

BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY
DEPARTMENT OF CUSTOMER SERVICES

IN RE: [REDACTED]
[REDACTED] 8th Street NW
Washington, DC 20012

Account No: [REDACTED]
Case No: 19-395348

Amounts in Dispute: \$1,899.81

Before Janet W. Blassingame, Hearing Officer
November 5, 2019 at 10:00 a.m.

The customer contested a water and sewer bill for the above account for the period of time January 19, 2019 to March 18, 2019. The DC Water and Sewer Authority (DC Water) investigated the charges and determined that the charges were valid based upon actual meter readings and adjustment of the customer's account was not warranted. The customer requested an administrative hearing.

This matter was scheduled for hearing on November 5, 2019. Present for hearing were: [REDACTED] and, Kimberly Arrington, Supervisor, Customer Support, was present on behalf of DC Water.

The property involved is a single-family residence owned by [REDACTED]. The property has three (3) bathrooms, one kitchen, a washing machine, a dishwasher, and two (2) outside faucets. Three (3) adults reside in the residence and the water and sewer bill has historically ranged between One Hundred Ten Dollars (\$110.00) and One Hundred Twenty-seven Dollars (\$127.00) per billing cycle.

The customer testified that nothing unusual was taking place in or near the property during the period in dispute. He stated that no repairs were made and there was no construction nearby. He testified that he always watches for water issues and that he neither saw nor heard anything amiss at the home. He testified that he hired a plumber the day after receiving the water and sewer bill in dispute. He testified that Cropp Metcalfe was at the house on March 27, 2019 and found no leaks even though the plumber noted that the basement toilet was noisy. The customer stated that she called DC Water and asked that his plumber be allowed to examine the water meter. The customer stated that DC Water did not respond to his request to have a plumber inspect the water meter. The customer stated that the utility did not inspect inside of the house for leaks.

The customer stated that despite his request to the utility to inspect the water meter, the next thing that happened was that he received the Investigation Letter from DC Water in which the utility stated that the charges were valid. The customer stated that a DC Water service representative told her that there had been a two (2) spike in water usage at the home and, further, that the water meter is read every month but it was not read in February 2019. The

customer complained that the conversation with the service representative in March 2019 was the first time that he heard that the water meter had not been read. The customer complained that the utility failed to give an high usage alert or to send a letter notifying her of a spike in water usage at the house. The customer asserted that she believed that an error occurred in the meter or meter read and that the error was either due to machine or human. The customer, further, questioned why the water meter was not read in February. The customer pointed out that the March 2019 bill for service is back within normal range of \$100.00 to \$200.00 per billing cycle.

Ms. Arrington asserted that the customer's meter readings are accurate. She, further, explained that all customers are automatically enrolled in the HUNA alert system and that a customer will be alerted of high-water usage if the water usage is 6x higher than normal. Ms. Arrington testified that the customer was sent a HUNA alert by DC Water on February 17, 2019. The parties verified that the email address in DC Water's record for the customer was correct and Ms. Arrington verified that the correct email address had been utilized by DC Water to send the high-water usage alert. Ms. Arrington stated that the customer had been sent high usage alerts on February 5, 2019, February 11, 2019 and February 17, 2019.

Ms. Arrington testified that when water usage goes down without necessity of repair by the utility, the high usage is controlled in the residence. Ms. Arrington asserted that DC Water did not do an interior audit of the house for leaks because the water usage was normal as of March 27, 2019 when the customer contacted the utility. Ms. Arrington, also, checked for record of utility work having been performed in the area of the property and she stated that there is no record of DC Water doing any work in the customer's area during the period in dispute.

Ms. Arrington testified that DC Water pulled the water meter from the property for testing and the meter was determined to have 100.41% accuracy which is within the accepted range of meter accuracy as established by the American Water Works Association. Ms. Arrington asserted that the accepted water meter accuracy range is 98.5% to 101.5%.

Ms. Arrington stated that DC Water has nothing in its customer contact notes stating that the customer wanted his plumber to be allowed to access the water meter.

The customer stated that he did not touch the basement toilet. He asserted that the toilet noise was annoying but that was all.

Ms. Arrington asserted that when she analyzed the meter reads from the property, she saw that water was constantly running between February 3, 2019 and February 18, 2019.

Ms. Arrington stated that she cannot explain why the customer did not receive a February bill statement.

Ms. Arrington changed the customer's alert setting from email to phone call. The customer's daughter stated that she now understands that the meter reads are electronic but she

questions the accuracy and efficiency of the signal system. [REDACTED] pointed out that its cold in February inferring that there would have been ice if water was running. The customer stated that the outside faucets are located at the front driveway and at the trashcan locations in the back of the house and that he did not see anything when he went to either site.

Based upon the foregoing evidence and testimony adduced during the hearing, the Hearing Officer makes the following:

FINDINGS OF FACT

1. The property involved is a single-family residence owned and occupies by [REDACTED] and [REDACTED]. (Testimony of [REDACTED])
2. The period in dispute is 1/19/2019 to 3/18/2019. (Testimony of the parties)
3. There was a significant increase in water usage at the property from 2/3/2019 to 2/18/2019. (Testimony of Kimberly Arrington; DC Water Meter Read log)
4. DC Water sent to the customer HUNA high water usage alerts on 2/5/2019, 2/11/2019 and 2/17/2019. (Testimony of Kimberly Arrington; DC Water customer contact record)
5. The customer verified that the email address utilized by DC Water to send to him high-water usage alerts was a good and valid email address, however, he failed to check his email and did not see the alerts of high usage sent by the utility. (Testimony of [REDACTED])
6. The customer indicated that phone call alerts were his preferred method of notification and his alert preference was changed in DC Water's records for his account. (Testimony of the parties)
7. The customer has the property inspected for leaks and no leaks were found as of 3/27/2019. (Testimony of [REDACTED]; CroppMetcalf invoice dated 3/27/2019)
8. The plumber noted that the customer's basement toilet was making a loud squealing noise when flushed and that the customer wanted to hold off on replacement. (CroppMetcalf invoice dated 3/27/2019)
9. The high-water usage which occurred at the customer's home declined without necessity of repairs being performed by the utility and the customer denies making any repairs. (Testimony of the parties)
10. High water usage was not occurring at the property as of the customer's phone call to DC Water on 3/27/2019 or when the plumber inspected that property, also, on 3/27/2019. (Testimony of the parties; CroppMetcalf invoice dated 3/27/2019)
11. DC Water has meter reads from the property for the entire period in dispute but provides no explanations as to why the customer failed to be billed for service in February 2019. (Testimony of Kimberly Arrington; DC Water Meter Read log)

12. DC Water tested the water meter and the meter was determined to have 100.41% accuracy which is within the accepted range of accuracy for a water meter.
(Testimony of Kimberly Arrington)

CONCLUSIONS OF LAW

1. The burden of proof is on the customer to show, by a preponderance of evidence, that the decision of DC Water is incorrect. (21 DCMR 420.7 and 420.8)
2. DC Water is obligated to investigate a challenge to a bill by doing any or all of the following:
 - (a) Verify the computations made in the formulation of the water and sewer charges;
 - (b) Verify the meter reading for possible meter overread or doubtful registration;
 - (c) If feasible, check the premises for leaking fixtures, underground invisible leaks, and house-side connection leaks;
 - (d) Check the meter for malfunction;
 - (e) Check the water-cooled air conditioning system, if any, for malfunction; and
 - (f) Make a reasonable investigation of any facts asserted by the owner or occupant which are material to the determination of a correct bill.

See, 21 DCMR 403.
3. Meters shall be read quarterly, or at such other times as the Director shall determine. (21 DCMR 308.1 and 309.1)
4. The General Manager shall determine the schedule upon which bills shall be rendered and may establish and implement a monthly billing cycle or such other cycle deemed, in his discretion, appropriate to meet the needs of the Authority... (See, 21 DCMR 308.2)
5. If at any time, a meter, data collection device or transmitter fails to register correctly or collect, deliver or transmit data or otherwise operate or bears evidence of having been tampered with, as determined by qualified personal of the Authority, the water charge for the interval in which the incident occurred shall be based on the average previous water consumption determined by meter readings.(21 DCMR 308.4)

DECISION

The customer in this matter was unable to establish that more likely than not the bill in dispute was incorrect or for some other reason he should not be responsible for its payment.

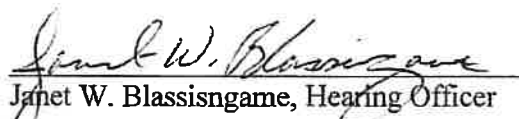
The customer asserted that he had no knowledge of any water issues in or about his property and that he hired a plumber, who inspected the property, and found no leaks. The customer, further, testified that a basement toilet was noisy when flushed but the toilet was not the cause of increased water consumption in his home. The customer stated that high water usage was the result of a two (2) day spike but he believed that either the water meter was defective or

human error caused an inaccurate reading of the water meter.

DC Water presented a meter test reflecting that the water meter was registering water usage at the property within the accepted range for meter accuracy. The utility presented evidence of hourly meter reads from the property and the meter reads showed increased water usage occurring at the property for a period of thirteen (13) days from February 5, 2019 to February 18, 2019. Further, the utility documented that it sent high usage alerts to the customer by email on three (3) dates during which the high usage was occurring. The customer verified the email address on file and used by the utility to send the alerts to him. Lastly, the spike in water usage was over by the time that the customer had a plumber inspect the property for leaks.

The customer complained that he did not receive a billing from DC Water for service in February 2019 but instead the utility sent to him a bill for the period January 19, 2019 to March 18, 2019 which encompassed 59 days of service. DC Water provided no explanation for its failure to bill the customer for a shorter period of time. DC Municipal Regulations proscribe that DC Water must read a water meter on a quarterly basis. Such a regulation implies that the utility must send a bill at least on a quarterly basis, even though, the regulations state that the utility's General Manager has discretion to determine when to bill customer's for service and that a monthly billing cycle can be used or such other billing cycle as the General Manager may deem appropriate to meet the needs of the utility. In this case, the customer was billed beyond a one-month bill cycle but not beyond a quarter cycle. Had the utility exceeded the billing cycle beyond ninety (90) days, the customer may have reason to dispute the billing if harm to him could have been shown. In this case, however, the utility billed before expiration of the quarter. Moreover, the utility sent alerts to the customer of the high usage occurring at the property and had the customer read his emails, the customer would have had the opportunity to do something to stop or impede the high-water consumption that was occurring. As opposed to heeding the alerts sent to him, the customer did nothing until he saw his billing statement and by the time that the billing statement was received, the high usage had stopped.

Based upon the foregoing, it is unfortunate that the customer failed to check his emails and note the alerts sent to him by DC Water that high water usage was occurring at his property. There is no evidence of meter malfunction or that the meter reads were wrong. The utility presented evidence that there was a significant increase in water usage at the property for an extended period of time. There was no evidence of improper billing and as such, the determination by DC Water that the charges were valid and no basis exists to adjust the customer's account is hereby AFFIRMED.


Janet W. Blassisgame, Hearing Officer
Date: January 7, 2020

Copy to:

[REDACTED]
[REDACTED] 8th Street, NW
Washington, DC 20012

BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY
DEPARTMENT OF CUSTOMER SERVICES

IN RE: [REDACTED]
[REDACTED] Lamont St NW
Washington, DC 20012

Account No: [REDACTED]
Case No: 19-442893

Amounts in Dispute: \$1,733.79

Before Janet W. Blassingame, Hearing Officer
November 5, 2019 at 11:00 a.m.

The customer contested a water and sewer bill for the above account for the period of time December 29, 2018 to January 28, 2019. The DC Water and Sewer Authority (DC Water) determined that the dispute was untimely. The customer requested an administrative hearing.

This matter was scheduled for hearing on November 5, 2019. Present for hearing were [REDACTED] and Kimberly Arrington, Supervisor, Customer Support, on behalf of DC Water.

The property involved is a single-family residence owned by [REDACTED]. The house has four (4) bathrooms, one kitchen, two (2) outside faucets (both capped). Seven individuals reside in the home. [REDACTED] stated that he undertook renovating the property between year 2000 and year 2002. He stated that his water and sewer bill has most recently ranged between \$250.00 to \$260.00 per billing cycle.

[REDACTED] stated that he had enrolled in auto-pay with DC Water and when the utility sent the bill now being disputed, the bill payment caused his other checks to bounce due to insufficient funds. The customer stated that he called DC Water.

[REDACTED] testified that he knows about plumbing and that he checked his bathrooms, performed dye tests and did a check thru-out the house to determine if there were any plumbing issues. He stated that he brought new toilets two (2) years ago. He, also, stated that he has a friend who is a master plumber and his friend told him about plumbing.

[REDACTED] stated that he was told by a customer service representative that DC Water would verify the meter read.

The customer pointed out that his water and sewer bill in March 2019 was \$257.00 and in February 2019, the bill had been \$267.62.

Ms. Arrington asserted that the meter reads from the property are actual reads and that they are accurate. She pointed out that DC Water sent the customer HUNA alerts of high-water usage occurring at his property on 1/1/2019, 1/7/2019 and 1/13/2019. She asked [REDACTED] to verify the email address to which the alerts had been sent and the customer does so and stated

that the email belonged to his son who lived in the house with him. [REDACTED] acknowledged that his son told him of the alerts by DC Water. The customer stated that upon being told by his son of the high-water usage alerts, he inspected the house but did not find anything amiss. [REDACTED] stated that he telephoned DC Water on March 4, 2019 and was told that his dispute of the bill was untimely but customer service representative checked the current usage occurring at the property and told him that water usage was back to normal for his residence. [REDACTED] asserted that the usage was a little high but, yet, deemed normal for a house of seven (7) people.

Ms. Arrington testified that high usage seemed to have started at the residence on November 28, 2019. She stated that she could see a change in the pattern of water used at the property in the utility's meter read records. She testified that the residents generally had not used water between 1:00 a.m. to 6:00 a.m. She testified that the customer's water usage returned to normal until 12/11/2019 when she could see in the usage record of the property that water was being used every hour until 1/24/2019 when usage went to a more consistent flow.

Ms. Arrington testified that DC Water pulled the water meter from the property for testing and that water meter was determined to 101.37% accuracy which meant that it was performing within the accepted standard for water meter accuracy which is 98.5% to 101.50% as established by the American Water Works Association.

Ms. Arrington asserted that she believes that the high usage was controlled within the house. She explained that when water usage goes down without repairs being performed, it was caused by something within the property. She asserted that, based upon DC Water's investigation, there was nothing wrong with the water meter at the property. [REDACTED] interjected that he knows that there was nothing wrong at his house. The customer suggested that alerts be sent to him by telephone and Ms. Arrington suggested to him that the threshold for receiving HUNA alerts be lowered in the customer's profile. Ms. Arrington explained that a customer can change the threshold for receiving HUNA alerts. She stated that DC Water will send an alert of high-water usage to a customer when usage goes up 6x normal usage for a property. Ms. Arrington suggested that the customer change the alert threshold from 6x to 3x; Mr. Velasquez agreed that 3x above normal was a better threshold and Ms. Arrington changed his alert threshold during the hearing.

Ms. Arrington asserted that if [REDACTED] had telephoned DC Water in response to the alerts sent of high water usage occurring as opposed to his waiting until after he received a high bill due to high water usage having occurred at his house, DC Water would have sent a service technician out to his property to inspect for leaks and the cause of the high water usage might have been found. Ms. Arrington pointed out that the customer opted to inspect himself and he did not find anything wrong and did not contact the utility.

Based upon the foregoing testimony and evidence adduced during the hearing, the

Hearing Officer makes the following:

FINDINGS OF FACT

1. The property involved is a single-family residence owned and occupied by [REDACTED] and his family. (Testimony of [REDACTED])
2. The customer called DC Water on March 4, 2019 regarding his bill statement dated January 29, 2019 for the period December 28, 2019 to January 28, 2019 and the customer service representative taking his call informed him that his dispute of the bill was untimely, (Testimony of the parties; DC Water Investigative Letter dated 4/2/2019)
3. DC Water sent by email HUNA alerts to the customer of high-water usage occurring at his property. The alerts were sent on 1/1/2019, 1/7/2019 and 1/13/2019. (Testimony of Kimberly Arrington; DC Water customer contact notes)
4. The customer acknowledges knowledge of the high-water usage alerts sent by the utility. (Testimony of [REDACTED])
5. In response to the high-water usage alerts, the customer conducted his own inspection of the property and found nothing amiss. (Testimony of [REDACTED])
6. The customer was enrolled in Auto-pay with the utility and the payment of the January 2019 bill statement was paid from the customer's account. (Testimony of the parties)
7. DC Water tested the water meter and the water meter was determined to have 101.37% accuracy. (Testimony of Kimberly Arrington; DC Water meter test results dated 10/3/2019)
8. Water usage spiked at the property between 12/11/2019 to 1/24/2019 and to a lesser degree on 11/28/18 to 12/1/2018. (Testimony of Kimberly Arrington; DC Water meter read log)
9. Water usage at the property declined after 1/24/2019 and has returned to within normal pattern of usage. (Testimony of the parties; DC Water meter read log)
10. The customer's next bill statement was dated 2/27/19. (Customer's Bill Summary dated 2/27/19)

CONCLUSIONS OF LAW

1. The burden of proof is on the customer to show, by a preponderance of evidence, that the decision of DC Water is incorrect. (21 DCMR 420.7 and 420.8)
2. 21 DCMR §402.1 dictates a customer has ten (10) working days after receipt of the bill in which to challenge a bill that s/he believes to be incorrect and s/he does not pay the bill, or, the customer may pay the bill and note that s/he pays under protest, provided s/he does so before she receives her next bill because a challenge pertains to the most recent charges
3. 21 DCMR402 has been deemed a claim processing rule which DC Water may waive. (Gatewood v. DC WASA, , 82 A.3d 41, D.C. Court of Appeals 2013)

4. Once the customer establishes a prima facie case that s/he did not use and/or was not responsible for payment of the water as charged, the burden shifts to DC Water to rebut the customer's claim that s/he did not use the water as charged. (Gatewood v. DC WASA, Case No: 12-AA-368, decided DC Court of Appeals on July 3, 2013)
5. DC Water is obligated to investigate a challenge to a bill by doing any or all of the following:
 - (a) Verify the computations made in the formulation of the water and sewer charges;
 - (b) Verify the meter reading for possible meter overread or doubtful registration;
 - (c) If feasible, check the premises for leaking fixtures, underground invisible leaks, and house-side connection leaks;
 - (d) Check the meter for malfunction;
 - (e) Check the water-cooled air conditioning system, if any, for malfunction; and
 - (f) Make a reasonable investigation of any facts asserted by the owner or occupant which are material to the determination of a correct bill.See, 21 DCMR 403.2

6. D.C. Municipal Regulations bar adjustment of a customer's bill when all checks and tests provide no reasonable explanation for excessive water consumption. (See 21 DCMR 408 which states: "In cases in which all checks and tests result in inconclusive findings that provide no reasonable explanation for excessive consumption, no adjustment shall be made to the bill for any portion of the excessive consumption, except as may be approved by the General Manager, based upon a demonstration by the owner or occupant that such an adjustment will further a significant public interest.")

DECISION

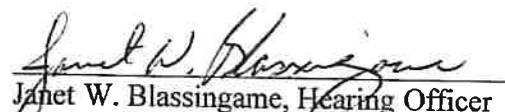
The customer failed to establish that more likely than not the bill in dispute is wrong or for some other reason, he should not be responsible for payment of the water and sewer charges. As a general rule, a property owner is responsible for what occurs on his property and, in this case, it appears that water was being used or wasted at the property. Nothing in the record supports a conclusion that the water usage did not occur or for some reason, the property owner is not responsible for payment to the utility for its water and sewer services.

DC Water determined that the customer's dispute of the bill dated January 29, 2019 was untimely. Pursuant to the regulations, the customer, who paid the bill based upon his enrollment in Auto-Pay, had to contact the utility to dispute the charges before he received his next bill. In this case, the customer was billed on February 27, 2019 for the succeeding bill cycle of 1/29/19 to 2/27/19 and the customer did not contact the utility to dispute the earlier bill dated January 29, 2019 until March 4, 2019. Allowing time for mail receipt (3 days), the customer's call to dispute the January dated billing was untimely. (See, 21 DCMR 402.1) However, DC Water investigated the customer's dispute, set this matter for hearing and the Hearing Officer heard the dispute on its merits, without objections being made the DC Water. As such, DC Water waived its claim processing rule. (See, Gatewood supra.)


On the merits of his dispute, the customer asserted that he checked his property for plumbing issues and found none. DC Water, on the other hand, presented evidence that it tested the water meter from the property and the meter was determined to be functioning within accepted accuracy standards. The utility presented hourly meter reads from the property which reflected the occurrence of high-water usage at the property and pinpointed when the high-water usage occurred and declined. The utility, further, presented testimony and evidence of and the customer acknowledged that high-water usage alerts had been sent to the customer contemporaneous with the time period reflected within the meter read log that high-water usage was occurring at the property.

The customer testified that he knew about plumbing and followed the directions of his friend who was a master plumber and he could find nothing wrong even though the utility sent three (3) alerts of high usage occurring within the house. The inability to find the problem, however, does not excuse the customer found responsibility to pay the utility for water used or lost due to increased consumption. DC Water pointed out during the hearing that had the customer contacted the utility in response to the usage alerts sent to him, the utility would have come out to the property to conduct an inspection for leaks. Likewise, the customer relied upon his knowledge of plumbing issues and elected not to have a licensed plumber inspect his home in response to the utility's alerting him of increased usage occurring at the property. The end result of the customer's response to the alerts sent to him was that high-water consumption occurred at his house for a significant period of time and resulted in his receiving a very high water and sewer bill.

21 DCMR 408 dictates that when checks and tests do not find the cause of excessive water consumption, the customer is responsible for paying the bill. In this case, even though the customer did not find the cause of the increased usage, the utility tested the meter and the meter was functioning properly and it had supporting meter reads reflecting that the water was used. While the utility rejected the dispute based upon claim untimeliness and, then, waived the time limitation and investigated the claim, the conclusion of the Hearing Officer is that the charges are valid and no basis exists for an adjustment of the customer's account. The customer has paid the disputed charge and is not entitled to any refund or other adjustment.


Janet W. Blassingame, Hearing Officer
Date: January 7, 2020

Copy to:


Lamont Street, NW
Washington, DC 20012

BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY
DEPARTMENT OF CUSTOMER SERVICES

IN RE: JMS Onyx, LLC
3419 14th St NW
Washington, DC 20010

Account No: [REDACTED]

Amounts and Periods in Dispute:	
9/27/18 to 10/24/2018=	\$ 776.46
10/25/18 to 11/27/18=	579.09
12/27/18 to 1/25/19=	<u>175.96</u>
	\$1,531.51

Before Janet W. Blassingame, Hearing Officer
November 5, 2019 at 2:00 p.m.

The customer contested water and sewer bills for the above account for the period of time noted above. The DC Water and Sewer Authority (DC Water) investigated the dispute and determined that the charges were valid and no basis existed to adjust the customer's account. The customer requested an administrative hearing.

This matter was scheduled for hearing on November 5, 2019. Present for hearing were: James Simpson, owner of JMS Onyx, LLC and Kimberly Arrington, Supervisor, Customer Support, on behalf of DC Water.

The property involved is a commercial property owned by JMS Onyx, LLC since year 2001. The building has four (4) stories. On the ground level in a bakery opened seven (7) days a week from 8:00 a.m. to 10:00 p.m. with two (2) employees. A construction company with five (5) employees occupies the remaining levels of the building. The bakery has one bathroom and an extra sink; no food preparation is done on the premises. There is a kitchen and one bathroom on each remaining floor. In addition, the 2nd floor has a dishwasher. The building is monitored by a single water meter and the water and sewer bill has ranged between \$125.00 to \$180.00 per billing cycle.

Mr. Simpson testified that he checked the building in October 2018 and, then, hired a plumber on November 20, 2018. Mr. Simpson testified that he hired Maralis Plumbing & Mechanical LLV and all of the toilets and sinks within the building were checked, that dye tests were performed and no leaks were found. Mr. Simpson stated that the plumber observed water on top of the water meter. Ms. Arrington responded that it was not abnormal to have water in the meter pit.

Mr. Simpson stated that he was not really contesting charges for the period of 12/27/18 to 1/25/19 in the amount of \$175.96 and that he had not listed to be in dispute the period of 11/28/18 to 12/26/18 billed in the amount of \$256.95.

Mr. Simpson stated that he had no idea what was going on since the second billing was high as well.

Ms. Arrington asserted that the charges were based upon actual meter reads and she pointed out that the customer had telephoned DC Water on November 9, 2018 in response to receiving a HUNA alert of high-water usage occurring at the property. Mr. Simpson interjected that he did not do any repairs.

Ms. Arrington testified that water usage at the building was constant but not necessarily high. She testified that DC Water tested the water meter and the meter was determined to have 101.16% accuracy which is within the accepted range of water meter accuracy as established by the American Water Works Association to be 98.5% to 101.5%.

Ms. Arrington concluded stating that water usage at the property slowed as 12/25/18.

Based upon the foregoing testimony and evidence adduced during the hearing, the Hearing Officer makes the following:

FINDINGS OF FACT

1. The property involved is a four (4) story commercial building owned by JMS Onyx LLC. (Testimony of James Simpson)
2. The period in dispute is September 27, 2018 to November 27, 2018. (Testimony of James Simpson)
3. There was a spike in registering water usage at the property during the period in dispute. (Bill Summaries dated 10/25/18 and 11/27/18)
4. Water usage at the building declined in December 2018 and has remained within historical levels. (DC Water Usage At A Glance on Bill Summary dated 1/28/19)
5. The customer checked the building for plumbing problems in October 2018 and he hired a plumber to inspect the building as of November 20, 2018. With respect to both inspections, no leaks were found. (Testimony of James Simpson; Morales Plumbing and Mech LLC job invoice dated 11/20/18)
6. DC Water tested the water meter and the meter was determined to be functioning within accepted range of accuracy at 101.16%. (Testimony of Kimberly Arrington; DC Water meter test results)
7. DC Water review the meter reads from the property and found no irregularity although usage was noted to have been constant during the period in dispute. (Testimony of Kimberly Arrington)
8. DC Water sent the customer a HUNA alert of high-water usage occurring at the building and the customer called the utility in response to the alert on November 9, 2018. (Testimony of the parties)

CONCLUSIONS OF LAW

1. The burden of proof is on the customer to show, by a preponderance of evidence, that the decision of DC Water is incorrect. (21 DCMR 420.7 and 420.8)
2. DC Water is obligated to investigate a challenge to a bill by doing any or all of the following:
 - (a) Verify the computations made in the formulation of the water and sewer charges;
 - (b) Verify the meter reading for possible meter overread or doubtful registration;
 - (c) If feasible, check the premises for leaking fixtures, underground invisible leaks, and house-side connection leaks;
 - (d) Check the meter for malfunction;
 - (e) Check the water-cooled air conditioning system, if any, for malfunction; and
 - (f) Make a reasonable investigation of any facts asserted by the owner or occupant which are material to the determination of a correct bill.

See, 21 DCMR 403.

3. D.C. Municipal Regulations bar adjustment of a customer's bill when all checks and tests provide no reasonable explanation for excessive water consumption. (See 21 DCMR 408 which states: "In cases in which all checks and tests result in inconclusive findings that provide no reasonable explanation for excessive consumption, no adjustment shall be made to the bill for any portion of the excessive consumption, except as may be approved by the General Manager, based upon a demonstration by the owner or occupant that such an adjustment will further a significant public interest.")

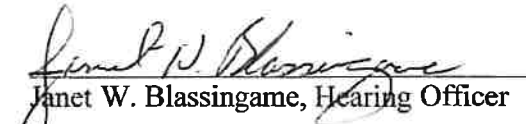
DECISION

The customer failed to establish that more likely than not the bills in dispute are wrong or for some other reason, he should not be responsible for payment of the water and sewer charges. As a general rule, a property owner is responsible for what occurs on his property and, in this instance, tests and checks failed to unearth why high-water usage was occurring at the building. In instances in which checks and test result in inconclusive findings that provide no reasonable explanation for excessive consumption, DC Water is barred by regulation from adjusting a customer's bill with the very narrow exception of a discretionary act by the General Manager when an adjustment is deemed to further a significant public interest. (See, 21 DCMR 408)

In this case, no leaks were found by the customer in inspecting the building while DC Water tested its water meter and the meter was found to be functioning appropriately and it had meter reads from the property reflecting the water usage for which it charged the customer. Moreover, the utility sent the customer an alert notifying of high-water usage occurring at the building. The onus is on the customer to maintain his property and he is responsible for water

consume therein. The evidence established that the customer knew, based upon the HUNA alert, that high water usage was occurring at the property and he did not have a plumber in to inspect the building for several days thereafter. Unfortunately, when the customer did have a plumber come in to inspect, the source of the usage was not found. The usage did however decline without intervention/repair by the utility and, as such, whatever cause the increase usage was within the building and the responsibility of the owner.

Accordingly, DC Water's determination that the charges were valid and no basis exists for adjustment of the customer's bill is hereby AFFIRMED.


Janet W. Blessingame, Hearing Officer
Date: January 7, 2020

Copy to:

Mr. James Simpson
JMS ONYX, LLC
3419 14th Street, NW
Washington, DC 20010

BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY
DEPARTMENT OF CUSTOMER SERVICES

IN RE: [REDACTED]
[REDACTED] Kalmia Road, NW
Washington, DC 20012

Account No: [REDACTED]
Case No: 19-329881

Dates and Amounts in Dispute:
12/21/2018 to 1/22/2019= \$ 329.71
1/23/2019 to 2/21/2019 = \$185.20
2/29/2019 to 3/30/2019= \$162.38
3/21/20190 to 4/18/2019= \$190.00
4/19/2019 to 5/20/2019= \$168.00
5/21/2019 to 6/20/2019= \$196.78

Before Janet W. Blassingame, Hearing Officer
November 7, 2019 at 11:00 a.m.

The customer contested water and sewer bills for the above account for the periods of time outlined above. The DC Water and Sewer Authority (DC Water) investigated the water and sewer charges and determined that the charges were valid based upon actual meter readings and that no basis warranted an adjustment of the customer's account. The customer requested an administrative hearing.

This matter was scheduled for hearing on November 7, 2019. Present for hearing were [REDACTED] and Kimberly Arrington, Supervisor, Customer Support, on behalf of DC Water.

The property involved is a single-family residence owned by [REDACTED] since year 1975. The house has two (2) full bathrooms and two (2) half bathrooms, one kitchen, radiator heating, a washing machine, utility sink, a dishwasher and one outside faucet. Historically, the water and sewer bill has ranged between Sixty Dollars (\$60.00) and Seventy Dollars (\$70.00) per billing cycle.

[REDACTED] testified that she will have one guest who stays for two (2) days over the holidays and she will host a holiday dinner but she has never experienced a spike in water usage.

The customer stated that she called DC Water and was told to check the toilets within the house. [REDACTED] testified that she hired a plumber, Gary Smith, and the plumber found no leaks. [REDACTED] stated that even though no leaks were detected, she had new flappers and internal mechanisms installed in the toilets in April or May of 2019. The customer testified that DC Water also inspected her house for leaks on March 14, 2019 by conducting dye tests and no leaks were found.

[REDACTED] complained that the utility stopped sending paper bills to her.

The customer asserted that nothing is running in her house. She further stated that she received a Friendly Reminder from DC Water, so she paid the bill.

Ms. Arrington testified that the meter reads are actual and accurate. She stated that DC Water pulled the water meter for testing on August 9, 2019 and the meter was determined to have 101.28% accuracy which is within the accepted standards for meter accuracy as established by the American Water Works Association. She testified that the accuracy standard is 98.5% to 101.5%.

Ms. Arrington testified that the customer received a new water meter in year 2018 because the prior meter was fifteen (15) years old. The new meter was installed on September 4, 2018 and the customer's used water as follows:

9/4/2018 to 9/21/2018 – 2.68 CCF- \$99.43
9/21/2018 to 10/18/2018 – 4.8 CCF - \$90.31
11/19/2018 to 11/21/2018 – 5.87 CCF - \$105.54
11/22/2018 to 12/20/2018 – 10.92 CCF - \$167.81

Ms. Arrington testified that the usage graph reflects that periodic spikes in water usage have occurred at the property on a day-by-day basis. She stated that she sees no continuous running of water at the property. She also pointed out that because the meter was old, the customer could have been using more water than was registering on the water meter and, as such, her bills did not reflect her actual water usage.

Ms. Arrington stated that DC Water plans to cancel estimated billing in the customer's account for the dates 8/20/2018, 9/20/2018 and 10/21/2018 because the billing system did not pick-up the existence of the new water meter. Ms. Arrington asserted that the customer's bill dates are 10/21/2018, 9/3/2018 and 10/1/2018.

Ms. Arrington pointed out that the customer has used 5 CCF of water since the water meter was pulled for testing on August 8, 2019.

Ms. Arrington pointed out that the customer has entered into a payment plan and pays her current charges. She also pointed out that the customer received HUNA alerts of high-water usage occurring at the house. Ms. Arrington stated that she would ensure that all late fees and penalties were removed from the customer's account.

██████████ reiterated that her water usage has not changed to account for the decline in usage reflected after August 8, 2019 when the current water meter was installed at the property.

Based upon the foregoing evidence and testimony adduced during the hearing, the Hearing Officer makes the following:

FINDINGS OF FACT

1. The property involved is a single-family residence owned and occupied by [REDACTED] (Testimony of [REDACTED])
2. The periods in dispute are:

12/21/2018 to 1/22/2019=	\$ 329.71
1/23/2019 to 2/21/2019 =	\$185.20
2/29/2019 to 3/30/2019=	\$162.38
3/21/2019 to 4/18/2019=	\$190.00
4/19/2019 to 5/20/2019=	\$168.00
5/21/2019 to 6/20/2019=	\$196.78
3. DC Water installed a new meter at the residence on 9/4/ 2018.
4. The replaced water meter had been in use at the property for fifteen (15) years and, although the utility did not test the accuracy of the water meter, it contended that the meter's accuracy may have declined over time. (Testimony of Kimberly Arrington)
5. The customer experienced an increase in water usage starting sometime between 11/21/2018 and 12/20/2018 and high usage continued to register on the water meter until 6/20/2019. (DC Water meter read report)
6. DC Water sent high water usage alerts (HUNA) to the customer on 3/23/19, 3/29/19, 6/20/19 and 6/26/19 advising that high usage was occurring at the home. (Testimony of Kimberly Arrington)
7. Reported water usage at the property declined, based upon the meter read transmitted 7/19/2019, but thereafter, DC Water estimated the customer's water usage restoring usage back to volume recorded in previous months of high usage. (DC Water meter read report)
8. DC Water estimated the customer's water usage for three (3) billing cycles- 7/19/2019 thru 10/21/2019 because meter reads in its Star meter read transmittal report were backwards. The utility noted "implausible read to be in line with previous reads due to backwards reads in star". (DC Water Note log dated 9/3/2019, 10/01/2019)
9. DC Water submitted into evidence during the hearing, its meter read log for the period 8/9/2019 to 11/7/2019 and on the face of log, no backward reads are evident. (review by the Hearing Officer)
10. The customer was unaware of any leaks or plumbing issues within her home and she hired a plumber to inspect the property and no leaks were detected. (Testimony of [REDACTED])
11. DC Water inspected the property and no leaks were found. (Testimony of the parties; DC Water Service Work Order dated 3/19/19)
12. DC Water pulled the water meter for testing and the meter was determined to have 101.28% accuracy. (Testimony of Kimberly Arrington; DC Water Shop Test dated 10/2/2019)

CONCLUSIONS OF LAW

1. The burden of proof is on the customer to show, by a preponderance of evidence, that the decision of DC Water is incorrect. (21 DCMR 420.7 and 420.8)

2. Once the customer establishes a prima facie case that s/he did not use and/or was not responsible for payment of the water as charged, the burden shifts to DC Water to rebut the customer's claim that s/he did not use the water as charged. (Gatewood v. DC WASA, 82 A.3d 41, D.C. Court of Appeals 2013)
3. DC Water is obligated to investigate a challenge to a bill by doing any or all of the following:
 - (a) Verify the computations made in the formulation of the water and sewer charges;
 - (b) Verify the meter reading for possible meter overread or doubtful registration;
 - (c) If feasible, check the premises for leaking fixtures, underground invisible leaks, and house-side connection leaks;
 - (d) Check the meter for malfunction;
 - (e) Check the water-cooled air conditioning system, if any, for malfunction; and
 - (f) Make a reasonable investigation of any facts asserted by the owner or occupant which are material to the determination of a correct bill.
See, 21 DCMR 403.2
4. If the investigation reveals doubtful meter registration or possible meter malfunction, the Department shall remove the meter and test it. (21 DCMR 405.2)
5. If the results of the tests under §405.2 verify doubtful registration or meter malfunction, the bill shall be adjusted to equal the average consumption of water at the same premises for up to three (3) previous comparable periods for which records are available. (21 DCMR 405.3)
6. The repair of leaking faucets, household fixtures and similar leaks, and the repair of malfunctioning water-cooled air conditioning equipment, are the responsibility of the owner or occupant. (21 DCMR 406)
7. D.C. Municipal Regulations bar adjustment of a customer's bill when all checks and tests provide no reasonable explanation for excessive water consumption. (See 21 DCMR 408 which states: "In cases in which all checks and tests result in inconclusive findings that provide no reasonable explanation for excessive consumption, no adjustment shall be made to the bill for any portion of the excessive consumption, except as may be approved by the General Manager, based upon a demonstration by the owner or occupant that such an adjustment will further a significant public interest.")

DECISION

The customer established a prima facie case that she did not use the water as charged in the disputed billings but the customer failed to establish by a preponderance of the evidence that more likely than not the bills being disputed were wrong.

The customer experienced a significant increase in reported water usage at her home approximately three (3) months after a new water meter was installed at the property in September 2018. High water usage continued for six (6) billing cycle and, then, declined. During the period that reported high water usage was occurring at the home, DC Water sent alerts to the customer six (6) times. The customer testified that she was not aware of any leaks or plumbing issues within her home and that a plumber was unable to detect any leaks. Likewise, the customer testified that DC Water sent a service technician to inspect the home and no leaks were detected. DC Water, on the other hand, pointed out the age of the replaced water meter and asserted that the customer's prior reported water usage on the old meter might have been wrong because the old meter may not have been capturing all of the water used. The utility, further, tested the water meter installed at the property and in use during the dispute periods and the water meter was determined to be functioning within accepted standards of water meter accuracy. The utility, also, presented at meter read logs reflecting hourly usage at the property.

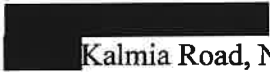
Pursuant to 21 DCMR 408 when all tests and checks fail to determine the cause of high water usage occurring at a property, DC Water is barred from adjusting a customer's account due to the excessive water used. In this case, the meter test affirmed the accuracy of the water meter, the MTU was transmitting meter reads on an hourly basis, and despite inspections by the utility and a private plumber, no leaks were found to provide explanation for the increase in water usage at the home. Under such facts, it must be accepted that the water as reported was used at the premises and, as such, the customer is responsible for payment of the charges for service.

Interestingly, the evidence did show that beyond the period in dispute, DC Water detected a problem with the meter read transmissions from the property for the billing cycles occurring in August, September and October 2019 and it estimated the customer's water usage. The Hearing Officer reviewed the meter reads for the estimated billing cycles and failed to see any backward meter reads. Ms. Arrington stated during the hearing that the utility intended to cancel the bills based upon estimated usage and re-bill the customer based upon the actual meter reads. Ms. Arrington asserted that from the date that the meter was removed for testing- 8/8/2019 up to the hearing date- the customer had only used 5 CCF of water. As such, the customer should see a significant adjustment to her account based upon a re-billing using the actual meter reads.

Based upon the foregoing, the determination by DC Water that the bills in dispute are valid and no basis exists to adjust the customer's account for the period 1/23/2019 to 6/20/2019 is here AFFIRMED. DC Water, however, has stated its intention to re-bill and adjust the customer's account for the bill cycles of August, September and October 2019 based upon actual meter reads and, if the utility fails to do so as indicated, the customer will have basis to dispute and appeal its inaction.

By: Janet W. Blassingame
Janet W. Blassingame, Hearing Officer
Date: January 7, 2020

Copy to:


Kalmia Road, NW
Washington, DC 20012

BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY
DEPARTMENT OF CUSTOMER SERVICES

IN RE: [REDACTED]
[REDACTED] L Street NE
Washington, DC 20002

Account No: [REDACTED]
Case No: 19-598116

Amounts in Dispute: \$1,167.71

Before Janet W. Blassingame, Hearing Officer
November 13, 2019 at 10:00 a.m.

The customer contested a water and sewer bill for the above account for the period of time March 6, 2019 to April 3, 2019. The DC Water and Sewer Authority (DC Water) investigated the water and sewer charges and determined that the charges were valid based upon actual meter readings and that no basis warranted an adjustment of the customer's account. The customer requested an administrative hearing.

This matter was scheduled for hearing on November 13, 2019. Present for hearing were [REDACTED], along with her daughter, [REDACTED], and, Kimberly Arrington, Supervisor, Customer Support, on behalf of DC Water.

The property involved is a residence owned by [REDACTED]. The property has a basement apartment and upstairs living unit. The property has three (3) bathrooms, two (2) kitchens, two (2) washing machines, two (2) dishwashers. [REDACTED] has occupied the property for forty (40) years and currently, four (4) people live in the house. The water and sewer bill has historically ranged between One Hundred Fifteen Dollars (\$115.00) and One Hundred Fifty Dollars (\$150.00) per billing cycle.

[REDACTED] testified that she contacted DC Water when her mother received the bill in dispute and she requested an inspection of the house. [REDACTED], also, stated that she called Michael & Sons which sent a plumber on April 15, 2019 to inspect the house for leaks and no leaks were found. [REDACTED] stated that the plumber recommended that the toilets be changed and, in fact, the toilets were changed on April 15, 2019.

The Hearing Officer interjected that looking at the plumber's report by Michael & Son, it appears that the plumber noted finding a running toilet in the basement of the house. Further, that DC Water sent the customer an email noting high water usage occurring at the property. [REDACTED] responded that she saw the email from DC Water only after receiving the bill.

[REDACTED] stated that the tenants in the basement unit of the house moved in in the beginning of February 2019. [REDACTED] stated that she inspected the basement unit before the tenants moved into the unit and that she did not hear water running or see water on the floor.

Ms. Arrington stated that HUNA alerts are set automatically to be sent by email unless a customer sets the system to make an alert by phone call. She stated that currently the customer is

set to receive a HUNA alert when usage hits a 6x above normal usage. Ms. Arrington told the customer that she would change the customer's alert threshold to 2x above normal usage and, per the request of the customer and her daughter, she would change the email address for alert notifications from [REDACTED] email to that of her daughter, [REDACTED] email.

Ms. Arrington asserted that the meter readings from the property are correct. She testified that DC Water conducted an interior audit of the house on April 18, 2019 and no leaks were found. Ms. Arrington clarified the technician's findings, however, by noting that the service technician inspected the property after repairs had been performed by the plumber hired by the customer.

Ms. Arrington testified that DC Water removed the water meter for testing and the water meter was determined to have 99.70% accuracy which is within the accepted standard for water meter accuracy as established by the American Water Works Association.

Ms. Arrington testified that DC Water conducted an underground inspection of the property on April 16, 2019 and no underground leak was found.

Ms. Arrington noted that, per the meter reads, one can see that in January 2019 the customer had period during which no water usage was occurring within the house. Ms. Arrington pointed out that in February 2019, however, usage within the home starts to increase and based upon the testimony of [REDACTED], the increase occurred after the new tenants moved into the basement unit. Ms. Arrington testified that high water usage was occurring at the property from March 5, 2019 to April 15, 2019.

The Hearing Officer, again, interjected that upon review of the customer's bill dated March 26, 2019, it appears that water usage at the property was higher than normal. The Hearing Officer noted that the customer and/or her daughter did not contact DC Water until [REDACTED] received the bill dated April 4, 2019 and by then the balance was \$2,389.07 with arrears in the amount of \$1,221.36. The Hearing Officer noted that the customer failed to pay her March invoice for service.

Ms. Arrington informed the customer that she would remove assessed late fees from the account retroactive to March 7, 2019.

Based upon the foregoing testimony and evidence adduced during the hearing, the Hearing Officer makes the following:

FINDINGS OF FACT

1. The property involved is a two (2) unit residence owned by [REDACTED]. (Testimony of [REDACTED])
2. The period in dispute is March 6, 2019 to April 3, 2019. (Testimony of the parties)
3. High water usage was occurring at the property prior to the period in dispute and the same was reflected on the bill dated 3/26/2019 for the period 2/6/19 to 3/5/19 resulting in a charge of \$1,121.36 for 88.03 CCF of water. (Bill Summary dated 3/26/19)

4. The charge for the period in dispute was \$1,167.71 for 91.79 CCF of water. (Bill Summary dated 4/4/19)
5. Increased usage occurred at the property between March 5, 2019 and April 15, 2019. (Testimony of Kimberly Arrington)
6. DC Water sent a HUNA alert to the customer on March 29, 2019 of high-water usage occurring at the property. (DC Water Customer Contact Log dated 3/29/2019)
7. The customer hired a plumber to inspect the property for leaks and the plumber found that all of the toilets in the home were in need of a rebuild and that the basement toilet was running; the plumber recommended replacing the parts inside the toilet tank. (Michael & Sons invoice dated 4/15/2019)
8. The customer replaced the toilets in the home on April 15, 2019. (Testimony of [REDACTED])
9. DC Water conducted an interior inspection of the house for leaks on April 18, 2019 and no leaks were detected. (DC Water Customer Contact Log dated 4/30/2019)
10. DC Water conducted an underground inspection of the property on April 16, 2019 and no underground leaks were detected. (Testimony of Kimberly Arrington; DC Water Service order dated 4/16/19)
11. DC Water tested the water meter and the meter was determined to have 99.70% accuracy. (Testimony of Kimberly Arrington; DC Water Meter Shop Test Results dated 10/07/2019)

CONCLUSIONS OF LAW

1. The burden of proof is on the customer to show, by a preponderance of evidence, that the decision of DC Water is incorrect. (21 DCMR 420.7 and 420.8)
2. D.C. Municipal Regulations relating to water and sanitation bar adjustment of a customer's bill if excessive water consumption is the result of a leaking faucet, household fixtures, and similar leaks or the malfunctioning water-cooled air conditioning equipment. (21 DCMR 406)

DECISION

The customer failed to establish a prima facie case that more likely than not the bill in dispute was wrong. The evidence and testimony established that when the customer hired a plumber to inspect her property for leaks, the plumber found her basement toilet running. The toilet was replaced on April 15, 2019 and according to the meter reads from the property, the high-water usage stopped on April 15, 2019. Moreover, DC Water sent notice to the customer of high-water usage occurring at her property and the customer's prior bill from the utility, also, reflected that high-water usage was occurring at the property. The evidence and testimony established that the customer failed to take action when notified by the alert by DC Water and when she received the earlier bill for service for the period February 6, 2019 to March 5, 2019 and that the customer, only, took action to investigate and mitigate her loss after she received the bill in dispute which was dated April 4, 2019.

The evidence and testimony established that the water meter was functioning within

accepted perimeters for meter accuracy. DC Water, also, presented evidence of meter reads from the property reflecting when usage increased and declined, when the utility sent HUNA alerts to the customer, that there was no underground leak at the property and that, by April 18, 2019 when the utility sent a service technician to inspect the property for leaks, no leaks were detected.

Based upon the above facts, the weight of the evidence was against the customer that her bill was incorrect and all evidence supports the conclusion that the defective running toilet found in the basement by the plumber from Michael & Sons was most likely the cause of high water consumption at the residence.


Pursuant to the DC Municipal Regulations if excessive water consumption is the result of a household fixture such as a toilet, DC Water is barred from adjusting a customer's bill. (See, 21 DCMR 406)

Accordingly, DC Water's determination that the charges are valid and no basis exists to adjust the customer's bill is hereby AFFIRMED.

By: Janet W. Blessingame
Janet W. Blessingame, Hearing Officer

Date: January 7, 2020

Copy to:


L Street, NE
Washington, DC 20002

BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY
DEPARTMENT OF CUSTOMER SERVICES

IN RE: Hilbert Humphrey
64 New York Ave. NE, 3rd Fl.
Washington, DC 20002

Account No: [REDACTED]
Case No: 19-54894

Service Address:
2117 R. Street, SE

Amount in Dispute - \$ 3,312.85

Before Janet W. Blassingame, Hearing Officer
November 13, 2019 at 1:00 pm.

ORDER OF DEFAULT

The customer contested a water and sewer bill for the above account for the period of time March 23, 2019 to May 22, 2019. The DC Water and Sewer Authority (DC Water) investigated the water and sewer charges and determined that the charges were valid and no adjustment of the account was warranted. DC Water, further, declared that the account had been billed based on actual meter readings. The customer appealed DC Water's decision and requested an administrative hearing.

This matter was scheduled for hearing on November 13, 2019. Present for hearing was Kimberly Arrington, Supervisor, Customer Support, DC Water on behalf of DC Water.

The customer was afforded an extended grace period due to the awareness of so many customers having difficulty finding the new location of DC Water, however, although the hearing was delayed until 2:00 p.m., the customer failed to appear. The letter of notification that was sent to the customer advised him that "Failure to appear at your scheduled hearing may result in a default judgment being entered against you." (See, 21 DCMR 415.3) Accordingly, based upon customer's failure to appear or to request that the hearing be postponed, a default judgment is entered against the customer and the determination that the bill is valid is affirmed.

By: *Janet W. Blassingame*
Janet W. Blassingame, Hearing Officer

Date: January 7, 2020

Copy to:

Mr. Hilbert Humphrey
64 New York Avenue, NE, 3rd Fl.
Washington, DC 20002

BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY
DEPARTMENT OF CUSTOMER SERVICES

IN RE: Scott Hamilton
d/b/a Hamilton's Bar & Grill
233 2nd Street, NW
Washington, DC 20001

Account No: [REDACTED]
Case No: 19365546

Amounts in Dispute: \$2,326.56

Before Janet W. Blassingame, Hearing Officer
November 6, 2019 at 2:00 p.m.

The customer contested a water and sewer bill for the above account for the period of time January 31, 2019 to March 1, 2019. The DC Water and Sewer Authority (DC Water) investigated the water and sewer charges and determined that the charges were valid and no basis existed to adjust the customer's account. The customer requested an administrative hearing.

This matter was scheduled for hearing on November 6, 2019. Present for hearing were Scott Hamilton and Kimberly Arrington, Supervisor, Customer Support, on behalf of DC Water.

The property involved is a commercial building rented by Scott Hamilton for Hamilton's Bar & Grill. The business has operated at the site for thirteen (13) years. The property has five (5) bathrooms- one single and four (4) double occupancy bathrooms, one kitchen, two (2) bar sinks, a utility sink. There are ten (10) to fifteen (15) employees and the bar & grill is open seven (7) days a week from 11:00 a.m. to 11:00 p.m. The water and sewer bill for the business has historically ranged between Four Hundred Sixty Dollars (\$460.00) to Five Hundred Dollars (\$500.00) per billing cycle.

Mr. Hamilton pointed out that the disputed bill is for thirty (30) day period with a charge of \$2,326.56. He stated that the period in dispute is January 31, 2019 to March 1, 2019 and the bill was dated March 4, 2019. Mr. Hamilton compared the charge for water and sewer service with the prior bill received for the period September 1, 2018 to January 30, 2019 which was dated February 4, 2019 and pointed out that he had been charged for 109.34 CCF of water usage.

Mr. Hamilton stated that he contacted DC Water on March 5, 2019 after receiving the March 4, 2019 dated bill. He testified that the water meter had no reading until February 25, 2019 at 11:00 p.m. but the daily average usage was 716 CCF while on-line with reads, the average usage was 79 CCF.

The customer complained that DC Water sent no alerts of high-water usage occurring at the property and he asserted that the month of February is traditionally a "slow" business month.

Mr. Hamilton testified that he checked all of the toilets within the business and found none of the toilets running and he observed no obvious leaks within any bathroom. He stated

that he did not hire a plumber to performed the inspection and that there were no repairs performed or equipment changes.

Mr. Hamilton pointed that water usage for his business reflected on-line was normal.

Mr. Hamilton testified that DC Water conducted an underground inspection for leaks and no leak was detected. Mr. Hamilton added that the service technician told him that other customers were experiencing issues with the new water meters. Mr. Hamilton stated that DC Water installed a new water meter at his property on September 19, 2018. He testified that his February 4, 2019 bill covered the period of meter change and that prior to the meter change, water usage was registered at 21.98 CCF and after the meter change usage registered at 87.35 CCF, making total usage at 109.34 CCF for the period September 1, 2018 to January 30, 2019.

Mr. Hamilton stated that he paid the disputed bill only due to having been enrolled in auto-pay.

Ms. Arrington testified that the meter read was accurate. She stated that the MTU at the property was not transmitting reads from the water meter. She testified that DC Water estimated the customer's water usage for four (4) months and that the actual meter read was a field read. She acknowledged that the utility had no Star reads from the property until February 25, 2019 even though the water meter had been installed on September 20, 2018. She stated that the MTU was programed on January 30, 2019.

Ms. Arrington testified that DC Water should not have billed the customer in the manner that it did after estimating his usage for an extended period.

Ms. Arrington stated that the water meter after testing was determined to have 100% accuracy.

Ms. Arrington informed that customer that his bill would be adjusted based upon daily average consumption based upon historical usage.

Based upon the foregoing testimony and evidence adduced during the hearing, the Hearing Officer makes the following:

FINDINGS OF FACT

1. The property involved is a commercial building in which the customer's operates a bar and grill known as "Hamilton's Bar & Grill". (Testimony of Scott Hamilton)
2. The period in dispute is January 31, 2019 to March 1, 2019. (Testimony of the parties)
3. DC Water installed a new water meter at the property on September 20, 2018, however, the MTU failed to transmit meter reads from the property and the utility did not have any transmitted meter reads until February 25, 2019. (Testimony of Kimberly Arrington)
4. DC Water billed the customer based upon estimated water usage for four (4) months. (Testimony Kimberly Arrington)
5. DC Water tested the water meter from the property and the meter was determined to have 100% accuracy. (Testimony of Kimberly Arrington)

6. DC Water conducted an underground leak inspection and no leak was found. (Testimony of Kimberly Arrington)
7. DC Water acknowledged that it failed to properly bill the customer, due to the extended period of estimating usage, and that the customer's account is appropriately to be adjusted. (Testimony of Kimberly Arrington)

CONCLUSIONS OF LAW

1. The burden of proof is on the customer to show, by a preponderance of evidence, that the decision of DC Water is incorrect. (21 DCMR 420.7 and 420.8)
2. DC Water is obligated to investigate a challenge to a bill by doing any or all of the following:
 - (a) Verify the computations made in the formulation of the water and sewer charges;
 - (b) Verify the meter reading for possible meter overread or doubtful registration;
 - (c) If feasible, check the premises for leaking fixtures, underground invisible leaks, and house-side connection leaks;
 - (d) Check the meter for malfunction;
 - (e) Check the water-cooled air conditioning system, if any, for malfunction; and
 - (f) Make a reasonable investigation of any facts asserted by the owner or occupant which are material to the determination of a correct bill.
See, 21 DCMR 403.
3. Meters shall be read quarterly, or at such other times as the Director shall determine. (21 DCMR 308.1 and 309.1)
4. If at any time, a meter, data collection device or transmitter fails to register correctly or collect, deliver or transmit data or otherwise operate or bears evidence of having been tampered with, as determined by qualified personnel of the Authority, the water charge for the interval in which the incident occurred shall be based on the average previous water consumption determined by meter readings. (21 DCMR 308.4)
5. DC Water is granted the authority to establish, adjust, levy, collect and abate charges for services, facilities, or commodities furnished or supplied by it, pursuant to D.C. Code §34-2202.03(11)

DECISION

DC Water reversed its determination that the customer was not entitled to an adjustment of his account and, as such, based upon the utility's admission of error in billing, the customer's

account shall be, if not already having been, adjusted to reflect a charge for service for the period of January 31, 2019 to March 1, 2019 based upon average previous water consumption.

DC Water has authority to estimate a customer's water usage, however, pursuant to the D.C. Municipal Regulations, DC Water is obligated to read a customer's water meter at least on a quarterly basis and, as such, the utility should not estimate a customer's water usage for an period exceeding three (3) months. (See, 21 DCMR 308 and 309) In this case, the utility admitted that it had estimated the customer's water usage for four (4) months and that it should have billed the customer based upon historical usage.

Even though the utility tested the water meter and the meter was determined to be within an appropriate range of accuracy, the evidence established that the MTU was not transmitting meter reads for an extended period of time and that the utility failed to obtain a meter reading.

By: Janet W. Blassingame
Janet W. Blassingame, Hearing Officer

Date: January 7, 2020

Copy to:

Mr. Scott Hamilton
Hamilton's Bar and Grill
233 2nd Street, NW
Washington, DC 20001

BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY
DEPARTMENT OF CUSTOMER SERVICES

IN RE: [REDACTED]
[REDACTED] 53rd Street SE
Washington, DC 20019

Account No: [REDACTED]
Case No: 19-488395

Amounts in Dispute: \$783.35

Before Janet W. Blassingame, Hearing Officer
November 7, 2019 at 10:00 a.m.

The customer contested a water and sewer bill for the above account for the period of time March 16, 2019 to April 18, 2019. The DC Water and Sewer Authority (DC Water) investigated the water and sewer charges and determined that the charges were valid based upon actual meter readings and that no basis warranted an adjustment of the customer's account. The customer requested an administrative hearing.

This matter was scheduled for hearing on November 7, 2019. Present for hearing were [REDACTED] and Kimberly Arrington, Supervisor, Customer Support, on behalf of DC Water.

The property involved is a single-family residence owned by [REDACTED]. The house is occupied by two (2) adults and two (2) children. The house has one and one-half (1 ½) bathrooms, one kitchen, a washing machine, a utility sink, and one outside faucet. The water and sewer bills have averaged Two Hundred Dollars (\$200.00) per billing cycle.

[REDACTED] testified that when she received the water and sewer bill which she is now disputing, she just prayed. She stated that she was afraid of her water getting cut-off.

[REDACTED] asserted that she does not use an abundant amount of water. She stated that she washes clothing on a bi-weekly basis and that every 2 – 3 months, it is her practice to check for leaks within the house. [REDACTED] testified that DC Water conducted an interior inspection of her home for leaks and no leaks were found.

[REDACTED] stated that she has no explanation for the high bill received from DC Water. When asked if she received any high-water usage alerts from the utility, the customer stated that her phone service has been off since last month and, as such, she was not aware of any alerts.

[REDACTED] stated that DC Water changed the water meter at her property and her water and sewer bill went back to normal next billing cycle.

Ms. Arrington asserted that the meter read was correct. She stated that a new water meter was installed at the property on March 18, 2019. She explained that the customer's water usage had been estimated by the utility since November 21, 2018 because the MTU was not working.

Ms. Arrington testified that DC Water has estimated billing of the customer based upon prior usage and did so until March 17, 2019. Ms. Arrington stated that the utility obtained a meter read from the property on March 17, 2019 based upon a technician going out on the service order. She stated that the MTU at the property started transmitting as of March 18, 2019 and based upon the meter reads, she sees that water was being used every hour almost.

Ms. Arrington asserted that DC Water was unable to test the water meter in its investigation of the charges because the meter was too deep within the meter pit. She stated that an audit was done on May 3, 2019.

Based upon the foregoing testimony and evidence adduced during the hearing, the Hearing Officer makes the following:

FINDINGS OF FACT

1. The property involved is a single-family residence owned and occupied by [REDACTED] and her family. (Testimony of [REDACTED])
2. The period in dispute is March 16, 2019 to April 18, 2019. (Testimony of the parties)
3. DC Water installed a new water meter at the property on March 18, 2019. (Testimony of Kimberly Arrington)
4. The utility lacked meter reads from the property from November 21, 2018 until the new meter was installed in March 2019; the lack of meter reads was due to the MTU not transmitting from the property. (Testimony of Kimberly Arrington)
5. DC Water estimated the customer's water usage during the period November 21, 2018 until March 18, 2019. (Testimony of Kimberly Arrington)
6. After installation of the new meter, meter reads registration reflected that there was hourly usage of water at the property until May 5, 2019 when the registration stopped for three (3) hours. After May 5, 2019, usage registration on the water meter appeared to stop periodically for a few hours each in no pattern of usage. (Testimony of Kimberly Arrington; DC Water Meter Read log)
7. DC Water sent a technician to the property on two (2) occasions- the first to change the water meter on March 18, 2019 and the second to conduct an inspection of leaks. (Testimony of the parties; DC Water record meter read dates and consumption)
8. DC Water detected no leaks upon inspection of the customer's home on May 3, 2019. (Testimony of the parties; DC Water record of meter read dates and consumption; DC Water service record)
9. The customer received no high-water usage alerts from the utility and the customer was unaware of any water problem within or about her house. (Testimony of [REDACTED])
10. The utility did not test the water meter at the property to determine its accuracy due to the depth of meter within the meter pit. (Testimony of Kimberly Arrington)
11. No repairs were performed at the property, however, the customer reports that water usage returned to normal after the billing cycle in dispute. (Testimony of [REDACTED])

12. DC Water meter read data confirms that starting May 20, 2019 forward, the water usage registering on the meter at the property is and has been within the customer's historical usage levels. (DC Water record of meter read dates and consumption)

CONCLUSIONS OF LAW

1. The burden of proof is on the customer to show, by a preponderance of evidence, that the decision of DC Water is incorrect. (21 DCMR 420.7 and 420.8)
2. Once the customer establishes a prima facie case that s/he did not use and/or was not responsible for payment of the water as charged, the burden shifts to DC Water to rebut the customer's claim that s/he did not use the water as charged. ((Gatewood v. DC WASA, , 82 A.3d 41, D.C. Court of Appeals 2013)
3. DC Water is obligated to investigate a challenge to a bill by doing any or all of the following:
 - (a) Verify the computations made in the formulation of the water and sewer charges;
 - (b) Verify the meter reading for possible meter overread or doubtful registration;
 - (c) If feasible, check the premises for leaking fixtures, underground invisible leaks, and house-side connection leaks;
 - (d) Check the meter for malfunction;
 - (e) Check the water-cooled air conditioning system, if any, for malfunction; and
 - (f) Make a reasonable investigation of any facts asserted by the owner or occupant which are material to the determination of a correct bill.
See, 21 DCMR 403.
4. Meters shall be read quarterly, or at such other times as the Director shall determine. (21 DCMR 308.1 and 309.1)
5. If at any time, a meter, data collection device or transmitter fails to register correctly or collect, deliver or transmit data or otherwise operate or bears evidence of having been tampered with, as determined by qualified personal of the Authority, the water charge for the interval in which the incident occurred shall be based on the average previous water consumption determined by meter readings. (21 DCMR 308.4)
6. D.C. Municipal Regulations bar adjustment of a customer's bill when all checks and tests provide no reasonable explanation for excessive water consumption. (See 21 DCMR 408 which states: "In cases in which all checks and tests result in inconclusive findings that provide no reasonable explanation for excessive consumption, no adjustment shall be made to the bill for any portion of the excessive consumption, except as may be approved

by the General Manager, based upon a demonstration by the owner or occupant that such an adjustment will further a significant public interest.”)

7. Equitable laches comes into play when two prerequisites are met- the defendant must have been prejudiced by the plaintiff's delay and the delay must have been unreasonable. (See, King v. Kitchen Magic, 391 A.2d 1184, 1187-88 (D.C. 1978); Fannie B. Martin v. William Carter, 400 A.2d 326 (D.C. 1979).

DECISION

The customer was able to establish a prima facie case that more than likely the disputed charges were incorrect. The basis of the customer's case was that she was unaware of any leaks or plumbing issues within her home to account for high water usage, that she routinely inspected her property for plumbing issues and had found nothing wrong and that DC Water had inspected the property and found no leaks. The customer, further, established that her water bill returned to normal in the next billing cycle.

DC Water presented meter reads dated from March 18, 2019 going forward, however, it acknowledged that prior to the meter change on March 18, 2019, the MTU at the property had not been transmitting meter reads since November 2018 and the utility had been estimating the customer's water usage. DC Water conducted an interior inspection of the property and no leaks were found. The utility did not test the water meter to establish meter accuracy. The utility, further, did not provide any explanation of the high-water registration on the water meter or the lack of high water usage alert to the customer that high water consumption was occurring at her property or the method utilized to verify the accuracy of the meter read upon which the disputed bill was based.

The Gatewood case, supra. instructed that the burden to establish meter accuracy rests upon DC Water in bill dispute cases and the lack of a meter test does not automatically mean that DC Water cannot establish that a customer's bill is correct. Pursuant to the applicable Municipal Regulations relating to bill disputes, the utility can dispose itself of a number of tools to establish that its bills are accurate and correct. (See, 21 DCMR 403) Meter testing is one such tool but not the only tool that the utility can use to rebut a customer's assertion that she did not use the amount of water billed to her account. In this case, the utility conducted an interior audit which failed to detect any leaks and it presented the meter reads. The utility did not present any evidence to establish verification of the computations made in the formulation of the water and sewer charges or of the meter reading for possible meter overread or doubtful registration. The utility did write in its Investigative Report that because usage declined the decline indicates that the cause for the increased water usage was controlled at the premise and additionally that there was no underground leak.

The Hearing Officer is not persuaded that the utility has presented sufficient evidence to


rebut the customer's prima facie case but, also, this is a case where the customer should be protected by the equity defense of laches. Here, as soon as a new meter was placed at the property, registration on the meter started reflecting high water usage occurring at the property resulting in the bill in dispute. Only DC Water had the meter registration data to know what was occurring at the property and it did not alert the customer of such knowledge. The high-water consumption seems to have declined for no apparent reason and has continued within historical levels in line with the utility's past estimate of the customer's water usage. As such, the spike is without explanation and an abnormality in the customer's historical usage history. 21 DCMR 408 dictates that when tests are inconclusive to provide a reasonable explanation for excessive water consumption, a customer's account is not to be adjusted for the excessive usage. In this case, however, the utility only performed one check- the interior audit- and the check performed supports the customer's position that nothing was wrong with the property. The other troubling aspects of this case are that if high water usage was occurring the utility failed to notify the customer so that she could have mitigated and investigated the usage. The utility had estimated the customer's water usage for an extended period of time and, as such, the customer had no way of knowing, without being alerted by the utility, of the meter reads indicating high water usage occurring. In essence the customer was "blindsided" by the bill which was so much higher than based on her established and normal water usage.

DC Water is to read water meters, at least, on a quarterly basis, but, in this case, it had not obtained a meter read for over four (4) months since the MTU stopped in November 2018. When an individual is harmed due to no fault of her own, equity comes into play and laches can protect the customer. Not only did the utility not rebut the customer's prima facie case, because it failed to alert the customer of high water usage occurring at her home and the customer had no way of knowing that high usage was registering on the newly installed meter, the Hearing Officer is convinced that the customer should be shield from responsibility for the charges, particularly, in light of the unexplained declined in usage and no explanation for the spike in usage.

Accordingly, DC Water's determination that the charges are valid and no basis exists for adjustment of the customer's account is hereby REVERSED. DC Water is directed to adjust the customer's account for the period March 16, 2019 to April 18, 2019 to equal the average consumption of water at the premises for up to three (3) previous comparable periods for which records are available.

By: Janet W. Blessingame
Janet W. Blessingame, Hearing Officer
Date: January 7, 2020

Copy to:


53rd Street, SE
Washington, DC 20019

**BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY
DEPARTMENT OF CUSTOMER SERVICES**

IN RE: [REDACTED]
[REDACTED] Valley Terrace, SE
Washington, DC 20032

Account No: [REDACTED]
Case No: 19-666914

Amount in Dispute - \$ 1,038.00

Before Janet W. Blassingame, Hearing Officer
November 13, 2019 at 11:00 a.m.

ORDER OF DEFAULT

The customer contested a water and sewer bill for the above account for the period of time June 27, 2019 to July 25, 2019. The DC Water and Sewer Authority (DC Water) investigated the water and sewer charges and determined that the charges were valid and no adjustment of the account was warranted. DC Water, further, declared that the account had been billed based on actual meter readings. The customer appealed DC Water's decision and requested an administrative hearing.

This matter was scheduled for hearing on November 13, 2019. Present for hearing was Kimberly Arrington, Supervisor, Customer Support, DC Water on behalf of DC Water.

The customer was afforded an extended grace period due to the awareness of so many customers having difficulty finding the new location of DC Water, however, although the hearing was delayed until 11:57 a.m., the customer failed to appear. The letter of notification that was sent to the customer advised her that "Failure to appear at your scheduled hearing may result in a default judgment being entered against you." (See, 21 DCMR 415.3) Accordingly, based upon customer's failure to appear or to request that the hearing be postponed, a default judgment is entered against the customer and the determination that the bill is valid is affirmed.

By: Janet W. Blassingame
Janet W. Blassingame, Hearing Officer

Date: January 7, 2020

Copy to:

[REDACTED]
[REDACTED] Valley Terrace, SE
Washington, DC 20032

BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY
DEPARTMENT OF CUSTOMER SERVICES

IN RE: [REDACTED]
[REDACTED] Primrose Road NW
Washington, DC 20012

Account No: [REDACTED]
Case No: 19-549037

Amount in Dispute: \$ 1,550.66

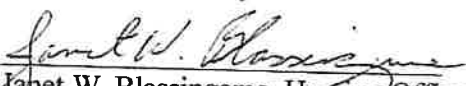
Before Janet W. Blassingame, Hearing Officer
November 6, 2019 at 1:00 p.m.

The customer contested water and sewer bills for the above account for the period of time March 21, 2019 to May 20, 2019. The DC Water and Sewer Authority (DC Water) investigated the dispute and determined that the charges were valid based upon actual meter reads and no basis existed to adjust the customer's account. The customer requested an administrative hearing.

This matter was scheduled for hearing on November 6, 2019. Present for hearing was Kimberly Arrington, Supervisor, Customer Support, on behalf of DC Water. This matter was previously scheduled for hearing on September 17, 2019. No information is available to the Hearing Officer as to why the hearing did not go forward on said date.

Ms. Arrington informed the Hearing Officer on November 6, 2019 that [REDACTED] who was identified to be the customer's daughter called DC Water and stated that her father, [REDACTED] was hospitalized and diagnosed with dementia. Ms. Arrington did not request that this matter be continued but, instead, requested that the dispute be returned to file.

A review of the file reflects that DC Water did conduct a test of the accuracy of the water meter at the premises and the meter time determined that the water meter accuracy was 100.93%. The file also contains hourly meter reads from the property for the period in dispute. Notwithstanding the foregoing, however, based upon the information that the customer is incapacitated, the Hearing Officer is not inclined to dismiss this matter for failure to appear for hearing, however, the dispute must be brought to closure and cannot be allowed to simply return to file for an indefinite period. As such, the customer, his heirs and assigns are granted a continuance of sixty (60) days from the date of this Order during which time they are directed to present to DC Water a Power of Attorney or Order of the Court conveying to them authority to represent [REDACTED] in this dispute. Upon presentation of documentation authorizing a third party to represent [REDACTED]'s interest or upon indication from [REDACTED] that he is able to go forward, this matter will be re-set for hearing on the next available hearing schedule. In the event that neither a Power of Attorney nor Certificate of Authority from a Court of jurisdiction over [REDACTED] is presented to DC Water, this matter shall be declared moot based upon the customer's failure to pursue his dispute and DC Water is directed to administratively close the file.


Janet W. Blassingame, Hearing Officer
Date: January 7, 2020

Copy to:



Primrose Road, NW
Washington, DC 20012

BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

DEPARTMENT OF CUSTOMER SERVICES

IN RE: Laura Gross
113 Wythe Street
Alexandria, VA 22314

Account No: [REDACTED]
Case No: 19-467234

Service Address:
1118 10th Street, NW

ORDER

This matter comes before the Hearing Officer upon a Motion For Reconsideration And Other Relief filed by D.C. Water dated October 7, 2019 and an Opposition thereto filed on behalf of the customer, as well as, a Motion For Leave to File Surreply by the Office of the People's Counsel, a Surreply in Opposition to the D.C. Water's Reply Memorandum in Support of Motion For Reconsideration and DC Water's Memorandum in Opposition to Motion For Leave To File Surreply.

This matter was originally heard on August 7, 2019 upon the customer's Petition for Administrative Hearing. Present for hearing were Laura Gross, who was accompanied by: Grace Soderberg, Assistant People's Counsel; Chandler Crumlin, Consumer Services Manager-Water; and, Rusheeda Boyd, Community Outreach Specialist-Water, all from the Office of People's Counsel, D.C. Government. Kimberly Arrington, Supervisor, Customer Support, was present on behalf of DC Water. The customer contested water and sewer bills for the periods of time:

August 7, 2018 to September 7, 2018- bill dated September 10, 2018=	\$376.10
September 8, 2018 to October 4, 2018- bill dated October 19, 2018=	\$447.37
October 5, 2018 to November 5, 2018- bill dated November 6, 2018 =	\$642.45
November 6, 2018 to December 6, 2018- bill dated December 11, 2018=	\$779.29
December 7, 2018 to January 7, 2019- bill dated January 7, 2019=	\$387.77

The DC Water initially, took the position that the customer only disputed charges for the bill dated November 6, 2018. DC Water investigated the charges and determined that no adjustment was warranted, that the charges were valid and that the account had been billed on actual meter reads. The utility acknowledged, at a later time, that the customer was disputing additional bills and it declared that the disputes of bills dated October 19, 2018, December 11, 2018, and January 7, 2019 were untimely, in that, the customer failed to dispute the charges within ten (10) days of receipt of each bill. DC Water did not address the customer's dispute of charges reflected on the bill dated September 10, 2018 and it did not issue an Investigative Letter to the customer regarding said charges. During the hearing, DC Water requested a continuance in order to test the water meter. After deliberation and argument, the customer objected to a continuance and to a post-submission of the meter test. The Hearing Officer ruled that the utility could submit a water test post-hearing but that its weight would be limited because of the inability of the customer to cross-examine. DC Water declared that the water meter test would

be available in two (2) weeks. The Hearing Officer issued a Decision dated September 5, 2019 and concluded that the customer prevailed in her dispute of the bill charges and that DC Water was to adjust her account for the period August 7, 2018 to January 7, 2019 to equal the average consumption of water at the same premises for up to three (3) previous comparable periods for which records are available.

In its Motion for Reconsideration, DC Water declared that it does not seek reconsideration of the entire Decision but, only as to two (2) aspects of the Decision: the Hearing Officer entertaining the customer's challenge to the bills dated September 20, 2018, October 19, 2018, December 11, 2018 and January 7, 2019; and, the Hearing Officer's denial of DC Water's request to leave the record open to afford DC Water the opportunity to complete its bench testing of the water meter removed from the customer's property.

JURISDICTION

For the reasons stated below, the Hearing Officer determines that she lacks jurisdiction to entertain the Motion for Reconsideration or to grant any form of relief from the Decision. The Hearing Officer does not agree with the customer's position and believes that she does have authority to reconsider or otherwise review a decision prior to its appeal to the DC Court of Appeals, however, the Hearing Officer finds that her authority to do so, has limits and does not extend to the grant of any relief in this matter.

The customer asserts in her Opposition to the Motion for Reconsideration that DC Water's Motion is legally infirm and should be denied. The customer argues that the sole path for an appeal of the Decision is to file a Petition for Review with the District of Columbia Court of Appeals. See, Gross Opposition p. 2.

On the other hand, DC Water asserts that it may request reconsideration of the Decision until the period for taking an appeal has run. The utility asserts that jurisdiction remains with the Hearing Officer within the time allowed for taking an appeal of the Decision. The utility cites Albertson v. Fed. Comm. Commission, 182 F. 2d 397 (DC. Cir, 1950) in which the Court determined that the Commission had inherent authority to reconsider previous action taken by it pursuant to Rule 1.726(c) which provides that the Commission "may on its own motion set aside any action made or taken by it within 20 days". The Court reasoned that if the Commission could set aside its own action on its own motion, there was nothing to preclude it from doing so upon the motion of an interested party.

The applicable rules and regulations relating to administrative hearing of bill disputes, however, do not contain any express provision for a motion for reconsideration or the Hearing Officer making changes to a decision after a decision has been rendered, but there is nothing in the rules and regulations opposed to such a motion or action. DC Water cited from Albertson supra. "the power to reconsider is inherent in the power to decide". See, DC Water Reply Memo, p. 2. The fact that the Commission had an express rule granting to it authority to reconsider and change its actions within a certain time frame distinguishes the Albertson case from bill dispute matters.

The applicable rules and regulations regarding administrative hearing of bill disputes do not provide clear guidance. On the one hand, 21 DCMR 420.5 states that the Rules of Civil Procedure are not binding for these administrative hearings. On the other hand, 21 DCMR 414.3 dictates that "No hearing officer shall have the authority to override any law or regulation of the District of Columbia". DC Code §1-1502 states that the D.C. Water and Sewer Authority is subject to all laws applicable to offices, agencies, departments and instrumentalities of the District government. And the District of Columbia Office of Administrative Hearings Rules of Practice and Procedure Act instructs that when its rules do not address a procedural issue, an Administrative Law Judge may be guided by the District of Columbia Superior Court Rules of Civil Procedure to decide the issue.

First, referring to the rules of the Office of Administrative Hearings, OAH Rule 2828.2 states that a party may file a motion asking the Administrative Law Judge to change a final order within ten (10) calendar days after the final order has been served. The rules further instruct that if the motion is not filed within ten (10) calendar days of the final order being served, the motion will be treated as a motion for relief from final order and the grounds for granting the relief are limited to certain criteria to include mistake, inadvertence, surprise, fraud and newly discovered evidence. (See OAH Rule 2828.3 thru 2828.10)

The OAH Rules are similar to the D.C. Superior Court Rules of Civil Procedure. Rule 59 imposes a ten (10) day time limit within which a movant may request a new trial or amendment of a judgment. Pursuant to the court rule, the ten (10) day limit is jurisdictional and the trial judge has no authority to decide the merits of the motion if the motion is untimely. The Court rules, as do the administrative rules, provide that a party has a thirty (30) day time limit for noting appeal of a final order and that the trial judge has no authority to enlarge the time. See, Circle Liquors, Inc. v. Cohen, App. D.C. 670 A. 2d 381 (1996) and Hahn v. DC WASA, App. D.C. 727 A. 2d 317 (1999). Rule 60 of the D.C. Superior Court Rules of Civil Procedure provides relief from judgment or order where there has been a clerical mistake or inadvertence, excusable neglect, newly discovered evidence, fraud, etc. The Court rules allow for three (3) additional days for mailing of an order, as such, a motion for new trial or amendment of judgement must be filed within thirteen (13) days of the order if mailed. See, Rule 6(e) of the Superior Court Rules of Civil Procedure.

In this instance, the Decision upon which relief is being requested is dated September 5, 2019 and was, hand-delivered to DC Water on September 6, 2019. DC Water's Motion for Reconsideration is dated October 7, 2019 and was received by the Hearing Officer on October 8, 2019. The time limit for filing notice of appeal is 30 days.

Pursuant to both Rule 59 of the DC Superior Court Rules and OAH Rule 2828.2, a Motion for Reconsideration must be filed within 10 days of service of the order. Here, under these rules the time for filing a motion for reconsideration expired for DC Water on September 16, 2019. Both rules, then, allow for consideration of relief viewing the motion as a motion for relief from final order but the review is far more limited and the rules look at whether there was clerical mistake, surprise, fraud, newly discovered evidence, etc.

It is clear that the Motion for Reconsideration was not timely filed if one looks at the

rules of either the D.C. Superior Court or the Office of Administrative Hearings. Taking it to the next step and viewing the motion as a motion for relief from judgment, the Hearing Officer finds no mistake, inadvertence, surprise or newly presented evidence in the motion. If viewed in a light most favorable to DC Water that the Hearing Officer has authority to reconsider until the time for noting an appeal ended, the Hearing Officer lacks authority to extend the time for noting appeal and DC Water, based upon information available to the Hearing Officer, failed to note an appeal in this matter. Either way, since 30 days has elapsed after the Decision was served, the Hearing Officer has lost authority to take any action.

The Hearing Officer concludes that she did have authority to reconsider the Decision if the same had been timely filed and thereafter, she had authority to look for mistake, inadvertence or presentation of new evidence, however, such authority terminated 30 days after the Decision was served.

Accordingly, it is determined that the Hearing Officer lacks jurisdiction to entertain the Motion for Reconsideration or to grant any form of relief from the Decision because the time for doing so has expired. As such, the Motion for Reconsideration is found to have been untimely and is dismissed as null and void.

By: Janet W. Blessingame
Janet W. Blessingame, Hearing Officer

Date: January 7, 2020

Copy to:

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