefit from the public service." 66 Pa.C.S. § 1403.
7. The Pennsylvania Public Utility Code and the Commission's regulation allow the Commission to "order a waiver of any late payment charges levied by a public utility as a result of a delinquent account for customers with a gross monthly household income not exceeding 150% of the Federal poverty level." 66 Pa.C.S. § 1409, 52 Pa.Code § 56.22(d).
8. The Complainant successfully carried her burden of proving that she is entitled to a subsequent Commission-issued payment arrangement and a waiver of late payment charges.

ORDER

THEREFORE,

IT IS ORDERED:

1. That Complainant late-filed Exhibits 1 and 2 are admitted into the record in this matter.
2. That the Formal Complaint filed by Gina Johnson in Gina Johnson v. Philadelphia Gas Works at Docket Number F-2022-3034495, is hereby sustained.
3. That all late payment charges assessed against Gina Johnson's account with Philadelphia Gas Works after July 5, 2022, be waived.
4. That Gina Johnson shall make monthly payments consisting of her current budget bill plus one sixtieth (1/60th) of the balance accrued on her account, beginning with the first billing due date following the entry of a final Commission Order in this case.
5. That, if Gina Johnson does not keep the payment schedule stated in this Order, Philadelphia Gas Works is authorized to suspend or terminate her utility service in accordance with the Commission's statute and regulations.
6. That the Secretary mark this docket closed.

Date: February 27, 2023

/s/
Eranda Vero
Administrative Law Judge