

STATE OF NEW JERSEY

Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

BARBARA MARTIN, Petitioner,

v.

BPU DOCKET NO. EC19101351U

ATLANTIC CITY ELECTRIC COMPANY, Respondent.

ORDER ADOPTING INITIAL
DECISION

BPU DOCKET NO. EC19101351U

OAL DOCKET NO. PUC 16892-19

Parties of Record:

Barbara Martin, Petitioner, *pro se* **Shane P. Simon, Esq.**, on behalf of Respondent, Atlantic City Electric Company

BY THE BOARD:

The instant matter involves a billing dispute between Barbara Martin ("Petitioner") and Atlantic City Electric Company ("ACE," "Respondent," or "Company"). This Order sets forth the background and procedural history of Petitioner's claims and represents the Final Order in this matter. Having reviewed the record, the New Jersey Board of Public Utilities ("Board") now **ADOPTS** the Initial Decision rendered on May 16, 2023, as follows.

PROCEDURAL HISTORY

On October 9, 2019, Petitioner filed a petition with the Board requesting a formal hearing to resolve a billing dispute against ACE for electric service rendered at Petitioner's residence located at the Weymouth, New Jersey property ("Property"). Petitioner alleged ACE improperly charged Petitioner's account with her deceased mother's previous electric bill in the amount of \$6,921.38. Petitioner filed an amended petition on November 1, 2019. On November 8, 2019, Respondent filed an answer and counterclaim seeking to collect an outstanding balance of \$7,189.95 on Petitioner's account. On May 14, 2020, Petitioner filed a supplement to her billing dispute alleging that ACE misappropriated her New Jersey State Home Energy Program Universal Service Fund ("USF") credit to pay off her deceased mother's electric bill rather than her electric bill. Petitioner claimed that ACE owed her \$750 for applying her USF credit to her mother's account.

On November 19, 2019, the dispute was transferred to the Office of Administrative Law ("OAL") for a hearing as a contested case, pursuant to N.J.S.A. 52:14B-1 to 15 and 14F-1 to 13. This matter was assigned to Administrative Law Judge ("ALJ") Catherine A. Tuohy, who issued an

Initial Decision in OAL docket PUC 16892-19 on May 16, 2023 ("Initial Decision"). Numerous telephone status conferences were conducted as in-person hearings at the OAL were suspended due to the COVID-19 health crisis and the Petitioner's inability to proceed via Zoom audio and video technology. Initial Decision at 2. Once in-person hearings resumed at the OAL, a hearing was scheduled on November 16, 2022 and on November 17, 2022. Ibid.. Prior to the hearing dates, on November 7, 2022, the parties jointly requested a telephone conference wherein the parties agreed to proceed by summary decision and a briefing schedule was established. Ibid.. On January 3, 2023, ACE filed a motion for summary decision with supporting exhibits ("Motion"). Ibid.. On March 3, 2023, Petitioner filed opposition and cross-moved for summary decision. Ibid.. ACE filed a reply brief on April 14, 2023. The OAL did not receive any exceptions to the Initial Decision from either party.

In its Motion, ACE argued that its motion for summary decision should be granted for at least five (5) reasons:

- Petitioner's claims are moot because the disputed transferred balance from a prior account was cleared and removed through government arrearage forgiveness programs;
- Petitioner suffered no damages or harm because she failed to pay her current account bills, and still the government arrearage forgiveness programs cleared and removed her entire outstanding balance;
- Petitioner is responsible for the disputed transferred balance from the prior account because the bills and account were in Petitioner's name; those bills were not her mother's bills as Petitioner claims because Petitioner's mother passed away several years earlier in September 2010;
- Petitioner is responsible for the disputed transferred balance from the prior account because she owns and resided at the property during the prior account period; and
- The doctrine of unclean hands bars recovery on Petitioner's claim because she submitted false documents including an altered death certificate for her mother to avoid paying valid ACE bills for service at her property.

[Initial Decision at 3].

In Petitioner's opposition and cross-motion for summary decision, filed on March 3, 2023, Petitioner agreed that summary decision is appropriate as to her initial petition, conceding that the billing charges have been cleared and removed from her account and the billing dispute issue concerning the transferred balances from her mother's account is now moot. Initial Decision at at 3. However, Petitioner argued that she is entitled to summary decision on her supplemental petition in the amount of \$750 for ACE's alleged misappropriation of her USF credits. Lbid. Petitioner claimed that the ACE billing process is abnormal and argued that one would have to be an accountant to figure it out. Id. at 4.

On May 16, 2023, ALJ Tuohy issued the Initial Decision in favor of ACE, granting ACE's motion for summary decision and denying Petitioner's cross-motion for summary decision. Additionally,

ALJ Tuohy dismissed Petitioner's petition and supplemental petition. First, ALJ Tuohy discussed both parties' motion for summary decision as outlined above. ALJ Tuohy determined that the Petitioner agreed that summary decision is appropriate as to her initial petition and found that matter moot. Initial Decision at 3. As the initial petition is moot, ALJ Tuohy determined it was not necessary to address the various allegations of nefarious conduct against Petitioner raised by ACE. <u>Ibid.</u> Therefore, the remaining claim at issue was Petitioner's supplemental filing of the misappropriated \$750 USF credit. ALJ Tuohy noted that Petitioner's motion was not supported by an affidavit, yet Petitioner did annex copies of electric bills supplied by ACE and made various handwritten notation on the bills. <u>Id.</u> at 4. ALJ Tuohy noted that ACE submitted business records of cumulative billing statements for the Petitioner's account demonstrating that Petitioner received her monthly USF credits to her account. <u>Ibid.</u> ALJ Tuohy found the following as facts as established:

- Petitioner received a New Jersey USF Fresh Start Program credit in the amount of \$2,007.88 on February 23, 2022, and a Federal COVID CARES Act/American Rescue Plan credit in the amount of \$6,025,22 on May 25, 2022, totaling \$8,033.10 to her ACE account.
- Petitioner conceded that her petition is moot in light of her account being cleared of the disputed balance transfers.
- 3. ACE submitted an affidavit of Michelle Green, who works for ACE as a supervisor for regulatory performance. She has personal knowledge of the facts supporting ACE's motion for summary decision. She generated an ACE business record of a cumulative billing statement for Petitioner's ACE Account Number ending. 6858 at her Weymouth, NJ property for the period from August 26, 2019, through November 23, 2022. All USF credits are listed and credited to her account. A USF payment in the amount of \$2,007.88 was credited to her account on February 23, 2022, and a COVID Care Act payment in the amount of \$6,025.22 was credited to her account on May 25, 2022.
- 4. Ms. Green also generated for illustrative purposes, a cumulative billing statement for Petitioner's ACE Account No. 6858 which removed the disputed transferred balances and the other state and federal government arrearage forgiveness program credits. The illustration demonstrates that Petitioner received her USF credits to her account each month that were applied to her electric bill.

[Initial Decision at 4-5]

In ALJ Tuohy's legal analysis, it was first noted that, pursuant to N.J.A.C. 1:1-12.5, summary decision should be rendered "if the papers and discovery which have been filed, together with affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." Initial Decision at 5. ALJ Tuohy further stated that the regulation mirrors R. 4:46-2(c), which provides that judgment shall be rendered if the pleadings together with affidavits "show that there is no genuine issue as to any material fact" and where a moving party is entitled to a judgment. <u>Ibid.</u> ALJ Tuohy held that this matter was ripe for summary decision, finding no issues of material fact in dispute and finding that ACE is entitled to summary decision as a matter of law. <u>Id.</u> at 6.

ALJ Tuohy determined that the Petitioner bears the burden of proof by a preponderance of the competent, credible evidence of the matter before the OAL. <u>Ibid.</u> ALJ Tuohy determined that

both the Petitioner and ACE have agreed that the initial decision is moot as Petitioner's receipt of USF funds cleared her electric account of all disputed transferred balances. <u>Ibid.</u> The only remaining claim was the Petitioner's supplemental filing alleging that ACE had misappropriated her USF credits. <u>Ibid.</u> ALJ Tuohy noted that Petitioner did not set forth "any proof that would create a genuine issue of fact in support of her position that ACE misappropriated her USF credits and that she is entitled to \$750 in damages. <u>Ibid.</u> In contrast, ALJ Tuohy noted that ACE has submitted an affidavit, detailing Petitioner's account history and the USF credits received as well as other arrearage forgiveness monies credited to her account both to the disputed transfers to her account and without the disputed transfers. <u>Ibid.</u> ALJ Tuohy determined that ACE's billing statements prove that the Petitioner received her USF monthly credit applied to her account and that there was no misappropriation. <u>Id.</u> at 7.

DISCUSSION AND FINDINGS

In customer billing disputes before the Board, a petitioner bears the burden of proof by a preponderance of the competent, credible evidence. See Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). The burden of proof is met if the evidence establishes the reasonable probability of the acts alleged and generates reliable belief that the tended hypothesis, in all human likelihood, is true. See Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div.), certif. denied, 31 N.J. 75 (1959). An action is moot when there is no longer a justiciable controversy, and for reasons of judicial economy it is appropriate to refrain from decision-making when the parties do not have a concrete adversity in interest. Anderson v. Sills, 143 N.J. Super. 432, 437 (Ch. Div. 1976). Petitioner and ACE agreed that the initial petition was moot, leaving the remaining claim of the Petitioner's supplemental filing. In the present instance, Petitioner failed to show, by a preponderance of the competent credible evidence, that ACE misappropriated her USF credits. Petitioner failed to provide any proof that would create a genuine issue of material fact. ACE, however, submitted an affidavit detailing the Petitioner's account history and showing the USF credits received as well as other arrearage forgiveness monies. ACE generated a business record of a cumulative billing statement for Petitioner's ACE Account No. 6858 at her Weymouth, NJ property for the period from August 26, 2019, through November 23, 2022. The billing statement shows that all USF credits are listed and credited to her account. Additionally, ACE generated a cumulative billing statement for Petitioner's ACE Account No. 6858, which removed the disputed transferred balances and the other state and federal government arrearage forgiveness program credits. The illustration demonstrates that the Petitioner received her USF credits to her account each month that were applied to her electric bill.

Thus, after careful review and consideration of the entire record, the Board <u>HEREBY FINDS</u> the findings and conclusions of law of ALJ Tuohy to be reasonable and, accordingly, <u>HEREBY ACCEPTS</u> them. Specifically, the Board <u>FINDS</u> that Petitioner failed to meet her burden of proof.

Accordingly, the Board <u>HEREBY ADOPTS</u> the Initial Decision in its entirety and <u>ORDERS</u> that the Petition be <u>DISMISSED</u>.

This Order shall be effective July 6, 2023.

DATED: June 29, 2023

BOARD OF PUBLIC UTILITIES

BY:

JOSEPH L. FIORDALISC

PRESIDENT

MARY-ANNA HOLDEN COMMISSIONER

DR. ZENON CHRISTODOULOU

COMMISSIONER

CHRISTINE GUHL-SADOVY

COMMISSIONER

MARIAN ABDOU COMMISSIONER

ATTEST:

SHERRH. GOLDEN

SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities.

BARBARA MARTIN, PETITIONER V. ATLANTIC CITY ELECTRIC COMPANY, RESPONDENT

BPU DOCKET NO. EC19101351U OAL DOCKET NO. PUC 16892-19

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INITIAL DECISION
SUMMARY DECISION

OAL DKT. NO. PUC 16892-19

AGENCY DKT NO.: EC19101351U

BARBARA MARTIN,

Petitioner,

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ATLANTIC CITY ELECTRIC COMPANY,

Respondent.

Barbara Martin, petitioner, pro se

Shane P. Simon, Esq., for respondent (Saul Ewing, LLP, attorneys)

Record Closed: April 14, 2023 Decided: May 16, 2023

BEFORE **CATHERINE A. TUOHY**, ALJ:

STATEMENT OF THE CASE

On October 9, 2019, and amended on November 1, 2019, Barbara Martin (hereinafter Martin or petitioner) filed a petition against Atlantic City Electric Company (hereinafter ACE) with the Board of Public Utilities (hereinafter Board or BPU) alleging that ACE improperly charged her account with her deceased mother's previous electric bill in the amount of \$6,921.38. Respondent filed an answer and counterclaim seeking to

collect an outstanding balance of \$7,189.95 on petitioner's account. Petitioner filed a "Supplement" to her billing dispute dated April 29, 2020, and filed with the BPU on May 14, 2020, alleging that ACE was misappropriating her New Jersey (NJ) State Home Energy Program Universal Service Fund (USF) credit to pay off her deceased mother's electric bill as opposed to her electric bill. Petitioner claims ACE owes her \$750 for applying her USF credit to her mother's account. ACE supplies electric service to the Martin's home.

PROCEDURAL HISTORY

The petitioner requested a fair hearing, and the matter was transmitted to the Office of Administrative Law (OAL) where it was filed on November 27, 2019, to be heard as a contested case pursuant to N.J.S.A. 52:14B-1 to 15 and 14F-1 to 13. Numerous telephone status conferences were conducted in this matter during the suspension of inperson hearings at the OAL due to the COVID-19 health crisis and petitioner's inability to proceed via Zoom audio and video technology. Once in-person hearings resumed, this matter was scheduled for a hearing on November 16, 2022, and November 17, 2022. In advance of the hearing dates, the parties jointly requested a telephone conference which was conducted on November 7, 2022, during which the parties elected to proceed by summary decision. A briefing schedule was established. Respondent filed its motion for summary decision, brief and supporting exhibits on January 3, 2023. Petitioner filed opposition and cross-moved for summary decision on March 3, 2023, after receiving an adjournment. Respondent filed a reply brief April 14, 2023, and the motion record closed.1 By order, dated May 12, 2023, respondent's motion seeking an order directing the State Registrar to produce the death certificate of Betty Laura Pater was denied as this tribunal lacks jurisdiction to enter such an order.

¹ On May 12, 2023, respondent filed a motion to strike an April 19, 2023, email submitted by petitioner as scandalous and impertinent. To the extent that the April 19, 2023, email was not considered as part of the motion record in this case and this decision disposes of all issues between the parties, the motion is moot.

FACTUAL DISCUSSIONS AND FINDINGS

Respondent ACE argues that it is entitled to summary decision on several grounds:

- Martin's claims are moot because the disputed transferred balance from a prior account was cleared and removed through government arrearage forgiveness programs;
- 2. Martin suffered no damages or harm because she failed to pay her current account bills, and still the government arrearage forgiveness programs cleared and removed her entire outstanding balance;
- Martin is responsible for the disputed transferred balance from the prior account because the bills and account were in Martin's name; those bills were not her mother's bills as Martin claims because Martin's mother passed away several years earlier in September 2010;
- Martin is responsible for the disputed transferred balance from the prior account because she owns and resided at the property during the prior account period; and
- The doctrine of unclean hands bars recovery on Martin's claim because she submitted false documents including an altered death certificate of her mother to avoid paying valid ACE bills for service at her property.

Petitioner in her opposition and cross-motion for summary decision has agreed that summary decision is appropriate as to her initial petition insofar as all the billing charges have been cleared and removed from her account and the billing dispute issue concerning the transferred balances from her mother's account is now moot (paragraph 1, Martin motion for summary decision.) To the extent that Martin has agreed that summary decision is appropriate as to her first petition as the matter is moot, it is not necessary to address the various allegations of nefarious conduct against Martin raised by ACE. However, Martin still argues that she is entitled to summary decision on her

supplemental petition in the amount of \$750 for ACE's alleged misappropriation of her USF credits. Ms. Martin's motion is not supported by an affidavit. She annexes copies of electric bills supplied by ACE as Exhibit 10 to their motion for summary decision and has made various handwritten notations on these bills. Ms. Martin states in her motion at paragraph two that the ACE billing process is very abnormal and one would have to be an accountant to figure it out and she is not. ACE has submitted business records of a cumulative billing statement for the Martin account demonstrating that Martin received her monthly USF credits to her account.

Based upon the documentary evidence presented, I **FIND** the following as **FACT**:

Petitioner received a NJ USF Fresh Start Program credit in the amount of \$2,007.88 on February 23, 2022, and a federal COVID CARES Act/American Rescue Plan credit in the amount of \$6,025,22 on May 25, 2022, totaling \$8,033.10 to her ACE account. (Exhibits 10 and 24.)

Petitioner concedes that her petition is moot in light of her account being cleared of the disputed balance transfers. (Petitioner's motion for summary decision paragraph 1.)

ACE has submitted an affidavit of Michelle Green, who works for ACE as a supervisor for regulatory performance. She has personal knowledge of the facts supporting ACE's motion for summary decision. She generated an ACE business record of a cumulative billing statement for Martin's ACE account No. _______ at her , Weymouth, NJ property for the period from August 26, 2019, through November 23, 2022. (Respondent's Exhibit 24.) All USF credits are listed and credited to her account. A USF payment in the amount of \$2,007.88 was credited to her account on February 23, 2022, and a COVID Care Act payment in the amount of \$6,025.22 was credited to her account on May 25, 2022.

Ms. Green also generated for illustrative purposes, a cumulative billing statement for Martin's ACE account No. which removed the disputed transferred balances and the other state and federal government arrearage forgiveness program

credits. The illustration demonstrates that Martin received her USF credits to her account each month that were applied to her electric bill. (Respondent's Exhibit 28.)

LEGAL DISCUSSION AND ANALYSIS

Summary Decision

The respondent seeks relief pursuant to N.J.A.C. 1:1-12.5, which provides that summary decision should be rendered "if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." Our regulation mirrors R. 4:46-2(c) which provides that "the judgment or order sought shall be rendered if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law."

A determination whether a genuine issue of material fact exists that precludes summary decision requires the judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the allegedly disputed issue in favor of the non-moving party. Our courts have long held that "if the opposing party offers . . . only facts which are immaterial or of an insubstantial nature, a mere scintilla, 'fanciful frivolous, gauzy or merely suspicious,' he will not be heard to complain if the court grants summary judgment." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 529 (1995) (citing Judson v. Peoples Bank and Trust Co., 17 N.J. 67, 75 (1954)).

The "judge's function is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." Brill, 142 N.J. at 540 (citing Anderson v. Liberty Lobby, 477 U.S. 242, 249, 106 S. Ct. 2505, 2511, 91 L. Ed. 2d 202, 213 (1986)). When the evidence "is so one-sided that one party must prevail as a matter of law," the trial court should not hesitate to grant

summary judgment. <u>Liberty Lobby</u>, 477 U.S. at 251-2, 106 S. Ct. at 2512, 91 L. Ed. 2d at 214.

I CONCLUDE that this matter is ripe for summary decision since there are no issues of material fact in dispute and that respondent ACE is entitled to summary decision as a matter of law as set forth below.

In this administrative proceeding, the petitioner bears the burden of proof by a preponderance of the competent, credible evidence as to those matters that are justifiably before the OAL. Atkinson v. Parsekian, 37 N.J. 143 (1962). Evidence is found to preponderate if it establishes the reasonable probability of the facts alleged and generates reliable belief that the tendered hypothesis, in all human likelihood, is true. See Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div.), certif. denied, 31 N.J. 75 (1959).

In this matter, petitioner and respondent have both agreed that the initial petition is moot based on petitioner's receipt of the USF Fresh Start Funds and COVID/Cares Act/ American Rescue Plan forgiveness program which cleared her electric account of all disputed transferred balances. An action is moot when it no longer presents a justiciable controversy because the issues raised have become academic. For reasons of judicial economy and restraint it is appropriate to refrain from decision-making when an issue presented is hypothetical, judgment cannot grant effective relief, or the parties do not have a concrete adversity of interest. Anderson v. Sills, 143 N.J. Super. 432, 437 (Ch. Div. 1976).

The only remaining claim was what petitioner alleged in her supplemental filing with the BPU that ACE misappropriated her USF credit. However petitioner has set forth no proof that would create a genuine issue of fact in support of her position that ACE misappropriated her USF credits and that she is entitled to \$750 in damages. To the contrary, ACE has submitted an affidavit from Ms. Green detailing Martin's account history and the USF credits received as well as other arrearage forgiveness monies credited to her account both with the disputed transfers to her account (Respondent's Exhibit 24) and without the disputed transfers. (Respondent's Exhibit 28.) Both ACE

billing statements prove that petitioner received her USF monthly credit applied to her electric account and there was no misappropriation.

Therefore, based on the foregoing, respondent ACE's motion for summary decision is **GRANTED** and petitioner's cross motion for summary decision is **DENIED**.

ORDER

It is therefore **ORDERED** that respondent ACE's motion for summary decision is **GRANTED** and petitioner's cross-motion for summary decision is **DENIED**. It is further **ORDERED** that the petition and the supplemental petition in this matter be and is hereby **DISMISSED**.

I hereby **FILE** my initial decision with the **BOARD OF PUBLIC UTILITIES** for consideration.

This recommended decision may be adopted, modified, or rejected by the **BOARD OF PUBLIC UTILITIES**, which by law is authorized to make a final decision in this matter. If the Board of Public Utilities does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the SECRETARY OF THE BOARD OF PUBLIC UTILITIES, 44 South Clinton Avenue, P.O. Box 350, Trenton, NJ 08625-0350, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

	Cat a. Teropy
May 16, 2023	
DATE	CATHERINE A. TUOHY, ALJ
Date Received at Agency:	
Date Mailed to Parties:	
CAT/gd	

APPENDIX

LIST OF EXHIBITS

For petitioner

 Petitioner's opposition and cross-motion for summary decision with attachments, received March 3, 2023

For respondent

- Respondent's January 3, 2023, motion for summary decision; Affidavits of Michelle Green, Agnes Carpenter and David Solomon, Esq.; brief and supporting exhibits 1 through 33
- Respondent's reply brief dated April 14, 2023