

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|------------------------|---|----------------|
| Joseph Hinton | : | |
| | : | |
| v. | : | C-2023-3042481 |
| | : | |
| Philadelphia Gas Works | : | |

INITIAL DECISION

Before
Arlene Ashton
Administrative Law Judge

INTRODUCTION

This decision denies the Complaint because the Complainant failed to establish by a preponderance of the evidence that he is eligible for a second Commission-issued payment arrangement or an extension of his prior one.

HISTORY OF THE PROCEEDING

On August 22, 2023, Joseph Hinton (Complainant or Mr. Hinton) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (Respondent or PGW) in which he requested a new payment arrangement.

On September 14, 2023, Respondent filed an Answer in which it averred that the Complainant had defaulted on multiple payment arrangements, including several Company-issued payment agreements and multiple Commission-issued payment arrangements. Respondent requested that Mr. Hinton’s Complaint be dismissed.

On October 2, 2023, the Commission issued a hearing notice setting an initial telephonic hearing for November 28, 2018, at 10:00 a.m. and the case was assigned to me. A prehearing order was issued on October 11, 2023, advising the parties of the applicable hearing procedures.

The hearing convened as scheduled on November 28, 2023. Mr. Hinton appeared *pro se*, testified on his own behalf, but did not offer any exhibits. Anita Murray, Esquire, appeared on behalf of Respondent and presented the testimony of one witness, Ronda Cobb, a Customer Review Officer for PGW. Ms. Cobb sponsored three exhibits, which were admitted into the record:

Exhibit No. 1 – Statement of Account (3 pages)

Exhibit No. 2 – Negotiate Payment Arrangements 2/14/20005 through 7/05/2022 (2 pages)

Exhibit No. 3 – Summaries for BCS Case No. 3836293 and BCS Case No. 3914498 (8 pages)

The record closed on December 19, 2023, upon filing of the transcript.

FINDINGS OF FACT

1. Complainant is Joseph Hinton, who resides at 1819 West Grange Avenue, Philadelphia, PA.
2. Respondent is Philadelphia Gas Works, which provides gas service to Complainant at his residence in Philadelphia, PA.
3. On May 5, 2022, Mr. Hinton filed an informal complaint with the Commission's Bureau of Consumer Services (BCS) at BCS Case No. 3836293, seeking a Commission-issued payment arrangement. Exhibit 3.

4. By decision dated July 1, 2022, at BCS Case No. 3836293, BCS granted Complainant a Level 3¹ payment arrangement on an outstanding balance of \$3,552.44. Exhibit3.

5. The July 1, 2022 Commission-issued payment arrangement directed Mr. Hinton to pay a monthly budget bill of \$383 plus an additional \$358 towards his arrearage, for a total of \$741, beginning with the due date of his August 2022 bill. Exhibit 3.

6. In his request for a payment arrangement at BCS Case No. 3836293, Mr. Hinton reported a gross monthly household income of \$9,836.67 and a household size of five people consisting of four adults and one child. Tr.27. Exhibit 3.

7. The Complainant defaulted on the July 1, 2022 Commission-issued payment arrangement because he never paid the full amount due under the July 1, 2022 payment arrangement Exhibit 1, 2.

8. On August 22, 2023, Mr. Hinton filed an informal complaint with BCS at BCS Case No. 3914498, seeking a new Commission-issued payment arrangement. Exhibit No. 3.

9. By decision dated August 17, 2023, at BCS Case No. 3914498, BCS denied Mr. Hinton's informal complaint. Exhibit No. 3.

10. On August 22, 2023, Mr. Hinton filed the current Complaint.

11. Mr. Hinton's current household size is five people consisting of four adults and one child. Tr. 27.

¹ A Level 3 customer is defined as a household with a gross monthly income level exceeding 250% and not more than 300% of the Federal poverty level and is provided with a repayment period of not more than one year. 66 Pa.C.S. § 1405(b)(3).

12. The Complainant works as an Uber driver; he works 25-30 hours a week.
Tr. 29.

13. On average, the Complainant earns approximately \$375 per week as an Uber driver, or approximately \$1,625.00 per month.² Tr. 25

14. The Complainant's is employed as a seasonal warehouse worker and earns \$1,700.00 per month. Tr. 25

15. The Complainant's wife and daughter are unemployed. Tr. 52.

16. Mr. Hinton's current gross monthly household income totals \$3,325.00.

17. Mr. Hinton's outstanding balance as of the date of the initial hearing is \$7,437.11. Exhibit No. 1.

DISCUSSION

In this matter, Mr. Hinton seeks a second Commission-issued payment arrangement.³ 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). "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).

² Mr. Hinton's income was calculated based on his testimony at the hearing, where he indicated that he earned between \$350 and \$400 per week as an Uber driver. Lacking more precise information or documentary evidence, his monthly income was estimated using the mid-point amount, \$375 which was multiplied by 52 weeks in the year to calculate annual wages, and divided by 12 months per year, yielding a monthly income of \$1,625.

³ The Complainant did not dispute that he defaulted on multiple Company-issued payment agreements.

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, Burlison v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

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. 66 Pa.C.S. 1402(1). 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).

The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401–1419 (Act), 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) 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).

The Complainant received a Commission-issued payment arrangement on July 1, 2022, with the first payment of \$741.00 due on the bill due date for his August 2022 PGW bill.⁴ The record indicates that PGW issued a bill to the Complainant on August 16, 2022, due on September 9, 2022. However, the Complainant defaulted on the arrangement by paying only \$200 of the \$741 payment due on or before the September 9, 2022, payment due date. Exhibit 1.

The Act provides limitations that the Commission must follow including Section 1405(d) of the Responsible Utility Customer Protection Act, which 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

⁴ Mr. Hinton did not appeal that BCS decision. 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 payment arrangement is paid off.” *See, Horinka v. Pa. Power Co.*, Docket No. C-2017-2582842, p. 3 (Opinion and Order entered Aug. 4, 2017).

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).

Therefore, pursuant to 66 Pa.C.S. § 1405(d), Mr. Hinton is eligible for another Commission-issued payment arrangement only if there has been 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 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 (emphasis added). 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.” 66 Pa.C.S. § 1403.

When requesting a payment arrangement in 2022, Mr. Hinton reported a household size of six, consisting of five adults and one child. At that time, he reported gross household monthly income of \$9,836.67.

At the hearing, Mr. Hinton testified about his current household size and income, indicating that his household consists of five individuals, four adults and one child. He also testified that his current gross monthly household income totals \$3,325.00, consisting of his earnings as an Uber driver and those of his son, who earns approximately \$1,700 per month as a warehouse worker. Mr. Hinton testified that his wife has been unemployed since August 2023 and his daughter is also unemployed and her ability to work is “sporadic” due to health issues.⁵ Tr. 54.

⁵ In his testimony, Mr. Hinton stated that his daughter had filed a disability claim with Social Security but that her claim had been denied. Tr. 52. He also testified that his son’s work was seasonal and was expected to cease after Christmas. Tr. 26.

The Complainant's combined household income of \$3,325.00 falls below 100% of the Federal poverty guideline for a household of five.⁶ Since the decision in BCS Case No. 3836293 on July 1, 2022, the household size decreased by one person and household income decreased by \$6,511.76. The \$6,511.76 change in income represents a 66% decrease in household income. Having experienced a significant change in household income, he is eligible for a Level 1 Commission-issued payment arrangement.

However, before awarding a payment arrangement, there also must be an examination as to whether Mr. Hinton has demonstrated some evidence of good faith efforts to pay his utility bills. As the Commission has made clear, while Section 1405 of the Act generally authorizes the Commission to issue a payment arrangement for a customer, it does not require it; rather, it is an exercise of the Commission's discretion which should be exercised very judiciously. *Hayes v. Phila. Gas Works*, Docket No. C-2017-2634526 (Opinion and Order entered Oct. 1, 2018) (*Hayes*), citing *Hewitt v. PECO Energy Co.*, Docket No. F-2011-2273271 (Opinion and Order entered Sept. 12, 2013). Specifically, the Commission exercises its discretion only on behalf of customers who have demonstrated some evidence of good faith efforts to pay their utility bills. *Hayes*. A payment arrangement, which prevents service termination if 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).

Mr. Hinton's current outstanding balance is \$7,437.11. Tr. 32; Exhibit 1. As noted above, given his household size and income, under Section 1405(b), he is eligible for a 60-month payment arrangement, which would result in a monthly payment of \$123.95 towards his outstanding balance, plus billing for actual usage. Assuming that the budget bill amount remains at the \$383 level in effect at the time of the July 2022 Commission-issued arrangement, the Complainant's monthly bill would be \$506.

⁶ See Federal poverty guidelines, 88 Fed. Reg. 3424 (January 19, 2023). Also available at <http://aspe.hhs.gov/poverty> (providing that a gross monthly income of less than \$3,860 for a household of six is less than 100% of the Federal poverty level).

As noted above, the July 1, 2022, BCS Case No. 3836293 arrangement provided for a monthly payment of \$741.00, commencing with the payment due in August 2022. The Statement of the Account entered into the record reflects seven payments on Mr. Hinton's account since the Commission-issued payment arrangement was granted. Those seven payments ranged in amount from a high of \$300 paid in February 2023 to a low of \$57.70, being the last payment made on the account in September 2023. In sum, not one payment was for the full amount specified in the BCS arrangement.

In light of the Complainant's current financial condition, his failure to pay even one full payment under the July 2022 Commission-issued payment arrangement and his unwillingness or inability to ever pay more than \$300 in any month for gas service despite a much higher household income, it is highly unlikely that he can or would make a monthly payment of \$506 under another Commission-issued payment arrangement. The Complainant has a poor payment history and has demonstrated an inability or unwillingness to comply with payment arrangements established by PGW and the Commission. As a result, I conclude that the record in this matter does not support awarding the Complainant a second Commission-issued payment arrangement under 66 Pa.C.S. § 1405(d).

While the Complainant is not eligible for a second Commission-issued payment arrangement, 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. Specially, section 1405(e) provides:

(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. . . .

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

66 Pa.C.S. § 1403.

As noted above, Mr. Hinton's current gross monthly household income is below 100% of the Federal poverty level.⁷ Thus, he may be eligible for reinstatement and extension of his July 1, 2022, BCS Case No. 3836293 payment arrangement if he defaulted on said arrangement as a result of at least one of the four prongs of the definition above. There is no evidence that Complainant defaulted on his July 1, 2022, BCS payment arrangement as the result of the onset of a chronic or acute illness, catastrophic damage to his residence, or loss of residence. Thus, none of these prongs are applicable. Further, there was a decrease not an increase in Complainant's number of dependents in the household.

Based on the foregoing, I conclude that the Complainant has failed to carry his burden of proving that he is entitled to a second Commission-issued payment arrangement or an extension of the prior one. Accordingly, the Complaint shall be denied.

⁷ See *Federal Register*, Vol. 88, No. 12, pp. 3424-3425 (January 19, 2023). Also available at <http://aspe.hhs.gov/poverty> (providing that a gross monthly income of less than \$3,860 for a household of six is less than 100% of the Federal poverty level).

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 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. 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).
7. 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.
8. Complainant has failed to carry his burden of proving that he is eligible for a second or subsequent Commission-issued payment arrangement. 66 Pa.C.S. §§ 332(a), 1405(d).

9. 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).

10. The Complainant failed to demonstrate that he made a good faith effort to pay his utility bills. *Hayes v. Phila. Gas Works*, Docket No. C-2017-2634526 (Opinion and Order entered Oct. 1, 2018) (*Hayes*)

11. Complainant has failed to carry his burden of proving that he is eligible for a reinstatement of the Commission-issued payment arrangement at BCS Case No. 3836293. 66 Pa.C.S. §§ 332(a), 1405(e).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of Joseph Hinton in *Joseph Hinton v. Philadelphia Gas Works* at Docket No. C-2023-3042481 is denied.

2. That the docket at Docket No. C-2023-3042481 be marked closed.

Date: March 14, 2024

/s/
Arlene Ashton
Administrative Law Judge