

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Terrance Bradley	:	
	:	
v.	:	F-2023-3042169
	:	
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 his burden of proving that he experienced a significant change in circumstances through an increase in the customer's number of dependents in the household and catastrophic damage to his residence resulting in a significant cost to the customer's household. Therefore, Complainant is eligible for reinstatement of his 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 August 10, 2023, Terrance Bradley (Complainant or Mr. Bradley) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW, Company or Respondent).¹ Mr. Bradley checked the

¹ The Complaint is a timely appeal from the determination of the Commission's Bureau of Consumer Services (BCS), at BCS No. 3906446, which dismissed Complainant's informal complaint. A timely BCS appeal is subject to *de novo* review. 52 Pa. Code § 56.173(a).

boxes on the Complaint form stating that the utility is threatening to shut off his service or has already shut off his service and that he is requesting a Commission-issued payment arrangement.

On August 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 at least one broken Commission-issued payment arrangement.

By Hearing Notice dated September 12, 2023, an Initial Call-In Telephonic Hearing was scheduled for November 7, 2023, and the matter was assigned to me.

A Prehearing Order was issued and served on October 10, 2023, reminding the parties of the date and time of the scheduled hearing, and informing them of the procedures applicable to this proceeding.

On November 2, 2023, a Telephonic Hearing Cancellation/Reschedule Notice was issued rescheduling the hearing to January 4, 2024.

On January 4, 2024, the hearing convened as scheduled. The Complainant appeared *pro se*, testified on his own behalf, and offered the following exhibits for the record:

Complainant Exhibit 1 – Engineering Report

Complainant Exhibit 2 – Medical Records for Charlotte Bradley

PGW objected to the entry of Complainant Exhibits 1 and 2. I sustained the Objection regarding Complainant's Exhibit 2, and it was not admitted into the record. As for Complainant's Exhibit 1, I took the Objection under advisement and will rule on the objection below. Anita Murray, Esquire, appeared on behalf of PGW and presented the testimony of one witness, David

Kauffman, a customer review officer for PGW. Mr. Kauffman 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 was held open for the submission of late-filed exhibits by Complainant. On January 16, 2024, via email, Mr. Bradley provided as late-filed exhibits, the following:

Complainant Exhibit 3 – A contract between Mr. Bradley and Basements & Concrete dated October 5, 2022.

Complainant Exhibit 4 – Correspondence between Charlotte Bradly and Sunlight Financial.

Complainant Exhibit 5 – Screen shots of Complainant’s personal health records.

The same day, I forwarded Complainant’s email to PGW’s attorney.

On January 26, 2024, PGW filed Objections to the Late-Filed Exhibits. I will rule on the Objections below.

The record closed on January 26, 2024, upon receipt of the Objections to the Late-Filed Exhibits.

FINDINGS OF FACT

1. The Complainant is Terrance Bradley, who resides at 7512 Montour Street, Philadelphia, Pennsylvania 19111 (Service Address). PGW Ex. 1; Tr. 7.

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 his wife and his two adult children. Tr. 13, 24.

4. Complainant's gross monthly household income is \$5,633.33.² Tr. 13-14.

5. Complainant received one prior Commission-issued payment arrangement which was granted on July 6, 2022 (July 2022 PAR). PGW Exs. 2, 3; Tr. 37.

6. The July 2022 PAR was broken due to nonpayment after two payments were made on payment agreement and has not been satisfied. PGW Ex. 1.

7. The last payment made on the July 2022 PAR was on October 14, 2022. PGW Ex. 1.

8. Complainant's gross monthly household income at the time of the July 2022 PAR was \$5,200 with a household size of three. PGW Ex. 3 at 1; Tr. 38.

9. Complainant has received two company-issued payment arrangements which were broken. PGW Ex. 2; Tr. 35.

10. Complainant's household size has increased from three to four since the July 2022 PAR. Tr. 13, 24, 43; PGW Ex. 3.

11. Complainant had to make repairs to his home at a significant cost in the end of 2022 and beginning of 2023. Tr. 8-9, 12, 15. Compl. Exs. 1, 3.

12. Complainant's outstanding PGW balance at the time of the hearing was \$6,459.48. PGW Ex. 1; Tr. 33.

² Complainant testified that he works 40 hours per week at \$32.50 per hour, totaling \$1,300.00 per week. Tr. 13-14. (\$1,300 x 52 weeks = \$67,600 per year) (\$67,600 ÷ 12 months = \$5,633.33 per month.). There is no other income in the household. Tr. 13. Complainant did testify that he sometimes receives overtime, however, overtime is not guaranteed, is speculative, and will not be considered. Tr. 28-29.

DISCUSSION

Complainant's Exhibits and Objections Thereto

Complainant Exhibit 1: Engineering Report

During the hearing, Complainant offered an engineering report from Gunnett Engineering regarding the foundation to Complainant's home. PGW objected to the admission of the engineering report, stating that the document is hearsay and that it lacks relevance. Tr. 19.

I agree with PGW that the document is hearsay *if* provided to show the truth of the matter asserted. Pa.R.E. 801(c). However, the rules of evidence in an administrative setting are relaxed. Administrative agency law provides that "commonwealth agencies shall not be bound by technical rules of evidence at agency hearings, and all relevant evidence of reasonably probative value may be received. Reasonable examination and cross-examination shall be permitted." 2 Pa.C.S. § 505. However, it is noted that hearsay evidence, when properly objected to, is not acceptable evidence to support a finding. *Walker v. Unemployment Comp. Bd. of Rev.*, 367 A.2d 366 (Pa. Cmwlth. 1976). Therefore, the Engineering report will not be admitted to show the issues with the home as addressed in the report. However, the Engineering report will be admitted only for the purposes of showing that Complainant did receive a report on the home in November of 2022. PGW's objection based on lack of relevance is overruled.

Complainant's Late Filed Exhibits

During the hearing on January 4, 2024, I provided Complainant until January 16, 2024, to submit any late-filed exhibits that he may wish to submit. On January 16, 2024, Mr. Bradley sent, via email, proposed late-filed exhibits. The same day, I forwarded Mr. Bradley's email and attachments to PGW's attorney in the event Mr. Bradley failed to send it to her and to avoid *ex parte* communications. I asked attorney Murray to advise if PGW had any objections to the late-filed exhibits.

On January 26, 2024, PGW, filed Objections to Mr. Bradley's late-filed exhibits. In paragraph 10 of the Objections, PGW generally objected to all of the late-filed exhibits for Complainant's failure to serve a copy of his exhibits on PGW. PGW states that the failure to serve a copy of the documents on PGW "is highly prejudicial to PGW as it prevents PGW from viewing and investigating such evidence, from objecting to its admissibility, and from presenting any rebuttal evidence." However, though Mr. Bradley failed to copy Attorney Murray on the email with the proposed late-filed exhibits, I forwarded the email with the attached exhibits to attorney Murray the same day they were sent to me. PGW then had an opportunity to view, investigate, and object to the evidence contained within Complainant's exhibits. Therefore, the objection in paragraph 10 is overruled.

In Paragraph 11 of PGW's Objections, PGW objects to the incompleteness and relevancy of the Complainant's Exhibit 3 and states that its relevancy and probative value is outweighed by unfair prejudice and confusion of the issues. This objection is overruled. As mentioned above, all relevant evidence of reasonably probative value may be received under 2 Pa.C.S. § 505. The contract is relevant to explain the date that the work was contracted to be done which can then be corroborated by Complainant's testimony.

In Paragraph 12 of PGW's Objections, PGW objects to Complainant's Exhibit 4, the Conditional Loan Approval, for lack of relevance and that its probative value is outweighed by unfair prejudice and confusion of the issues. PGW argues that the Conditional Loan approval is undated and there is no evidence that the loan was accepted. PGW's objection regarding the Conditional Loan Approval is sustained. The application for a loan and the conditional approval of the same does not prove acceptance of the loan. Further, how Complainant paid for the repairs to his home are not relevant as to whether there was damage to the home.

In Paragraph, 13 of PGW's Objections, PGW objects to Complainant's Exhibit 5, Complainant's medical records. For the medical records dated prior to July 6, 2022, PGW objects to their relevancy, arguing that they have no bearing on his medical issues and financial difficulties suffered post-issuance of the Commission payment arrangement. For the medical records dated after July 6, 2022, PGW objects to their relevancy arguing that they make no indication that Complainant was unable to work as a result of these health issues. PGW's

objections regarding the medical records are sustained. Any onset of medical issues prior to the July 2022 PAR are not relevant in this matter. Further, there is not enough information provided regarding medical issues or medical examinations after the July 2022 PAR to indicate relevance to the issues in this case.

Therefore, Complainant's Exhibits 1 and 3 will be admitted in the ordering paragraphs below. PGW's objections to Complainant's Exhibits 4 and 5 will be sustained in the ordering paragraphs and Exhibits 4 and 5 will not be admitted.

Burden of Proof

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, Burlison 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).

Mr. Bradley testified that his gross household income is \$5,633.33 per month. Tr. 13-14. Complainant has a household size of four. Tr. 13, 24. Based on Complainant's gross monthly income of \$5,633.33, and his household size of four, he falls between 150% and 250% of the Federal poverty level.³ Absent further restrictions, Mr. Bradley 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). 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:

³ See, Federal poverty guidelines, 89 Fed. Reg. 2961 (Jan. 17, 2024); <https://aspe.hhs.gov/sites/default/files/documents/7240229f28375f54435c5b83a3764cd1/detailed-guidelines-2024.pdf>

(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 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.

Mr. Bradley was previously provided with a Commission-issued payment arrangement in July 2022. PGW Ex. 3 at 1-4; Tr. 37. The July 2022 PAR provided Complainant with a Level 2 payment arrangement. PGW Ex. 3 at 1-4; Tr. 37. In granting the July 2022 PAR, Mr. Bradley’s household income was determined to be \$5,200 per month with a household size of three. PGW Ex. 3 at 1; Tr. 38. Complainant defaulted on the July 2022 PAR. PGW Ex. 2; Tr. 35-36.

Currently, as explained above, Mr. Bradley’s household income is \$5,633.33 per month, which is an increase of \$433.33 per month from when he was issued the July 2022 PAR. Because Mr. Bradley has had an increase in household income instead of a decrease of 10% or more, the Commission is not permitted to grant him a second or subsequent payment arrangement under the Code. 66 Pa.C.S. §§ 1403, 1405(d).

Reinstatement of Prior Payment Arrangement

Although Mr. Bradley is not eligible for a second or subsequent Commission-issued payment arrangement, I must determine if he is eligible for reinstatement and extension of the July 2022 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 July 2022 PAR, he had a household size of three. PGW Ex. 3 at 1; Tr. 38. Complainant currently has a household size of four. Tr. 13, 24, 43.

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.

Further, Complainant alleges that he defaulted on the July 2022 PAR because he had to pay a significant amount of money to have his home repaired due to foundation issues. Tr. 8-9, 12, 15. Complainant noticed the issues with his home sometime around November of 2022. Tr. 12. Further, Mr. Bradley's exhibit shows that he contracted to have the issues repaired in October of 2022. Compl. Ex. 3. Complainant testified that they began the work on the home in January of 2023 and the total cost of the repairs was between \$14,000 and \$17,000. Tr. 21-22.

Mr. Bradley has met his burden of proving that he has had a significant change in circumstances as defined under 66 Pa.C.S. § 1403. His significant change of circumstances includes both an increase in the number of dependents in his household and catastrophic damage to his residence resulting in a significant cost to the customer's household. 66 Pa.C.S. § 1403. As mentioned above, his household income falls below 300% of the Federal poverty level. 66 Pa.C.S. § 1403. Therefore, the Commission may reinstate his previous payment arrangement and extend the remaining term for a period of six months. 66 Pa.C.S. § 1405(e). The July 2022 PAR defaulted after two payments were made towards the agreement. PGW Ex. 1. Therefore, the remaining term of the July 2022 PAR appears to be 34 months. As a result, his payment arrangement may be reinstated for a total of 40 months.⁴ 66 Pa.C.S. § 1405(e).

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to and subject matter of this case. 66 Pa.C.S. § 701.

⁴ 34 months from the balance of the July 2022 PAR plus 6 months extension equals 40 months.

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

6. Complainant has not met his burden of proving that he is eligible for a second or subsequent Commission-issued payment arrangement. 66 Pa.C.S. § 1405(d).

7. 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).

8. Complainant has experienced a significant change in circumstance through an increase in the customer's number of dependents in the household and catastrophic damage to his residence resulting in a significant cost to the customer's household. 66 Pa.C.S. § 1403.

9. Complainant has sustained his burden of proving that he is eligible to reinstate and extend the July 2022 payment arrangement. 66 Pa.C.S. § 1405(e).

ORDER

THEREFORE,

IT IS ORDERED:

1. That Complainant's Exhibit 1 is admitted into the record.
2. That Complainant's Late-filed Exhibit, Complainant's Exhibit 3, is admitted into the record.
3. That PGW's objections to Complainant's Exhibit 4 and Complainant's Exhibit 5 are sustained.
4. That the Formal Complaint filed by Terrance Bradley in Terrance Bradley v. Philadelphia Gas Works at Docket No. F-2023-3042169 is sustained.
5. 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 July 6, 2022 in BCS Case No. 3831455 is reinstated and the remaining term is extended for an initial period of six months, for a total of 40 months, following the entry of a final Commission order in this case.
6. That as long as Terrance Bradley maintains the terms of the reinstated payment arrangement, Philadelphia Gas Works shall not suspend or terminate his utility service except for valid safety or emergency reasons or assess late payments or finance charges against his account.
7. That, if Terrance Bradley does not keep the payment schedule stated in this order, Philadelphia Gas Works is authorized to suspend or terminate his utility service in accordance with the Commission's statutes and regulations.

