

UTILITIES ADVOCACY FOR LOW-INCOME HOUSEHOLDS IN MASSACHUSETTS

Second Edition

to 100% of the bill, because once November 15 arrives, the customer will likely be protected from termination by the winter moratorium for the next four or five months and will not have to make further payments in order to avoid termination of service during those months. On the other hand, if the customer is trying to get service restored in April or May, the Consumer Division might order the company to accept as little as 25% of the overdue bill and restore service because the company will have six months or so until November 15 to either collect the remaining 75% of the bill, or terminate the customer for failing to comply with the payment plan.

PRACTICAL TIP

Special rules apply to fuel assistance customers. Under contracts that utility companies sign with the fuel assistance agencies, the companies agree that they will restore service to a terminated customer if the fuel agency or customer can pay at least 50% of the overdue bill, regardless of the size of the bill. Ask your local fuel agency for assistance if the company will not agree to restore the utility service in these circumstances.

3. *To Address Bills From a Prior Address*

Companies have the right to refuse service to someone applying for service at a new address, if that person already owes that same company for service provided at a prior address. Under a rule announced by the DPU in *Cromwell v. Boston Edison Company*, DPU 18123 (1974), a company cannot shut off service at a new address even if, after the customer moves in, the company then learns that the person owes them money from a prior address. Therefore, the companies are very careful to screen prospective customers to determine if they already owe money from a prior address. The companies often ask the prospective customer to pay 100% of the prior bill as a condition of having service turned on at the new address.

However, companies can be required to enter into a so-called “Cromwell waiver” with the prospective customer. When the customer signs a Cromwell waiver, this waives the rule announced in the Cromwell case. The customer is basically saying to the company, “You can add that bill from my prior address onto the bills I’ll be getting at my new address, and if I don’t pay the entire bill, you can shut off the service at my new address.” This protects the company and makes it more likely that the company will collect the old bill. If the company and the customer sign the Cromwell waiver, the customer then can try to negotiate a payment plan on the old bill, rather than having to pay 100% of the bill as a condition of getting service. The payment plan principles discussed in the preceding section (B.2) would apply, since the customer is negotiating payments on an account that has already been terminated.

However, many individual CSRs at the companies are not trained about Cromwell waivers and will simply insist on getting 100% of the bill from the prior address paid, before agreeing to start the new account. In that situation, ask to speak to the CSR’s supervisor, or call the DPU’s Consumer Division for assistance.

4. How to Negotiate Successful Payment Plans

The customer’s goals when negotiating a payment plan are to have the company agree to a plan that the customer truly can afford and to strongly resist agreeing to plans the company may propose that require monthly payments that are too large. Company personnel routinely ask customers to pay 50%, 75% or even more of an overdue bill in order not to be terminated. Demanding that much of the bill is often illegal (see section B.1, above) and is usually more than the customer can afford. But customers who are facing termination are in desperate circumstances and will too readily agree to anything that appears likely to stave off a termination. It is best for an advocate to get involved whenever payment plans are being negotiated.

Whether the customer or an advocate is trying to set up the payment plan, the first step is to review the customer’s income and basic, unavoidable expenses, including rent, food, and utilities (and medical, if there are recurring medical expenses). While it is worthwhile to do a more thorough budget work-up for the family, it should at least include the following:

INCOME AVAILABLE EACH MONTH:	
Earned income	_____
Government cash assistance (TAFDC, SSI, etc.)	_____
Value of food stamps	_____
TOTAL INCOME (sum of prior 3 lines)	_____
BASIC EXPENSES EACH MONTH:	
Rent	_____
Food	_____
Utility customer is having problem with (gas or elect.) (NOTE: include only monthly average bill, not the arrearage/overdue bills)	_____
Other utility (if any)	_____
(Medical expenses, if large/recurring monthly)	_____
TOTAL EXPENSES:	_____
TOTAL INCOME LESS EXPENSES:	_____

If total expenses exceed the income, it is almost impossible to make a payment plan, without first asserting one of the four protections against termination (see Chapter VI), getting retroactive application of the discount rates (see Chapter VII.A.2) and/or finding sources that can help pay some of the amount owed. If the customer can assert a protection and/or reduce the size of the overdue bill through use of the discount rates and by obtaining

outside assistance in paying the bills, then the customer can follow the concepts described immediately below and try to negotiate a payment plan.

If the monthly income exceeds expenses, even by a small amount, the customer's goal is to get the company to agree to that amount. The customer or advocate should stress that the proposed payment plan reflects careful consideration of the household's actual income and expenses, and that asking the customer to pay more each month simply means that the payment plan will fail. When payment plans fail, companies do not collect what they are owed, and customers lose their utility service. It is therefore in the interests of the company, not just the customer, that the company accept payment plans that may spread the payments over many months but that are more likely to succeed.

It is also worth stressing with CSRs that every company in the state now runs an "arrearage management program" ("AMP") in which the company agrees to write off some of the amount the low-income customers owes if the customer simply pays each month's current bill as it comes due (and sometimes a portion of the arrearage that the company is not writing off). While AMPs are relatively new, most companies are pleased with the initial results, which demonstrate that making payments more affordable for the customer creates a win-win situation for the company and the customer. Many CSRs will not be familiar with the pilot AMPs that are now being run. It is therefore worth pointing out to the CSR that high-level managers now support the notion that low-income customers should be given plenty of time to pay back overdue bills, and that the company can actually collect more money if it offers customers reasonable payment plans.

A customer who has just asserted a protection (serious illness, winter moratorium, infant or elderly) is in an excellent position to set up a payment plan of his or her choosing, as the company cannot terminate the service. The company has no choice but to accept any payments that the customer makes. For example, a low-

income customer might have a two-month-old baby and a \$300 overdue bill. If the customer calls up and asks for a payment plan before asserting the infant protection, the company would likely refuse a payment plan offer as low as \$30/month (ten months to pay off the \$300). However, once the customer asserts the protection, it makes good sense for the customer to put in writing that she intends to pay \$30 per month on the arrearage, plus her current bills, because in fact the company cannot terminate service for ten months.

Another example is worth considering. Suppose a low-income customer owes \$640; has a seriously ill child in the house; and feels that she can pay \$80 per month on the arrearage (eight months to pay back the \$640 in full) plus her current bills as they come due. Were the customer to offer an \$80 per month payment plan prior to asserting the serious illness, the company might well refuse and threaten to proceed with the termination. In this scenario, the customer should first assert the serious illness protection (send in the doctor's letter and financial hardship form), and then put in writing, "I offer to pay back \$80 each month of my arrearage of \$640, along with paying my current bills." If the child gets better in, say, two months, and the serious illness protection expires, the customer will have paid only \$160 on the arrearage ($2 \times \$80 = \160), and will still owe \$480. However, if the company were once again threatening termination and refusing to accept a payment plan, the customer would be in a very strong position if she asked the DPU Consumer Division for assistance. She would be able to say to the DPU, "I offered a perfectly reasonable payment plan and actually made two payments of \$80 each at a time when the company was refusing to enter into a reasonable payment plan and could not terminate me. I should be allowed to continue the payment plan I offered, \$80 each month, even if it will still take another six months to complete that plan." In most such cases, the DPU would likely agree.

Customers who receive TAFDC or EAEDC have the option of having DTA pay part of the monthly benefit check directly to the

utility company. Benefits recipients should consider this carefully before agreeing to do so, as the result will be that the recipient will get a smaller check each month. But if the recipient is willing to allow DTA to make these direct payments (called “protective payments” or “vendor payments”), it may be easier to get a good payment plan from the utility company, and with a smaller up-front payment, because the utility company will be more assured that it will get payments in the future.

STEPS TO TAKE TO GET A REASONABLE PAYMENT PLAN

1. If the customer’s service has not yet been shut off, the customer has the absolute right to a payment plan of at least four months’ duration. Do not accept anything shorter than that.
2. Whether or not the service has been shut off, the customer should do a budget work-up to determine the amount of money available each month to pay towards the arrearage. If the customer’s monthly expenses are greater than the monthly income, the customer should determine if any of the four termination protections apply (serious illness, winter moratorium, infant and elderly); apply for discount rates and seek retroactive application of those rates; and seek out any available forms of assistance in paying the overdue bills.
3. The customer should seek a payment plan no greater than the amount determined as available each month from the budget work-up. If the company will not accept that amount, the customer should call upon the DPU for assistance.