

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Valerie Gregory	:	
	:	
v.	:	F-2022-3033630
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Arlene Ashton
Administrative Law Judge

INTRODUCTION

This Decision dismisses the Complaint of Valerie Gregory filed against Philadelphia Gas Works because Ms. Gregory 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.

PROCEDURAL HISTORY

On June 9, 2022, Valerie Gregory (the Complainant or Ms. Gregory) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (the Commission or PUC) against Philadelphia Gas Works (the Respondent or PGW) in which she requested a new payment arrangement (PAR).

On August 28, 2022, PGW filed a timely Answer with New Matter (Answer) in which it averred that the Complainant was not entitled to a new PAR because she has defaulted on multiple PGW-issued PARs and one Commission-issued PAR and has a poor payment

history. The Respondent requested that the Complainant be denied relief and the Complaint be dismissed.

The Answer included New Matter, in which PGW alleged that under the statute of limitations,¹ the Complainant had lost her right to pursue litigation before the Commission regarding the balance of her account arising out of service provided to her at a prior address from October 29, 2004, through June 30, 2010. The Answer was accompanied by a Notice to Plead advising the Complainant that she had 20 days from the date of service to respond to the New Matter. The Complainant did not file a response to the New Matter.

On August 28, 2022, PGW also filed a Preliminary Objection (Preliminary Objection) in which it averred that under the statute of limitations,² the Complaint should be dismissed to the extent that the Complaint sought relief relating to the balance of her account arising out of service provided to her at a prior address from October 29, 2004, through June 30, 2010. The Preliminary Objection was accompanied by a Notice to Plead advising the Complainant that she had 10 days from the date of service to respond to the Preliminary Objection. The Complainant did not file a response to the Preliminary Objection.

On August 31, 2022, the Commission issued a hearing notice setting an initial telephonic hearing for November 1, 2022, at 10:00 a.m. and the case was assigned to me.

On September 6, 2022, a prehearing order was issued advising the parties of the applicable hearing procedures. On October 26, 2022, I issued an Interim Order granting the Respondent's Preliminary Objection.

The hearing convened as scheduled. The Complainant appeared *pro se*, testified on her own behalf and offered no exhibits. Attorney Graciela Christlieb appeared on behalf of

¹ 66 Pa.C.S. § 3314.

² *Id.*

the Respondent. PGW presented the testimony of one witness and offered four exhibits which were admitted into the record.

During the evidentiary hearing, a question was raised regarding Ms. Gregory's removal from PGW's Customer Responsibility Program (CRP). Counsel for PGW noted for the record that PGW was unprepared to address the issue because it was not raised in Ms. Gregory's Complaint. However, PGW's witness provided testimony that Ms. Gregory was removed from CRP at her own request. Ms. Gregory disputed this testimony. PGW offered to produce the form Ms. Gregory submitted to request her removal from CRP as a late filed exhibit.

By letter dated November 7, 2022, sent by Ms. Christlieb on behalf of PGW, I was informed that PGW had been unable to locate the proposed late filed exhibit. The November 7, 2022, Letter also included a request for a further evidentiary hearing be scheduled to permit PGW a reasonable opportunity to present other evidence regarding the circumstances of Ms. Gregory's removal from CRP. On November 8, 2022, Ms. Gregory indicated via email that she agreed with PGW's request for a further hearing. By Order issued November 10, 2022, PGW's request was granted and the record for this matter was re-opened. On November 10, 2022, the Commission issued a further call-in hearing notice setting a further telephonic hearing for December 6, 2022, at 10:00 a.m.

The further hearing convened as scheduled. Attorney Christlieb appeared on behalf of the Respondent together with a witness prepared to present testimony. The Complainant failed to appear for the further hearing at the scheduled start time. The further hearing was recessed to allow the Complainant additional time to appear for the hearing. The hearing reconvened approximately 20 minutes after the scheduled start time for the hearing; however, the Complainant still failed to appear. PGW counsel made a motion to dismiss, with prejudice, the issue raised by the Complainant at the initial hearing relating to the Complainant's removal from the Customer Responsibility Program, based on the Complainant's failure to prosecute this issue. I advised PGW counsel that I would take the motion under advisement and that my decision on the motion would be reflected in the Initial Decision. As indicated below, PGW's motion is granted.

The hearing resulted in a transcript of 74 pages. The record was closed upon receipt of the transcript on January 18, 2023.

FINDINGS OF FACT

1. The Complainant is Valerie Gregory, who resides at 5320 Akron Street, Philadelphia, PA 19124 (service address).
2. The Respondent is Philadelphia Gas Works.
3. The Complainant is employed. On average, she works 35 hours per week and earns \$12.00 per hour. Tr. Tr. 37.
4. The Complainant earns \$420 per week (gross) or approximately \$1820 monthly and \$21,840 annually. Tr. 37.
5. The Complainant lives alone at the service address. Tr. 36.
6. PGW entered into six payment agreements with the Complainant; the Complainant defaulted on five agreements, and one was cancelled by the Complainant. Tr. 44. Exhibit 2.
7. The Complainant defaulted on her payment agreements with PGW because she repeatedly failed to pay them in full and on time. Id.
8. By decision issued October 27, 2016, at BCS Case No. 3488621, BCS granted a level 2 PAR on a balance of \$2,150.80. Id.
9. At BCS Case No. 3488621, Ms. Gregory reported gross monthly household income of \$1,750.67 and a household size of one adult. Exhibit 3.

10. The Complainant failed to adhere to the terms of the BCS payment arrangement. Tr. 46. Exhibit 3, 4.

11. As of October 25, 2022, the Complainant's total unpaid balance was \$9,263.84, of which \$3,709.73 was CAP arrears. Tr. 43, 48. Exhibits 1, 4.

12. Since the date of the BCS PAR awarded on October 27, 2016, in BCS Case No. 3488621, there has been no change in the Complainant's household size. Tr. 49., Exhibit 3, 4.

13. Since the date of the BCS PAR awarded on October 27, 2016, in BCS Case No. 3488621, the Complainant's income has increased. *Id.*, Exhibit 3, 4.

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.³ A person seeking affirmative relief from the Commission has the burden of proof.⁴

In this matter, the Complainant is the party seeking affirmative relief from the Commission; therefore, she has the burden of proof. This means that she must establish by a preponderance of the evidence that she is eligible for a Commission-issued payment arrangement under Chapter 14 of the Public Utility Code.⁵

³ 66 Pa.C.S. § 701.

⁴ 66 Pa.C.S. § 332(a).

⁵ *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976).

The Responsible Utility Customer Protection Act (Act)⁶ applies to complainants alleging inability to pay and requesting a Commission-issued PAR.⁷ However, a complainant who claims an inability to pay their utility bills is not entitled as a matter of right to receive a Commission-issued payment arrangement.⁸ It is entirely within the discretion of the Commission to determine on a case by case basis whether both parties, the customer and the utility company, will benefit from the issuance of a payment arrangement.⁹

The Act imposes limitations on the Commission’s authority to establish payment arrangements. Section 1405(c) of the Act prohibits the Commission from granting a payment arrangement with respect to arrearages accrued under a CAP.¹⁰ PGW’s witness testified that as of October 25, 2022, Ms. Gregory had an accrued balance of \$9,263.84, consisting of \$3,612.06 in CAP arrears and \$5,651.78 in non-CAP arrears. Ms. Gregory did not dispute the witness’ testimony concerning the amount or the characterization of her arrearage as CAP and non-CAP. In light of the limitations imposed by Section 1405(c) of the Act, Ms. Gregory’s request for a payment arrangement relating to her CAP arrearage *i.e.*, \$3,612.06 must be denied. However, she may be eligible for a payment arrangement relating to the non-CAP arrearage on her account *i.e.*, \$5,651.78.

While the Commission has the authority to establish a payment arrangement, the Commission exercises this authority very judiciously. More specifically, the Commission exercises its discretion only on behalf of customers, “who have demonstrated some evidence of

⁶ 66 Pa.C.S. §§ 1401-1419.

⁷ See, 66 Pa.C.S. § 1405(a), which provides that, “[t]he commission is authorized to investigate complaints regarding payment disputes between a public utility, applicants and customers.”

⁸ *E.g.*, *DeGannaro v. Pa. Elec. Co.*, Docket No. C-2012-2300818 (Final Order Nov. 8, 2012).

⁹ *Id.*; see also, *Creekmur v. PECO Energy Co.*, Docket No. C-2008-2079322 (Final Order entered Feb. 4, 2010).

¹⁰ 66 Pa.C.S. § 1405(c).

good faith efforts to pay their utility bills or who have experienced a significant change of circumstance outside of their control.”¹¹

Moreover, the Act provides strict guidelines that the Commission must follow, including the provision that generally permits the Commission to grant only one PAR with limited exceptions. Specifically, this provision of the Act provides, in relevant part:

(d) Number of Payment Agreements.—*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.^[12]

The Complainant failed to comply with the terms of the October 27, 2016, BCS decision at Case No. 3488621 which directed a payment arrangement on her account with Respondent. (Exhibit 3). Because Ms. Gregory did not appeal the BCS decision and failed to make the payments ordered by the BCS decision, she has defaulted on the PAR. As the Commission has explained, when a BCS decision is not timely appealed, “then the BCS payment arrangement becomes final and the complainant must prove a change in income to be awarded a different payment arrangement before the BCS PAR is paid off.”¹³ Therefore, pursuant to 66 Pa.C.S. § 1405(d), Ms. Gregory is eligible for another Commission-issued PAR only if she has suffered a change in income.

The Act defines a “change in income” as follows:

“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

¹¹ *Stormer v. Pa. Am. Water Co.*, Docket No. C-2011-2249169 (Final Order Mar. 28, 2012). See also, *Crawford v. Nat'l Fuel Gas Distrib. Corp.*, Docket No. C-20066348 (Opinion and Order entered Dec. 6, 2007); *Maye v. Nat'l Fuel Gas Distrib. Corp.*, Docket No. F-02140445 (Opinion and Order entered Oct. 22, 2008); *Sayre v. UGI Utils., Inc.*, Docket No. F-02292619 (Opinion and Order entered Nov. 4, 2008); *Thomas v. Nat'l Fuel Gas Distrib. Corp.*, Docket No. F-02144645 (Opinion and Order entered Dec. 9, 2008).

¹² 66 Pa.C.S. § 1405(d) (emphasis added).

¹³ See, *Horinka v. Pa. Power Co.*, Docket No. C-2017-2582842, at 3 (Opinion and Order entered Aug. 4, 2017).

of 10% or more if the customer's household income level is 200% or less of the Federal poverty level.^[14]

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.”¹⁵

Ms. Gregory testified about her household size and income. Ms. Gregory’s current household consists of herself alone. Ms. Gregory’s current gross monthly household income is \$1,820.67.¹⁶ Ms. Gregory’s household income is less than 200% of the Federal poverty level.¹⁷ Thus, Ms. Gregory is eligible for a second Commission-issued PAR if she has experienced a decrease in household income of 10% or more.¹⁸

Ms. Gregory’s gross monthly income at the time of the BCS decision dated October 27, 2016, at Case No. 3684483 was \$1,750.67. Given her current income of \$1,820.00, she has experienced an increase in income, not a decrease. Therefore, because the Complainant has not suffered a decrease in her household income, she is not eligible for a second Commission-issued PAR.

While the Complainant is not eligible for a second Commission-issued PAR, a provision of the Act provides that the Commission may reinstate and extend a previously ordered payment arrangement in limited circumstances where the customer has defaulted on that payment arrangement. Specifically, section 1405(e) provides:

¹⁴ 66 Pa.C.S. § 1403 (emphasis added).

¹⁵ 66 Pa.C.S. § 1403.

¹⁶ Tr. 36-37. Ms. Gregory’s monthly and annual income was calculated as follows: 35 hours per week at \$12.00 per hour = \$420 per week, or \$21,840.00 per year or \$1,820.00 per month. Tr. 54-55.

¹⁷ See *Federal Register*, Vol. 87, No. 14, pp. 3316 (January 21, 2022). Also available at <http://aspe.hhs.gov/poverty> (providing that a gross monthly income of less than \$4,578.00 for a household of two is below 300% of the Federal poverty level).

¹⁸ 66 Pa.C.S. § 1403.

(e) Extension of payment arrangements.--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.^[19]

Further, “significant change in circumstance” is defined as the following:

“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.^[20]

Ms. Gregory’s current gross monthly household income of \$1,820.00 for a household of one is less than 175% of the Federal poverty level.²¹ Thus, Ms. Gregory is eligible for reinstatement and extension of her October 27, 2016, PAR at BCS No. 3488621 if she defaulted on said arrangement as a result of at least one of the four prongs of the definition above. The record is void of evidence that Complainant defaulted on her BCS-PAR as the result of the onset of a chronic or acute illness, catastrophic damage to her residence, or loss of residence. Further, there was no increase in Complainant’s number of dependents in the household. In sum, none of the four prongs are applicable to Ms. Gregory.

Consequently, I conclude that the Complainant has failed to establish by a preponderance of the evidence that she is eligible for a second Commission-issued PAR or an

¹⁹ 66 Pa.C.S. § 1405(e) (emphasis added).

²⁰ 66 Pa.C.S. § 1403.

²¹ See *Federal Register*, Vol. 87, No. 14, pp. 3316 (January 21, 2022). Also available at <http://aspe.hhs.gov/poverty> (providing that a gross monthly income of less than \$4,578.00 for a household of two is below 300% of the Federal poverty level).

extension of the prior one. Therefore, I am constrained to conclude that the Commission lacks authority to order a second PAR in these circumstances with respect to the non-CAP arrearage on her account.

In light of Ms. Gregory's failure to appear at the further hearing to address the issue raised by her at the initial hearing regarding her removal from PGW's CRP program was appropriate, the motion made by PGW to dismiss the issue with prejudice will be granted in an ordering paragraph below.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject-matter of this dispute. 66 Pa.C.S. § 701.
2. The party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).
3. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).
4. The Responsible Utility Customer Protection Act applies to this proceeding. 66 Pa.C.S. §§ 1401-1419.
5. The Commission is authorized to establish a payment arrangement between a public utility and a customer. 66 Pa.C.S. § 1405(a).
6. The Commission is prohibited from establishing a payment arrangement for arrearages arising under a CAP between a public utility and a customer. 66 Pa.C.S. § 1405(c).
7. 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).

8. 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.

9. 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. §§ 332(a), 1405(d).

10. 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).

11. Complainant has failed to carry her burden of proving that she is eligible for a reinstatement of the Commission-issued payment arrangement at BCS No. 3488621. 66 Pa.C.S. §§ 332(a), 1405(e).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion made by Philadelphia Gas Works to dismiss, with prejudice, the issue raised by the Complainant at the initial hearing relating to the Complainant's removal from the Philadelphia Gas Works Customer Responsibility Program is granted.

2. That the Formal Complaint of Valerie Gregory at Valerie Gregory v. Philadelphia Gas Works at Docket No. F-2022-3033630 is dismissed.

3. That the Secretary shall mark this docket closed.

Date: April 6, 2023

/s/
Arlene Ashton
Administrative Law Judge