

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Mary Ayom	:	
	:	
v.	:	C-2022-3036975
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Michael J. Mroczka
Special Agent

INTRODUCTION

This Initial Decision sustains the Formal Complaint of a gas service customer seeking a payment arrangement because Complainant has met her burden of proving that she experienced a significant change in circumstances through an increase in the customer's number of dependents in the household. Therefore, Complainant is eligible for reinstatement of her Commission-issued payment arrangement and an extension of the remaining term of the payment arrangement for an initial period of six months.

HISTORY OF THE PROCEEDING

On November 25, 2022, Mary Ayom (Complainant or Ms. Ayom) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW, Company or Respondent). Ms. Ayom checked the box on the Complaint form requesting a Commission-issued payment arrangement.

On January 31, 2023, PGW timely filed its Answer to the Formal Complaint which admitted in part and denied in part the various material allegations of the Complaint. In its Answer, Respondent alleged that Complainant has had multiple broken PGW-issued payment arrangements and one broken Commission-issued payment arrangement.

By Hearing Notice dated February 7, 2023, an Initial Call-In Telephonic Hearing was scheduled for March 20, 2023, and the matter was assigned to me.

On March 20, 2023, the hearing convened as scheduled. The Complainant appeared *pro se*. Anita Murray, Esquire, appeared on behalf of PGW. Prior to the hearing, the parties engaged in settlement discussions and agreed to request to continue the matter for thirty days to allow Complainant time to apply for PGW's program that helps eligible low-income customers afford gas service, the Customer Responsibility Program (CRP). I agreed to continue this matter.

A Further Call-In Telephonic Hearing Notice was served on March 20, 2023, scheduling the matter for hearing, if necessary, on April 28, 2023.

A Prehearing Order was issued and served on April 18, 2023, reminding the parties of the date and time of the scheduled hearing, and informing them of the procedures applicable to this proceeding.

On April 28, 2023, the hearing convened as scheduled. The Complainant appeared *pro se*, testified on her own behalf, and offered no exhibits for the record. Anita Murray, Esquire, appeared on behalf of PGW and presented the testimony of one witness, Ronda Cobb, a customer review officer for PGW. Ms. Cobb sponsored the following three exhibits, which were admitted into the record without objection:

PGW Exhibit 1 –Statement of Account

PGW Exhibit 2 – History of Payment Agreements

PGW Exhibit 3 – BCS Opening and Closing Documents

The record closed on May 12, 2023, upon the filing of the 42-page transcript with the Commission.

FINDINGS OF FACT

1. The Complainant is Mary Ayom, who resides at 5619 Rosehill Street, Philadelphia, Pennsylvania 19120 (Service Address). PGW Ex. 1; Tr. 14.
2. The Respondent is Philadelphia Gas Works, a jurisdictional public utility, which provided gas service to Complainant at the Service Address.
3. Complainant resides at the Service Address with her minor daughter and her adult cousin. Tr. 15.
4. Complainant's gross monthly household income is \$3,200.¹ Tr. 16.
5. The Complainant received one prior Commission-issued payment arrangement which was granted on May 3, 2019 (May 2019 PAR). PGW Ex. 3; Tr. 26.
6. The May 2019 PAR was broken in April 2020 and has not been satisfied. PGW Ex. 1; Tr. 36.
7. Complainant's gross monthly household income at the time of the May 2019 PAR was \$2,145 with a household size of two. PGW Ex. 2; Tr. 26-27, 36.
8. Complainant has received two company-issued payment arrangements which were broken. PGW Ex. 2; Tr. 25.

¹ Complainant testified during her direct testimony that she makes \$3,200 per month. Tr. 16. However, during cross-examination, Complainant testified that she makes "like" \$20 per hour for 40 hours per week which equals \$3,466.66 per month (\$20 x 40 hrs = \$800; \$800 x 52 wks = \$41,600; \$41,600/12 mos. = \$3,466.66). Tr. 20. Since either amount is between 150% and 250% of the Federal poverty level, determining the "correct amount" between these amounts would have no bearing on this decision and I will accept the testimony that Complainant's monthly income is \$3,200.

9. PGW disconnected Complainant's gas service for nonpayment on May 23, 2022. Tr. 21.

10. Complainant's outstanding PGW balance at the time of the hearing was \$5,807.52. PGW Ex. 1; Tr. 24-25.

DISCUSSION

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). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (Opinion and Order entered Feb. 8, 1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (Opinion and Order entered Oct. 6, 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 (Pa. Cmwlth. 1990). A complainant can meet that burden if they present evidence more convincing, by even the smallest amount, than that evidence presented by Respondent. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). The offense must be a violation of the Public Utility Code (Code), a Commission Regulation or Order, or a violation of a Commission-approved tariff. 66 Pa.C.S. § 701.

The decision of the Commission must be supported by substantial evidence. 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 & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1961); *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

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 the complainant. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *see also*, *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

Payment Arrangement

Complainant requests a Commission-issued payment arrangement. The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401–1419 (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 when determining whether a payment arrangement can be issued. Section 1405(a)–(c) of the 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.

(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.

(c) Customer assistance programs.—Customer assistance program rates shall be timely paid and shall not be the subject of payment arrangements negotiated or approved by the commission.

66 Pa.C.S. §§ 1405(a)-(c).

Ms. Ayom testified that she earns \$3,200 per month. Tr. 16. Complainant resides at the service address with her minor daughter and her adult cousin. Tr. 15. No other residents have any source of income. Tr. 15. Based on Complainant’s gross income of \$3,200 per month, and her household size of three, she falls between 150% and 250% of the Federal poverty level.² Absent further restrictions, Ms. Ayom would qualify for a Level 2 payment arrangement. 66 Pa.C.S. § 1405(b)(2). However, as explained below, due to restrictions placed on the Commission by the Code, I cannot provide Complainant with a new Commission-issued payment arrangement.

Second or Subsequent Payment Arrangement

If the Commission has not previously ordered a payment arrangement for a complainant, the Commission has the authority to establish a payment arrangement, pursuant to 66 Pa.C.S. § 1405(a), on a complainant’s arrearages within the strict guidelines set forth in 66 Pa.C.S. § 1405(b), as stated above. However, the Code restricts the Commission from issuing a second or subsequent payment arrangement if a customer defaulted on a previous Commission-issued payment arrangement. The Code addresses second or subsequent payment arrangements as follows:

(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

² See, Federal poverty guidelines, 88 Fed. Reg. 3424 (Jan. 19, 2023); <https://aspe.hhs.gov/sites/default/files/documents/98087be2f7c9586ee24c35a011bc7ac8/guidelines-1983-2023.xlsx>.

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 by the Code 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.

Ms. Ayom was previously provided with a Commission-issued payment arrangement in May 2019 at BCS No. 3698262 (May 2019 PAR). PGW Ex. 3 at 3. The May 2019 PAR provided Complainant with a Level 2 payment arrangement on her balance of \$2,480.67. *Id.* In granting the May 2019 PAR, Ms. Ayom’s income was determined to be \$2,145 per month with a household size of two. *Id.* at 1. Complainant defaulted on the May 2019 PAR. PGW Ex. 2; Tr. 26.

Currently, as explained above, Ms. Ayom’s household income is \$3,200 per month, which is an increase of \$1,055 per month from when she was awarded the May 2019 PAR. Because Ms. Ayom has had an increase in household income instead of a decrease of 10% or more, the Commission is not permitted to grant her a second or subsequent payment arrangement under the Code. 66 Pa.C.S. §§ 1403, 1405(d).

Reinstatement of Prior Payment Arrangement

Although Ms. Ayom is not eligible for a second or subsequent Commission-issued payment arrangement, I must determine if she is eligible for reinstatement and extension of the May 2019 PAR. Chapter 14 authorizes the Commission to reinstate and extend a Commission-issued payment arrangement on which a customer has defaulted as a result of a significant change in circumstance:

(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). A “significant change in circumstance” is defined in the Code as follows:

“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.

When Complainant was awarded the May 2019 PAR, she had a household size of two. PGW Ex. 3; Tr. 27, 36. Complainant currently has a household size of three. Tr. 15. The third person in the household is Ms. Ayom’s cousin who is a disabled adult that does not have a source of income. Tr. 20-21.

The Commission in *Hayes v. Philadelphia Gas Works*, Docket No. C-2017-2634526 (Opinion and Order entered Oct. 1, 2018) (*Hayes*), held that a complainant’s adult son moving into the household after receiving a Commission-issued payment arrangement, met the conditions for establishing a “significant change of circumstance.” In *Parrish v. Pennsylvania Power Co.* Docket No. F-2018-3000956 (Opinion and Order entered Mar. 7, 2019) (*Parrish*), the Commission held that the addition of a complainant’s mother-in-law to the household qualifies as a “significant change in circumstance” as an increase in the customer’s number of dependents in the household. The Commission in *Hayes* and *Parrish* explained that the significant change in circumstances authorized the Commission to reinstate the Commission-issued payment

arrangements in their respective cases and grant a six-month extension of the payment arrangements.

Ms. Ayom has met her burden of proving that she had an increase in the number of dependents in her household. As mentioned above, her household income falls below 300% of the Federal poverty level. 66 Pa.C.S. § 1403. Therefore, she has experienced a significant change in circumstance, as defined by Chapter 14. Therefore, the Commission may reinstate her previous payment arrangement and extend the remaining term for a period of six months. 66 Pa.C.S. § 1405(e). The May 2019 PAR defaulted in April 2020. Therefore, the remaining term of the May 2019 PAR appears to be twenty-six months. Tr. 36. As a result, her payment arrangement may be reinstated for a total of thirty-two months.³ 66 Pa.C.S. § 1405(e).

Ms. Ayom's current arrearage is \$5,807.52. PGW Ex. 1; Tr. 24-25. Her payments under a reinstated and extended payment agreement will be her budget bill plus \$181.49.⁴

Reconnection of Gas Service

Ms. Ayom's gas service was disconnected in May 2022, prior to her filing the instant Complaint. Tr. 21. PGW was requiring Complainant to pay \$6,212.98 to restore service.⁵ PGW. Ex. 3 at 7. Also, the Code provides guidance on what PGW may require for reconnection of her service. Section 1407 of the Code states what fees a utility may require for reconnection as follows:

§ 1407. Reconnection of service.

(a) Fee. — A public utility may require a reconnection fee based upon the public utility's cost as approved by the commission prior to reconnection of service following lawful termination of the service.

³ Twenty-six months from the balance of the May 2019 PAR plus 6 months extension equals 32 months.

⁴ $\$5,807.52/32 = \$181.49 + \text{Budget bill.}$

⁵ $\$5,930.75 \text{ (full balance)} + \$123.23 \text{ (reconnection fee)} + \$159.00 \text{ (50\% of security deposit). PGW Ex. 3 at 7.}$

....

(c) Payment to restore service. —

(1) A public utility shall provide for and inform the applicant or customer of a location where the customer can make payment to restore service.

(2) A public utility may require:

(i) Full payment of any outstanding balance incurred together with any reconnection fees by the customer or applicant prior to reconnection of service if the customer or applicant has an income exceeding 300% of the Federal poverty level or has defaulted on two or more payment arrangements. If a customer or applicant with household income exceeding 300% of the Federal poverty level experiences a life event, the customer shall be permitted a period of not more than three months to pay the outstanding balance required for reconnection. For purposes of this subparagraph, a life event is:

(A) A job loss that extended beyond nine months.

(B) A serious illness that extended beyond nine months.

(C) Death of the primary wage earner.

(ii) Full payment of any reconnection fees together with repayment over 12 months of any outstanding balance incurred by the customer or applicant if the customer or applicant has an income exceeding 150% of the Federal poverty level but not greater than 300% of the Federal poverty level.

66 Pa.C.S. § 1407.

The Commission, in *Crawford v. National Fuel Gas Distribution Corp.*, Docket No. C-20066348 (Opinion and Order entered Dec. 6, 2007) (*Crawford*), considered whether Section 1407 of the Code precluded the Commission from ordering a payment arrangement under Section 1405. The Commission concluded that:

while Subsection 1407(c) delineates the terms a utility may impose upon a customer/applicant seeking restoration of service, Subsection 1407(c) in no way divests the Commission of its duty to act as the final arbiter of a utility consumer's rights with respect to payment disputes. If the consumer petitions the Commission

for further relief, Subsection 1405(b) delineates the payment arrangement terms the Commission may then impose.

Crawford at 14.

As mentioned above, Ms. Ayom has experienced a significant change in circumstance through an “increase in the customer's number of dependents in the household.” 66 Pa.C.S. § 1403. Therefore, I will reinstate the May 2019 PAR as outlined above, and will require PGW to reconnect Ms. Ayom’s service. However, I will not require PGW to reinstate the service until Ms. Ayom has made full payment of the reconnection fee in accordance with 66 Pa.C.S. § 1407(a) and payment of a deposit in accordance with 66 Pa.C.S. § 1404.⁶

CONCLUSIONS OF LAW

1. This Commission has jurisdiction over the parties to and subject matter of this case. 66 Pa.C.S. § 701.
2. The burden of proof in this proceeding is upon the Complainant. 66 Pa.C.S. § 332(a).
3. The Responsible Utility Customer Protection Act applies to this proceeding. 66 Pa.C.S. §§ 1401–1419.
4. The Commission is authorized to establish a payment arrangement between a public utility and a customer. 66 Pa.C.S. § 1405(a).
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

⁶ “A public utility may require a reconnection fee based upon the public utility's cost as approved by the commission prior to reconnection of service following lawful termination of the service.” 66 Pa.C.S. § 1407(a). “In addition to the right to collect a deposit under any commission regulation or order, the commission shall not prohibit a public utility, from requiring a cash deposit, payable during a 90-day period in accordance with commission regulations, in an amount that is equal to one-sixth of the applicant's estimated annual bill, at the time the public utility determines a deposit is required[.]” 66 Pa.C.S. 1404.

defaulted on a previous payment arrangement established by a Commission order or decision. 66 Pa.C.S. § 1405(d).

6. 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. 66 Pa.C.S. § 1405(e).

7. Complainant has experienced a significant change in circumstance through an “increase in the customer's number of dependents in the household.” 66 Pa.C.S. § 1403.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Mary Ayom in *Mary Ayom v. Philadelphia Gas Works* at Docket No. C-2022-3036975 is sustained.

2. That, in accordance with Section 1405(e) of the Public Utility Code, 66 Pa.C.S. § 1405(e), the payment arrangement issued by the Bureau of Consumer Services on May 5, 2019 in BCS Case No. 3698262 is reinstated and the remaining term is extended for an initial period of six months, for a total of 32 months, following the entry of a final Commission order in this case.

3. That Philadelphia Gas Works shall reconnect Complainant’s gas service within 72 hours of Complainant’s payment of any reconnection and/or deposit fees Philadelphia Gas Works may assess, in accordance with 66 Pa.C.S. § 1407(a) (regarding a reconnection fee) and 66 Pa.C.S. § 1404 (regarding payment of a deposit).

4. That as long as Mary Ayom maintains the terms of the reinstated payment arrangement, Philadelphia Gas Works shall not suspend or terminate her utility service except for valid safety or emergency reasons or assess late payments or finance charges against her account.

5. That, if Mary Ayom 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 Docket No. C-2022-3036975 be marked closed.

Date: August 10, 2023

_____/s/
Michael J. Mroczka
Special Agent