

STATE OF NEW YORK  
DEPARTMENT OF PUBLIC SERVICE

Case 93-E-0695 - In the matter of the Rules and Regulations of the Public Service Commission, Contained in 16NYCRR in Relation to Complaint Procedures--Appeal by \_\_\_\_\_ of the Informal Hearing-Decision Rendered in Favor of New York State Gas and Electric Corporation, filed in C 26358 (E366957)

COMMISSION DETERMINATION  
(Issued and Effective February 28, 1994)

This is an appeal by \_\_\_\_\_, complainant, to the Commission from an informal hearing decision dated July 30, 1993. The complaint concerns the disconnection of complainant's service by the utility because of an unpaid arrears. Complainant believes that because of a medical condition, existing rules precluded the utility from terminating his service and require immediate reconnection. The utility asserted that complainant failed to pay the balance of a deferred payment agreement and, as a result, complainant's service was disconnected on April 26, 1993. The medical documentation submitted by complainant did not include the doctor's identification number, a diagnosis, the duration of illness or indication that the lack of utility service would be detrimental to complainant's health and thus failed to meet the standards necessary for continued service in a medical emergency. The hearing officer found that the utility's claim of insufficient documentation was correct, and the complainant failed to produce necessary medical statements. Therefore, the

utility was not obligated to restore complainant's electric service.

For the reasons stated below, we deny complainant's appeal and uphold the hearing officer's decision.

#### Summary of Facts

(1) On September 9, 1991 complainant signed an agreement to pay off an arrears of \$1155.46. The agreement called for payments of \$10.00 per month with no downpayment. The complainant defaulted on this agreement. He initiated a similar agreement May 19, 1992 for the balance of \$1976.05. This agreement also was broken.

(2) On April 16, 1993 complainant contacted the Consumer Services Division, to request assistance in stopping the utility from terminating his service. Staff advised complainant that because he had defaulted on a previous "minimum" payment agreement <sup>1</sup> the utility could not be required to offer him a new deferred payment agreement and was permitted to terminate service. In addition, he did not satisfy requirements of Department of Social Services (DSS) for assistance. <sup>2</sup>

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<sup>1</sup>. As required by NYCRR 11.10 (a) (1) & (a) (3), a utility must offer a deferred payment agreement that is tailored to the customer's financial means. A payment agreement must provide for installments as low as \$10.00 per month and no down payment, when the customer or applicant demonstrates financial need for such terms, but need not provide for monthly installments of less than \$10.00.

<sup>2</sup>. 16 NYCRR 11.5 (a).

(3) On June 2, 1993 complainant contacted the Consumer Services Division (CSD), to inform staff that his electric service had been disconnected April 26, 1993, yet the utility was in possession of medical documentation which indicated the need for continuance of his electric service. Complainant provided the utility with a record of a confidential psychiatric assessment of himself, conducted at the Medical Health Clinic on April 26, 1993. <sup>3</sup> Complainant also provided a copy of an emergency room record he received from \_\_\_\_\_ indicating that he was admitted to their emergency room May 23, 1993, because he was cold, shivering and dizzy. <sup>4</sup> Staff advised complainant that neither piece of documentation was adequate to support continuation of service because of a medical emergency <sup>5</sup> --they did not state the reason.

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<sup>3</sup>. Neither piece of documentation indicates that complainant's illness or condition will be aggravated by the absence of utility service. In addition, many technical requirements of 16 NYCRR (a)(3) were not met (a doctor's registration number, and complainant's address were not given).

<sup>4</sup>. Although the psychiatric assessment is a confidential document, the utility faxed it to CSD staff, after complainant called CSD and requested a review. In addition, complainant mailed an additional copy of this assessment to staff.

<sup>5</sup>. Complainant had submitted a HEAP application to Delaware County DSS on January 18, 1993. His application was rejected and he was granted a fair hearing April 1, 1993. The hearing decision stipulated that some financial information was required from complainant. Specifically, DSS wanted information concerning some transactions on bank accounts he was deemed responsible for.

On April 19, 1993, in response to a conversation with complainant, DSS wrote to complainant, and repeated its request. In addition, DSS wanted clarification concerning expenses complainant paid for his dwelling.

why complainant needed utility service, or that a lack of service was detrimental to his health. <sup>6</sup>

(4) By letter dated June 3, 1993, staff advised complainant that his medical documentation did not qualify as a medical emergency certificate, because it did not affirm that complainant's condition would be aggravated by the absence of utility service. In addition, it did not contain complainant's address, or his doctor's State registration number as required by regulations. <sup>7</sup>

(5) On June 7, 1993 complainant contacted staff and requested an informal hearing.

(6) On June 29, 1993 an informal hearing was held via a telephone conference call with the complainant and a utility employee participating.

(a) Complainant asserted that he has a medical condition which obligated the utility to immediately restore service when it was presented with his medical documentation.

(b) The utility asserted that complainant's documentation was inadequate--it was missing his doctor's identification number, diagnosis, duration of illness and indication that the lack of utilities would be detrimental to the customer's health. Furthermore, the utility produced a tape

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<sup>6</sup>. The emergency room record indicates that complainant was encouraged to work out a payment arrangement with the utility, and if unable to, he was to follow-up with one of the hospital's doctors. A copy of his record is attached to this decision.

<sup>7</sup>. 16 NYCRR 11.5

recording of an April 26, 1993 conversation between one of its representatives and an emergency room doctor at hospital. Complainant had gone to the hospital to solicit assistance in trying to get service restored. The doctor stated at the beginning of the conversation that continuance of complainant's utility service was not a medical necessity, but that he was calling to try and work out a plan to get service restored. The utility representative he spoke to advised him that the utility would call complainant the following day. The complainant was contacted, but an agreement to restore service could not be reached.

(7) In his decision of July 30, 1993, the hearing officer found the utility's claim that complainant provided insufficient medical documentation convincing, and complainant's contention that he was protected under 16 NYCRR 11.5 unpersuasive. The hearing officer also found that unless one of the following options were met by complainant, the utility was not obligated to restore service:

- (a) provide the necessary medical certification;
- (b) pay off the balance; or
- (c) arrange for another deferred payment plan to pay off the balance.

(8) By letter dated August 2, 1993, complainant appealed the hearing officer's decision, asserting that the hearing officer was mistaken in his interpretation of 16 NYCRR

11.1 and 11.9 (a) (5), and had failed to consider the medical documentation presented at the hearing.

(9) By letter dated December 1, 1993, the utility informed staff that complainant filed a petition in July 1993, with the Supreme Court requesting that the Department of Social Services assign a guardian to arrange and pay for his utility services. Complainant's petition also requested that the court direct the utility to restore and maintain utility services until a hearing could be held. However, according to utility records, the complainant withdrew the petition when the judge informed him that if the court appointed a guardian, it would be for all of complainant's finances, not just the utility bills.

The utility also informed staff that it worked with complainant to establish another payment agreement. After the complainant submitted a payment of \$1541.00 on October 21, 1993, his service was restored, and a new agreement, which calls for \$10.00 monthly payments over a period of 196 months was established. On December 30, 1993 staff sent complainant a copy of the December 1, 1993 letter it received from the utility.

(10) On January 4, 1994 complainant responded to the above information by stating that he had to withdraw money from his children's bank account to pay for the restoration of his utility service, which deprived his children of property which legally belonged to them. Complainant also provided a note from Dr. , dated September 27, 1993, stating, "

has a chronic serious medical (psychiatric) condition."

#### Determination

The central issue in this matter is whether the documentation provided by complainant demonstrates that noncontinuance of his service constitutes a medical emergency under the Commission's rules such that the utility is required to restore service. Notwithstanding complainant's payment and the subsequent reconnection of his utility service, complainant has not withdrawn his appeal of the decision of the informal hearing officer and requests a determination by the Commission on whether the utility was precluded from discontinuing his service because of a medical hardship. This issue is not moot since a decision adverse to the utility could lead to penalties under HEFPA and would have bearing in the utility's obligation in the event the complainant defaults in future payments.

Complainant's argument that the hearing officer made a mistake in his interpretation of 16 NYCRR 11.1 and 11.9 (a) (5) is without merit. 16 NYCRR 11.1 merely sets forth the broad purpose of the rules. It states that, the "Home Energy Fair Practices act:

establishes as a State policy that the continued provision of gas, electric and steam service to residential customers without unreasonable qualifications or lengthy delays is necessary for the

preservation of the health and general welfare and is in the public interest."

Sections 11.5 and 11.9 of 16 NYCRR address the subject of medical emergency requirements, and are relevant in determining whether those requirements were met and if the utility acted properly.

Section 11.5(a) provides special protections for residential customers in cases involving medical emergencies. It requires that any certification of a medical emergency be submitted on stationery of the medical doctor or local board of health, shall be signed by the medical doctor or local board of health qualified to make a medical judgement, state the name and address of the certifying medical doctor or local board of health, the doctor's State registration number, the name and the address of the seriously ill person, the nature of the serious illness or medical condition, and affirm that the illness or condition exists or will be aggravated by the absence of utility service.<sup>8</sup> It also provides, that, while certification of medical emergencies remains in effect, customers should remain liable for payment of utility services and should make reasonable efforts to pay charges for such service.<sup>9</sup>

Section 11.9(a)(5) provides, in relevant part, that, "A utility shall reconnect residential service within 24 hours, unless prevented by circumstances beyond the utility's control

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<sup>8</sup>. See 16 NYCRR (a)(1)

<sup>9</sup>. 16 NYCRR 11.5 (a)(3)

or unless a customer requests otherwise," and that "where a utility has notice that a serious impairment to health or safety is likely to result if service is not reconnected, doubts as to whether reconnection of service is required for health or safety reasons shall be resolved in favor of reconnection."

The medical notification which was provided to the utility and subsequently to CSD was reviewed in an expeditious manner. Staff of the utility and of CSD, as well as the hearing officer, all determined that the notification did not indicate a serious impairment to complainant's health or safety would occur if service was not continued. In addition, a doctor who called the utility to assist complainant in the restoration of service, affirmed that the complainant's condition was not a medical emergency, and that his condition would not be aggravated by the discontinuance of his service. Although the rules provide that doubts as to whether reconnection is required shall be resolved in favor of reconnection, in this case the conversation of the doctor with the utility staff makes it clear that there is no doubt in this regard. On several occasions, the utility requested that complainant provide additional documentation, which would certify a medical emergency. However, complainant failed to comply with the request. Our review of the information provided to us by the complainant, which is attached, supports the hearing officer's determination that documentation supplied by complainant was inadequate and the utility's request

for additional documentation was valid.<sup>10</sup> Therefore, we find that the utility has complied with the rules and has not imposed any unreasonable qualifications or lengthy delays upon complainant to have service restored. We find the utility was not, and is not, required to restore complainant's service under 16 NYCRR 11.9 (a)(5).

Complainant's argument that medical documentation presented at the hearing was not properly considered by the hearing officer is without merit. In his decision, the hearing officer stated that he reviewed all documents in the case file, which included complainant's medical documentation. The hearing officer found that the complainant failed to provide the documentation necessary to obligate the utility under HEFPA, and as discussed above, we concur with his findings.

The supplemental documentation (the note from Dr. Ronald Coffey), provided during the pendency of this appeal, does not affirm that the loss of utility service will be detrimental to complainant's health and thus provides no basis to stop the utility from disconnecting complainant's service in the future if he defaults in payments.

Finally, complainant indicated the payment he submitted to restore his service was obtained from his childrens' bank

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<sup>10</sup>. 16 NYCRR 11.5 (a)(1) provides, that "No utility shall terminate or refuse to restore service when a medical emergency exists, as certified by a medical doctor or local board of health exists; provided, however, that a demonstration of the customer's inability to pay charges for service, while 16 NYCRR 11.5(a)(3) outlines medication certification requirements.

accounts in violation of his duty. It is complainant's prerogative to decide which funds to use as disbursement for utility bills. If complainant believes he was coerced to use these funds and wishes to pursue this matter further, he must do so in a court of law, as this is a matter not under our jurisdiction.

In order to assure that all aspects of this case have been properly addressed, we have thoroughly reviewed the entire case file. We find the evidence in this case indicates the complainant has not provided the necessary documentation to preclude the utility from terminating his service, or to obligate the utility to restore his service. Therefore, complainant's appeal is denied and the hearing officer's decision is sustained.

If the complainant defaults again, it is incumbent on NYSEG to follow the "cold weather procedures' rules", as may be applicable. <sup>11</sup>

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<sup>11</sup>. 16 NYCRR 11.5 (c).