

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Modestine Cuthbert

v.

Philadelphia Gas Works

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F-2024-3050656

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This Decision grants the Formal Complaint of Modestine Cuthbert against Philadelphia Gas Works because she successfully carried her burden of proving that she did not attempt to defraud the utility during the application process for enrollment in the Customer Responsibility Program. This Decision directs Philadelphia Gas Works to allow Ms. Cuthbert to reapply before the 12-month hold expires. In addition, Ms. Cuthbert successfully carried her burden of proving that she is entitled to the reinstatement of her original Commission-issued payment arrangement and its extension by six months.

HISTORY OF THE PROCEEDING

On July 23, 2024, Modestine Cuthbert (“Complainant” or “Ms. Cuthbert”) filed a Formal Complaint (“Complaint”) against Philadelphia Gas Works (“PGW” or “Respondent”) with the Pennsylvania Public Utility Commission (“Commission”). In her Complaint, Ms. Cuthbert alleged that PGW incorrectly concluded that she had altered her paystubs and denied her a payment arrangement. As relief, the Complainant requests that the Commission establish a payment arrangement for her.

This Formal Complaint is a timely appeal from the decision of the Commission’s Bureau of Consumer Services (“BCS”) at BCS Case No. 3986283. A timely BCS appeal is subject to de novo review. 52 Pa. Code § 56.173(a).

The Formal Complaint was served upon the Respondent by the Secretary of the Commission on August 9, 2024. On August 29, 2024, the Respondent filed an Answer denying all material allegations of fact and conclusions of law in the Complaint.

An Initial Call-in Telephonic Hearing Notice dated September 4, 2024, notified the parties that an initial call-in telephone hearing was scheduled on November 13, 2024, at 10:00 a.m., and that the matter was assigned to me.

On October 22, 2024, I issued a Prehearing Order. The Prehearing Order directed the parties to comply with various procedural requirements, reminded them of the time and date of the hearing and provided instructions for calling in to the hearing.

The hearing was convened as scheduled on November 13, 2024. Ms. Cuthbert 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, Philadelphia Gas Works, and presented the testimony of Wendy Vacca, who

is a Senior Customer Review Officer with PGW. The Respondent sponsored eight exhibits, which were admitted into the record.

During the hearing, I instructed the Complainant to submit, as a late-filed exhibit, copies of her last four paystubs. I also instructed the Respondent to submit as a late-filed exhibit the provisions regarding fraud from its current Universal Service Program. The deadline for submitting the late-filed exhibits was November 22, 2024. The deadline for filing written objections to the late-filed exhibits was December 2, 2024.

By email dated November 14, 2024, counsel for PGW submitted PGW late-filed Exhibit 9.

Ms. Cuthbert did not submit any late-filed exhibits of her own. Nor did she submit any written objections to PGW's late-filed Exhibit 9, which will be admitted into the record pursuant to the Ordering Paragraphs below.

The record in this matter closed on December 13, 2024, upon receipt of my copy of the transcript.

FINDINGS OF FACT

1. The Complainant is Modestine Cuthbert, a.k.a. Modestine Smith-Thorpe,¹ who resides at 1560 Ruan Street, Philadelphia, PA 19124 ("Service Address"). Tr. 8, 48.

2. The Respondent is Philadelphia Gas Works.

¹ At the hearing, the parties stipulated to the fact that Modestine Cuthbert and Modestine Smith-Thorpe are one and the same person. Tr. 48.

3. Ms. Cuthbert resides at the Service Address with her three daughters, who are 12, 14, and 15 years old. Tr. 24-25.
4. Ms. Cuthbert works for SmartWorks Cleaning Company. Tr. 23-24.
5. Ms. Cuthbert works between 10 and 20 hours every two weeks depending on her health. Tr. 21.
6. Ms. Cuthbert's payrate is \$12.00 per hour. Tr. 23.
7. During the period September 1, 2024, through October 31, 2024, Ms. Cuthbert worked for a total of 55 hours and received a gross pay of \$660.00 for the two-month period. Complainant Exhibit 1.
8. Ms. Cuthbert receives food stamps, assistance housing, and child support for one of her daughters.
9. On May 19, 2023, Ms. Cuthbert filed an informal complaint with BCS, BCS Case No. 3911661, requesting a payment arrangement. Tr. 39; PGW Exhibit 7.
10. On May 23, 2023, BCS established a payment arrangement for the Complainant upon finding her to be a Level 1 income customer after she reported a gross household income of \$600.00 per month for a household of four individuals. Tr. 39-40; PGW Exhibit 8.
11. The payment arrangement established by BCS at BCS Case No. 3911661 required Ms. Cuthbert to pay a special budget of \$480.00 per month consisting

of the regular budget billing of \$312.00 per month, plus \$168.00 per month towards the arrearages, beginning with the July 2024 bill. Tr. 40; PGW Exhibit 8.

12. Ms. Cuthbert suffers from liver disorder, executive memory loss and blood clots. Tr. 12, 21-22.

13. Ms. Cuthbert's memory loss was diagnosed in September of 2023 and has impacted her ability to work. Tr. 26-28.

14. Ms. Cuthbert defaulted on the Commission issued payment arrangement in April of 2024. Tr. 40, 52; PGW Exhibit 8.

15. On or before May 8, 2024, Ms. Cuthbert applied to enroll in PGW's Customer Responsibility Program (CRP). Tr. 33; PGW Exhibit 1.

16. By letter dated May 9, 2024, PGW informed Ms. Cuthbert that her CRP application was incomplete and that she had 14 days to make the necessary corrections. Tr. 34; PGW Exhibit 2.

17. By letter dated May 10, 2024, PGW informed Ms. Cuthbert that her CRP application was cancelled because it contained fraudulent information and that she must wait 12 months before applying again. Tr. 35-36; PGW Exhibit 3.

18. PGW cancelled Ms. Cuthbert's CRP application upon receiving from her a paystub for the pay period beginning May 11, 2024, though May 24, 2024, with a pay date of May 3, 2024. Tr. 36; PGW Exhibit 4.

19. During the period from November 2021 to November 2024, Ms. Cuthbert made 19 payments towards her account with PGW, for a total of \$5,824.46. PGW Exhibit 5.

20. As of the date of the hearing, Ms. Cuthbert's outstanding balance with PGW is \$9,614.66. PGW Exhibit 5.

DISCUSSION

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 (1994) (*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 & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

Upon the presentation by the complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the complainant shifts to the respondent. If the evidence presented by the respondent is of co-equal weight, the complainant has not satisfied her burden of proof. The complainant would be required to provide additional evidence to rebut the evidence of the respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).

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).

CRP Application

In her Complaint, Ms. Cuthbert alleged that PGW incorrectly concluded that she had altered her paystubs and denied her a payment arrangement. As relief, the Complainant requested that the Commission establish a payment arrangement for her. During the November 13, 2024 hearing, she clarified that, instead of a payment arrangement, PGW had denied her application for enrollment in its CRP, claiming that she had attempted to defraud the Company by submitting altered paystubs. Tr. 9-12. Ms. Cuthbert admitted that the paystubs she submitted to PGW as part of her CRP application contained an error but claimed that the error was caused by an inexperienced employee in her employer's payroll department. Tr. 10. She submitted the payroll summary for the period September 1, 2024, through October 31, 2024, to show her income for the period. Tr. 15, 16; Complainant Exhibit 1.

In response, PGW presented the testimony of Wendy Vacca, who is a Senior Customer Review Officer with the Respondent. Ms. Vacca testified that on or before May 8, 2024, Ms. Cuthbert applied to enroll in PGW's CRP. Tr. 33; PGW Exhibit 1. By letter dated May 9, 2024, PGW informed Ms. Cuthbert that her CRP application was incomplete and that she had 14 days to submit current paystubs for income verification. Tr. 33-34; PGW Exhibit 2. Ms. Cuthbert submitted a paystub for the pay period beginning May 11, 2024, through May 24, 2024, with a pay date of May 3, 2024. Tr. 36; PGW Exhibit 4. Because the pay date predates the work period, PGW concluded that the paystub was fraudulent. Tr. 36; PGW exhibit 4. By letter dated May 10, 2024, PGW informed Ms. Cuthbert that her CRP application was cancelled because it contained fraudulent information and that she must wait 12 months before applying again. PGW Exhibit 3. Ms. Vacca explained that the CRP stay-out provision is part of PGW's Universal Service and Energy Conservation Plan for the years 2023-2027. Tr. 49-50; PGW late-filed Exhibit 9.

At the hearing, I instructed Ms. Cuthbert to submit her four most recent paystubs as a late-filed exhibit by November 22, 2024. As of the date of this Initial Decision, she has not submitted the requested documentation. However, it is noteworthy that Ms. Cuthbert testified extensively about the effects of a health condition which has impaired her memory to the point that even writing things down does not always help her. Tr. 27. It is also important to note that the payroll summary submitted by Ms. Cuthbert includes a period equal to her four most recent paychecks, from September 1, 2024, through October 31, 2024. Complainant Exhibit 1. While not in the form of paystubs, Complainant Exhibit 1 confirms Ms. Cuthbert's testimony with regard to the name of her employer, her pay rate and the hours worked for the two-month period.

Upon careful consideration, I find Ms. Cuthbert's testimony on the source of the error in her CRP application to be credible. She has shown by a preponderance of the evidence that she did not submit documentation to PGW with the intent of defrauding the

Respondent. Because I find that no fraud was committed, the stay-out provision of PGW's Universal Service Program does not apply. Ms. Cuthbert shall be permitted to reapply for PGW's CRP.

Payment Arrangement

The Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401 *et seq.*, applied to complaints alleging inability to pay and requesting a Commission-issued payment arrangement at the time of the hearing. This law provided strict guidelines that the Commission had to follow when determining whether a payment arrangement could be issued and the length of the payment arrangement. I note that Chapter 14 has subsequently sunset, effective December 31, 2024, according to its provisions, and is not currently in effect.²

However, in its Statement of Policy entered December 24, 2024, the Commission clarified that its regulations codified at Chapter 56 shall remain in effect until amended. *See Sunset of Chapter 14, Title 66 of the Pa. Pub. Util. Code*, Docket No. M-2024-3052328 (Statement of Policy entered Dec. 24, 2024). With regard to the provision of payment arrangements, the Commission explained that it will maintain its application of the four-tiered process establishing the length of payment arrangements previously articulated in Chapter 14. *Id.* at 4. In particular, the Commission's Statement of Policy states that the principles of Section 1405 and definitions of Section 1403 will continue after the expiration of Chapter 14 on December 31, 2024. *Id.* at 5. Thus, consistent with Chapter 14, utility customers will be eligible for one payment arrangement on arrearages accrued while not on a customer assistance program under

² Nevertheless, since this action arose prior to the sunset of Chapter 14, its substantive effect still applies to this action. *Ghaderi v. St. Bd. of Osteopathic Med.*, 302 A.3d 240 (Pa. Cmwlth. 2023); *Miegoc v. W.C.A.B.*, 961 A.2d 269 (Pa. Cmwlth. 2008).

such terms, subject to a change in income or a significant change in circumstance as again outlined in the existing statute. *Id.* at 5, n. 3 (citing 66 Pa.C.S. § 1405(c)).

At the hearing, Ms. Vacca testified that Ms. Cuthbert has already received and defaulted on one Commission-issued payment arrangement. Ms. Vacca explained that on May 19, 2023, Ms. Cuthbert filed an informal complaint with BCS, BCS Case No. 3911661, requesting a payment arrangement. Tr. 39; PGW Exhibit 7. On May 23, 2023, BCS established a payment arrangement for the Complainant upon finding her to be a level 1 income customer after she reported a gross household income of \$600.00 per month for a household of four individuals. Tr. 39-40; PGW Exhibit 8. The payment arrangement established by BCS required Ms. Cuthbert to pay a special budget of \$480.00 per month consisting of the regular budget billing of \$312.00 per month, plus \$168.00 per month towards the arrearages, beginning with the July 2024 bill. PGW Exhibit 8. Not only did Ms. Cuthbert receive a Commission-issued payment arrangement, but she made payments in accordance with its terms. PGW Exhibit 5. Ms. Vacca testified that Ms. Cuthbert defaulted on the Commission-issued payment arrangement in April of 2024. Tr. 52; PGW Exhibit 8.

At the hearing, Ms. Cuthbert testified that she suffers from a liver disorder, executive memory loss and blood clots. Tr. 12, 21-22. She explained that her memory loss was diagnosed in September of 2023 and has impacted her ability to work. Tr. 26-28. This impact can be seen in the steep decrease from the income she reported to BCS in May of 2023, to the income she reported at the evidentiary hearing in November of 2024. More specifically, her reported household income went from \$600.00 per month for a household of four, to \$330.00³ per month for a household of four.

³ During the two-month period September 1, 2024, through October 31, 2024, Ms. Cuthbert worked for a total of 55 hours and received a gross pay of \$660.00. Complainant Exhibit 1. Her monthly gross income is \$330.00 ($\$660.00 / 2 = \330.00).

Section 1405(e) of Chapter 14 provided that, if the customer defaults on a payment arrangement established by the Commission 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). Section 1403 defined "significant change in circumstance" among others as "the onset of a chronic or acute illness resulting in a significant loss in the customer's household income" when that income is less than 300% of the Federal Poverty level. 66 Pa.C.S. § 1403.

PGW did not challenge Ms. Cuthbert's testimony on her diagnosis with memory loss, and it is clear Ms. Cuthbert's household income was below 300% of the Federal Poverty level when she was found to be a level 1 income customer by BCS at BCS Case No. 3911661. Her household income has experienced a significant loss following her diagnosis with memory loss – decreasing from \$600 per month to \$330 per month. Therefore, I find it appropriate to reinstate her original payment arrangement issued by BCS at BCS Case No. 3911661 and extend it by an additional six months.

Before concluding, I note that enrollment in PGW's CRP will be more beneficial to Ms. Cuthbert than a Commission-issued payment arrangement. She is encouraged to seek the assistance of her family members to complete the application and submit the necessary documentation.

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 burden of proof in this proceeding is on the Complainant. 66 Pa.C.S. § 332(a).

3. 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).

4. 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. 2 Pa.C.S. § 704; *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

5. Following the sunset of Chapter 14, Title 66 of the Pennsylvania Public Utility Code, the Commission's regulations codified at 52 Pa. Code Chapter 56 shall remain in effect until amended. *See Sunset of Chapter 14, Title 66 of the Pennsylvania Public Utility Code*, Docket No. M-2024-3052328 (Statement of Policy entered Dec. 24, 2024).

6. Following the expiration of Chapter 14 of the Pennsylvania Public Utility Code on December 31, 2024, the Commission will maintain its application of the four-tiered process establishing the length of payment arrangements previously articulated in Chapter 14. *See Sunset of Chapter 14, Title 66 of the Pennsylvania Public Utility Code*, Docket No. M-2024-3052328, at 4 (Statement of Policy entered Dec. 24, 2024).

7. The principles of Section 1405 and definitions of Section 1403 of the Pennsylvania Public Utility Code will continue after the expiration of Chapter 14 on December 31, 2024. *Sunset of Chapter 14, Title 66 of the Pennsylvania Public Utility Code*, Docket No. M-2024-3052328, at 5 (Statement of Policy entered Dec. 24, 2024).

ORDER

THEREFORE,

IT IS ORDERED:

1. That PGW late-filed Exhibit 9 is admitted into the record in this matter.
2. That the Formal Complaint of Modestine Cuthbert in *Modestine Cuthbert v. Philadelphia Gas Works* at Docket No. F-2024-3050656 is sustained.
3. That Modestine Cuthbert shall be allowed to apply to Philadelphia Gas Works' Customer Responsibility Program.
4. That the Commission's Bureau of Consumer Services payment arrangement established on May 23, 2023, at BCS Case No. 3911661 shall be reinstated effective the first billing cycle after entry of the Commission's Final Order in this matter.
5. That the payment arrangement established for Modestine Cuthbert by the Commission's Bureau of Consumer Services on May 23, 2023, at BCS Case No. 3911661 shall be extended for six months.
6. That, so long as Modestine Cuthbert adheres to the terms of this Order, Philadelphia Gas Works shall not assess any late payment charges nor shall Philadelphia Gas Works terminate service to Modestine Cuthbert, except for valid safety and/or emergency reasons.

