

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

IN RE: [REDACTED]  
[REDACTED] Wheeler Hill Drive SE  
Washington, DC 20018

Case No: 2018-05-02  
Account No: [REDACTED]

Amount in Dispute - \$ 1431.95

Before Janet W. Blassingame, Hearing Officer  
May 16, 2018 at 11:00 a.m.

The customer contested a water and sewer bill for the above account for the period of time May 13, 2016 to November 15, 2016. The DC Water and Sewer Authority (DC Water) investigated the water and sewer charges and determined that an adjustment to the account was warranted. The customer appealed DC Water's decision and requested an administrative hearing.

This matter was scheduled for hearing on May 9, 2018, however, this matter was re-scheduled due to an overrunning of a case which infringed upon the scheduled hearing time of this matter. On May 9, 2018, the customer was present for hearing and waited over an hour and one-half as the earlier case continued. [REDACTED] requested that her matter be continued and it was agreed that the case would be heard on May 16, 2018. Present for the hearing on May 16, 2018 were [REDACTED] and Eileen Wright, Sr. Communication Specialist, DC Water, on behalf of DC Water.

The property involved is a single-family townhouse owned by [REDACTED] which she occupied with her family until on or about April 17, 2015 when one of her sons was murdered in front of her house. The house has one full bathroom and two (2) half-bathrooms, one kitchen, and two (2) outside faucets. [REDACTED] stated that her water and sewer bill runs Sixty-two Dollars (\$62.00) per billing cycle with three (3) people occupying the residence. [REDACTED] stated that she has lived in the house for twenty-four (24) years but following her son's death, no one and especially she wanted to be in the home. [REDACTED] testified that she stayed away from the house for approximately one year and, then, gradually started to return to the residence and is up to staying five (5) days per week but not on weekends. She stated that her son stays in the house more than anyone else but that she avoids the area in which the house is located because the person arrested for her son's murder is out on bail and she sees the person in the neighborhood and she does not want to encounter the individual. [REDACTED] expressed the anguish of a mother losing a child to violence and her feelings toward the individual accused of the crime.

Ms. [REDACTED] asserted that her water meter is not hidden, is located outside of her house and for these reasons, the utility should not have had reason to estimate her water usage. She asserted that she paid the water and sewer bills sent to her.

Ms. Wright stated that DC Water considers the charges to be valid. She testified that the bill dated 12/5/15 covered 552 days for the period March 13, 2016 to November 15, 2016. She

testified that DC Water obtained an actual meter read from the property on November 16, 2016 and the meter read showed that the utility had underestimated the customer's water usage.

Ms. Wright testified that she reviewed the customer's account in July 2017 and that an adjustment was applied to the account in the amount of \$1,066.55. She stated that for purposes of the administrative hearing, the adjusted charge was placed back on the account but that the customer's actual balance due was \$627.79 as of July 10, 2017. Ms. Wright asserted that the customer's correct balance due is \$1,233.67 of which \$605.89 is outside of the amount in dispute. Ms. Wright stated that the customer has made sporadic payments on her account but she has not brought the balance due to zero (\$0).

██████████ stated that she paid \$505.00 to DC Water on January 6, 2017 and that \$505.00 was the amount due reflected on the bill at the time of payment. The customer stated that after she paid the \$505.00, she received the adjusted bill from DC Water.

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 townhouse owned by ██████████ who occupied the residence with her children up until April 17, 2015 when one of her sons was murdered in front of her house. (Testimony of ██████████)
2. After her son was murdered, ██████████ and her remaining children were emotionally unable to reside in their home and they did not live in the home for approximately one year following the crime. (Testimony of ██████████)
3. After a year of avoiding their home, the ██████████ gradually returned to the residence but no one has resumed full occupancy of the property. (Testimony of ██████████)
4. The period in dispute is May 13, 2015 to November 15, 2016. (Testimony of the parties)
5. DC Water estimated the customer's water usage at the property over a period of seventeen (17) billing cycles, then, sent the customer an adjusted bill covering 552 days reflecting it had underestimated the customer's water usage and that 384 CCF of water had been used. (Testimony of the parties; Bill Summary dated 12/05/16)
6. The adjusted bill sent to the customer reflected as outstanding amount due of \$484.04 and total current bill charges of \$1,431.95, totaling an amount due of \$1,915.99. (Bill Summary dated 12/05/16)
7. On 07/10/17, DC Water sent the customer a Bill Summary reflecting an adjustment to the account in the amount of \$1,066.55, leaving a total amount due of \$627.79. (Bill Summary dated 07/10/17)
8. The customer's water meter was changed by DC Water in May, 2017 and after the meter change the customer's water usage ranged between 2 CCF and 4 CCF per billing cycle. (See, DC Water Billed and Usage History)
9. Between June 2017 and November 2017, the customer averaged 2.83 CCFs in water usage per billing cycle. (See, DC Water Billed and Usage History)
10. Prior to the water meter change but after the utility sent the customer the bill now in dispute, the customer averaged 5.83 CCFs per bill between 12/23/2016 and 5/11/2017. (See, DC Water Billed and Usage History)

11. Prior to the 17 billing cycles of estimated water usage by DC Water, when the customer's bill was based upon an actual meter read, the customer's water usage ranged from 9 CCF to a one time high of 34 CCF, with the majority of reads in the teens. (See, DC Water Billed and Usage History)
12. During the period that the DC Water estimated the customer's water usage, the estimates of usage ranged between 11 CCF and 24 CCF, with an average usage of 15.51 CCF per billing cycle. (See, DC Water Billed and Usage History)

#### 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, Case No: 12-AA-368, decided DC Court of Appeals on July 3, 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 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)
6. 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)
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

In this case, the customer made a prima facie case that the disputed bill was incorrect. The basis of the customer's prima facie case was that the family had not resided in the residence during the period that the utility estimated water usage. The customer, further, asserted that her water meter was in clear view and accessible for reading; the customer's assertion amounted to an equitable defense against the bill in dispute based upon the utility's failure to read the water meter over an extended period of time.

By establishing a prima facie case, the burden shifted to DC Water to establish that the charges are valid and should be paid by customer. The Court in Gatewood supra. made it clear that the utility must investigate and present evidence that the customer used the water as charged. Normally, the utility will investigate by conducting an interior inspection for leaks, an underground inspection for leaks and/or a meter test, as warranted. In this case, DC Water did not test the customer's meter. DC Water did not conduct an interior inspection of the premises. The utility failed to address whether the usage could have been the result of an underground leak, in that, it did not test for the existence of an underground leak and it did not make any assertion that it could rule out the presence of an underground leak based upon a decline in water usage. The rebut by DC Water rested upon the fact that the utility had made an adjustment to the customer's account prior to the hearing. Normally, adjusting the customer's account will suffice and resolve a dispute, however, in this case, the customer maintained her dispute after the adjustment. During the hearing, the utility failed to provide any explanation of how the adjustment was calculated so that it could be determined that the adjustment was sufficient and correct. Moreover, the customer asserted that the house was unoccupied during the period that usage had been estimated. As such, the issue at hearing was whether the customer had used the water as charged. Without conducting an investigation and especially, establishing that the water meter was functioning properly, it was impossible for the utility to rebut the customer's prima facie case that she did not use the water charged to her account.

As previously noted, the utility did adjust the customer's account but failed to provide any information as to how the adjustment was calculated. The evidence established that prior to estimating the customer's water usage, the customer had a past due balance on her account. Based records presented by the utility, it appeared that, prior to June 23, 2015 which was the first time that the utility estimated the customer's usage for the period in dispute, the customer owed a balance due of \$306.29 as of May 29, 2015, then, on June 23, 2015, DC Water estimated usage of 19 CCFs and continued to estimate usage for the next sixteen (16) billing cycles. Over the course of the estimation period, the utility imposed late charges on the account and without explanation of how the adjustment was calculated, it is impossible to assess whether late charges were dealt with appropriately.

Pursuant to regulation, when the utility estimates a customer's usage because it lacks a meter read from the property, the water charge for time that the utility has to estimate usage due

to lack of a meter read from the property shall be based on the average previous water consumption determined by meter readings. (21 DCMR 308.4) In other words, the utility bases its estimates upon the customer's historical water usage. In this case, however, the customer suffered a tragedy in her family leading to her, essentially, abandoning the property as of the murder of her son which occurred on April 17, 2015. The meter read from the property on April 6, 2015 was 9 CCFs of water and the meter read on May 13, 2015 was 17 CCFs.

Notwithstanding the read obtained on November 15, 2016 which is the basis of the adjusted usage and charge being disputed, the next actual meter read from the property took place on December 23, 2016 and reflected 7 CCFs of water usage, followed by the next read on January 25, 2017 at 6 CCFs. The meter at the property was changed in May 2017 and since the meter change, actual meter reads from the property, based upon the record presented, have all been 4 CCF or below with average usage at 2.83 CCFs per billing cycle. Based upon the record presented, the Hearing Officer is led to believe that the customer's actual water consumption at the property after the April 2015 murder of her son was considerably less than her historical usage had been prior to the family vacating the property following the murder of the customer's son. If the customer's actual water usage was less than her historical usage during the period that usage was estimated, then, the basis used for estimated usage did not reflect usage occurring at the property. Had the utility read the water meter, the customer's water usage could and would have been established for the period that the family left the property following the murder. Pursuant to regulation, DC Water is to read the water meter on a quarterly basis. (21 DCMR 308.1 and 309.1)

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. In this case, had the utility read the water meter as dictated by its regulations, the customer's billings would have been on actual usage and in all probability reflective of the family not being in the home. The customer's most recent history of water usage provides a clearer and more accurate reflection of the family's water usage, at least, since the death of one member of the household and the less than complete return of the remaining family members to occupancy of the residence. In hindsight, however, neither the Hearing Officer nor anyone else has the ability to determine water usage by the customer during the period in dispute and the fault lies with DC Water failing to read the water meter for an unreasonable length of time. [REDACTED] testified, uncontroverted, that she and her remaining children did not occupy the house for approximately one year following the murder of her son in front of the house; she did provide specifics regarding how the schedule of return to the house and/or the number of occupants in the house when the family did, in fact, start to resume occupancy. The only clear fact established is that historical usage does not measure water usage during the period in dispute which ironically coincided with the family not occupying the property.


It is the determination of the Hearing Officer that the utility's failure to read the water meter pursuant to regulation caused prejudice to the customer in light of denying her measure of

water usage occurring at the property after a significant change in occupancy and that the failure of the utility was unreasonable. As such, the customer is entitled to the defense of laches. The Hearing Officer, further, determines that the utility failed to investigate as required the customer's dispute and the account adjustment was inadequate to resolve the dispute.

Based upon the foregoing, the determination by DC Water that the charges are valid and no further adjustment to the account is warranted, is hereby REVERSED. The customer is granted the shield of laches against imposition of the charge for 384 CCF of water as reflected on the Bill Summary dated 12/05/2016. DC Water shall adjust the customer's account to reflect fees incurred during the period of 6/23/2015 to 10/26/2016 and charge the customer for water and sewer service based upon the average water consumption determined by meter readings from the property obtained by the utility 12/23/2016 thru 11/29/2017. DC Water is directed to give credit to the customer for payments received, and, to further adjust the customer's account for late charges on any past due amount exceeding \$306.29 between the period 6/23/2015 and 11/15/2016.

By: Janet W. Blassingame  
Janet W. Blassingame, Hearing Officer  
Date: July 5, 2018

Copy to:

  
Wheeler Hill Drive, SE  
Washington, DC 20032

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

IN RE: [REDACTED]

[REDACTED] Warren Street, NW  
Washington, DC 20008

Case No: 20-18-05-04

Account No: [REDACTED]

Amount in Dispute - \$ 156.00

Before Janet W. Blessingame, Hearing Officer  
May 8, 2018 at 10:00 a.m.

The customer contested a water and sewer bill for the above account for the period of time August 2, 2017 to September 6, 2017. The DC Water and Sewer Authority (DC Water) investigated the water and sewer charges and determined that the charges were valid and that an adjustment to the account was not warranted. The customer appealed DC Water's decision and requested an administrative hearing.

This matter was scheduled for hearing on May 8, 2018. Present for the hearing were [REDACTED] and Eileen Wright, Sr. Communication Specialist, DC Water, on behalf of DC Water.

The property involved is a semi-detached single-family residence. The house has four (4) bathrooms, two (2) kitchens, one outside faucet, a dishwasher, and a washing machine. The customer stated that he took possession of the property at the end of June 2017 and moved into the house in July 2017. [REDACTED] stated that he and his wife occupy the home and that their children pass thru for visits and holidays.

[REDACTED] asserted that he disputes his water and sewer bills for September 2017 thru December 2017, as well. Ms. Wright asserted that the customer's dispute of his November 2017 bill was not timely; she pointed out that the November bill was not disputed until January 11, 2018. [REDACTED] retorted that he disputed both November and December billings. The parties agreed that the amount in dispute would be \$538.16 covering the bills for September 8, 2017, October 6, 2017 and December 12, 2017, and, that if the November 2017 bill is included in the dispute, the total amount in dispute would be \$638.27.

[REDACTED] stated that from the time that he took possession of the property, his water and sewer bills have reflected abnormal usage figures and asserted that 29.92 gallons appears to be a multiplier for billed usage. The customer contended that every read of his usage is and has been an estimate. [REDACTED] asserted that even though no one was home between August 12, 2017 and August 19, 2017, water usage was recorded to have occurred at the property. [REDACTED] stated that he just by chance reviewed the water usage and noticed the reflected usage. [REDACTED] testified that his July 2017 bill was \$70.29, his August 2017 bill was \$54.25 and, then, his September 2017 bill jumped so significantly that he called DC Water. [REDACTED] stated that the utility sent a technician to the property to conduct an audit, however, no leaks were found.

██████████ testified that he was not aware of any problems within his house, but, that he saw reflected in his usage history, three (3) days of the exact same usage amount allegedly having been used at the home. ██████████ testified that the DC Water service technician said that the MTU was not functioning and that the read out seemed to have issues. ██████████, when asked to explain what the technician meant regarding the read out having issues, he stated that the technician did not provide any explanation.

██████████ testified that he called DC Water again in December 2017 because his MTU had not been replaced and he continued to have reported high water usage. He stated that a service technician told him that the MTU was faulty. ██████████ testified that the MTU was not replaced upon April 1, 2018. He, further, stated that an underground audit was conducted by DC Water on December 13, 2017 and no underground leaks were detected.

██████████ testified that both he and his wife travel but generally they do not travel at the same time and, as such, one person is generally home. He stated that he did upgrades to the plumbing by installing new toilets and faucets in July and August 2017. He stated that the plumbing work was performed by Crown Plumbing and in August, 2017 new faucets were installed in the kitchen and in one of the bathrooms. ██████████, further, stated that he checks the water heater in the home every six (6) months and that this past July 2017 and January 2018, the water heater was operating fine.

██████████ pointed out that, during the month of July 2017, water usage at his home was reported to have been 29.92 gallons on 10 days, 59.84 gallons on 3 days, 179.52 gallons on 2 days and 149.6 gallons on 1 day. ██████████ pointed out that each usage total was a multiplier of 29.92 gallons. The customer asserted that if one looked at the daily usage on DC Water's website, usage for his property appears to be arbitrary or estimated. ██████████ asserted that since a new MTU has been in place at the property, reported water usage has declined.

Ms. Wright acknowledged that the service technician who performed the underground audit at the property wrote that the water meter appeared to be not working, as opposed to writing that the MTU was not working.

Ms. Wright asserted that the charges were valid based upon the meter readings from the property. She pointed out that an internal inspection was done at the property on September 29, 2017 and no leaks were found and the technician made no indication of anything being wrong with the water meter. Ms. Wright further stated that an underground inspection did not reveal the existence of any underground leaks. Ms. Wright asserted that when the underground inspection was performed the technician at the property was there to only look for leaks and that type of technician does not generally read the water meter. Ms. Wright asserted that a technician cannot just look at the water meter to access the meter functioning and that one must shine a light on the water meter to read a digital meter.

Ms. Wright testified that DC Water sent a technician to the property on December 15, 2017 to conduct an equipment check and at the time, the technician checked the MTU, looked to see the second dial numbers and obtained a visual read of the water meter.



Ms. Wright testified that DC Water removed and tested the water meter from the property and the water meter was determined to have an overall accuracy of 100.03% which is within the accepted range for water meter accuracy as established by the American Water Works Association.

██████████ acknowledged that the water meter in place at the property as of November 2014 was not readable by technicians from Water Services of DC Water and, as such, the matter of obtaining a read from the water meter was referred to the Meter Department of DC Water.

██████████ interjected that he and his wife were out of town from August 12, 2017 to August 19, 2017 yet the meter reads changed at the property.

Ms. Wright stated that from the new water meter at property, meter reads are reported every hour.

Ms. Wright pointed out that something at the property is causing the meter dials to move even though she does not know what that may be. She stated that the meter dial only moves when water goes thru the meter.

Ms. Wright submitted copies of the customer's billing statements from August 7, 2017 thru March 7, 2018, hourly meter reads May 7, 2018 back to August 2, 2017, Meter Test Report, Service Orders for an underground inspections and interior inspections, Usage Information Log, Customer Contact Log and High Usage Notification for April Water Usage.

Mr. ██████████ asserted that the water meter or MTU has caused faulty readings. He stated that there was a significant decline in usage before the meter change.

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 ██████████ and his wife. (Testimony of ██████████)
2. The period in dispute is August 2, 2017 to December 12, 2017. (██████████ telephone contacts with DC Water; testimony of the parties)
3. The customer purchased the property in June 2017 and occupied the property as of July 2017 and has thought that his water and sewer bill has been abnormal, to include his being charge for usage when the parties were out-of-town, until usage declined in early year 2018. (Testimony of ██████████)
4. Despite believing that his water and sewer bills were abnormal from the time of purchase and occupancy of the property going forward, the customer was alarmed by a significant increase in water usage/charge in September 2017. (Testimony of ██████████)
5. The customer was unaware of any plumbing issues within his home and instituted a practice of checking his hot water heater on a semi-annual basis (each July/January) and found nothing amiss regarding the hot water heater during its inspections. (Testimony of ██████████)

- [REDACTED]
6. The customer had plumbing work performed in the house in July 2017 and in August 2017 by upgrading toilets and installing new faucets. (Testimony of [REDACTED])
  7. DC Water conducted an interior inspection of the property on September 29, 2017 and no leaks were found. (Testimony of the parties; DC Water Service Order/Maintenance By Account form)
  8. DC Water conducted an underground inspection of the property on December 14, 2017 and no sounds were detected. (DC Water Work Order dated 12/14/17; testimony of Eileen Wright)
  9. The service technician at the property to conduct the underground inspection noted on the inspection report that the "digital meter" appeared not to be working. DC Water Work Order dated 12/14/17; testimony of Eileen Wright)
  10. DC Water obtained a reading from the water meter and removed the water meter from the property for testing on April 5, 2018. (Testimony of Eileen Wright; DC Water meter read order dated 4/5/18)
  11. The water meter was tested by DC Water and the meter was determined to have 100.03% overall accuracy. (Testimony of Eileen Wright; DC Water Meter Test Results)
  12. Each of the bills being disputed by the customer reflect that the charges were based upon actual meter reads. (Bill Summaries dated 08/07/17, 09/08/17, 10/06/17, 11/07/17, and 12/20/17)
  13. DC Water has meter reads from the property transmitted on an hourly basis starting August 2, 2017 thru April 7, 2018. (DC Water meter read log; testimony of Eileen Wright)
  14. DC Water sent the customer a high water usage alert notification in April 2018 and there was a significant increase in reported water usage occurring at the property on several days during the month of April 2018. (DC Water High Usage Notification Application for April Water Usage)
  15. Between August 12, 2017 and August 19, 2017 when the customer stated that no one was home at the property, there were hourly meter reads transmitted from the property and water usage was recorded each hour, however, usage was minimum and resulted in a meter dial change of one CCF having been used over the seven (7) day span of time. (DC Water meter read log; testimony of [REDACTED])
  16. During the billing cycle of 08/2/17 to 9/6/17, the customer was charged for 12 CCF of water usage, meaning that 11 CCF of water usage occurred between 8/2/17 to 8/12/17 and 8/19/17 to 9/6/17 when the property was occupied. (DC Water meter read log)
  17. Reported water usage at the property was low the first month of the parties' occupancy and then it significantly increased as reflected in the Bill Summaries for September 2017 and October 2017, water usage declined as reflected in the Bill Summary for November 2017, only to significantly increase again as reflected in the Bill Summary for December 2017; reported water usage at the property significantly declined and remained low starting with the billing cycle 12/6/17 to 1/4/18 as reflected in the Bill Summary for January 2018. (Bill Summaries dated 08/07/17, 09/08/17, 10/06/17, 11/07/17, 12/20/17 and 1/8/18)

#### 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, Case No: 12-AA-368, decided DC Court of Appeals on July 3, 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. 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 in this matter was able to establish a prima facie case that more likely than not the bills that he disputed were incorrect. The customer's case was based upon his testimony that he was unaware of any plumbing problems in his home, that he had upgraded certain plumbing fixtures, and that no leaks were found in the home or outside of the home by DC Water when it conducted both an interior audit and an inspection for underground leaks. The customer's case was further buttressed by the notation of a service technician that the digital meter at the property appeared to be not working.

Once a customer establishes a prima facie case, the burden shifts to DC Water to rebut the customer and establish that the charges are valid. (Gatewood, supra.) Here, the utility conducted an interior inspection of the premises and no leaks were detected. DC Water conducted an underground inspection of the property and no sounds were detected. The utility also removed and tested the water meter and the meter was determined to have acceptable

accuracy within the standard set by the American Water Works Association, thus, showing that the water meter was functioning. The utility, further, presented its Bill Summaries for the disputed period and the bills reflected that the charges were based upon actual meter reads and not estimates of water usage, and, the utility presented hourly meter reads from the property for the period in dispute, thus, showing that the MTU at the property was transmitting meter reads. DC Water was able to show that water usage at the property fluctuates up and down and the same was not dependent upon what equipment was recording and transmitting water usage from the property, in that, water usage declined in January 2018 prior to any equipment change at the property by the DC Water. Lastly, DC Water presented evidence, through its high water notification alert system, of the customer experiencing high water consumption again in April 2018 after water usage declined significantly for several months between December 2017 and March 2018.

In instances where all tests and checks fail to determine the cause of high water consumption, the applicable District of Columbia Municipal Regulations bar DC Water from adjusting a customer's account for any portion of excessive water consumption. (See, 21 DCMR 408) In this case the customer believed that his bills were abnormal from the onset of ownership and occupancy of the property. He asserted that all of the water usage numbers were based upon a multiplier of 29.92 gallons and he asserted that his charges were arbitrary or estimates. During the course of the hearing, however, DC Water showed that its charges were based upon actual meter reads from the property and that its equipment was functioning appropriately.

It is significant that the customer failed to present any evidence of having a plumber inspect the property. Even though DC Water conducted inspections for leaks inside and underground and found no leaks, because the evidence was that water usage at the property fluctuates and after a period of decline has again significantly increased, it would be prudent of the customer to hire a plumber to conduct an in-depth inspection of the property in an effort to find the cause of the fluctuating water consumption if the customer cannot explain the same due to occupancy or acts of water consumption within a particular billing cycle.

Notwithstanding the foregoing, however, the weight of the evidence and testimony established that more likely than not the charges are valid and DC Water's investigation conclusion that no basis exists to adjust the customer's account is appropriate and correct. As such, DC Water's determination that the charges are valid and no basis exists to adjust the customer's account is hereby AFFIRMED.

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

Date: July 5, 2018

Copy to:

[REDACTED]  
[REDACTED] Warren Street, NW  
Washington, DC 20008

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

IN RE: [REDACTED]  
[REDACTED] 15<sup>th</sup> Place, NW  
Washington, DC 20012

Case No: 20-18-05-05  
Account No: [REDACTED]

Amount in Dispute - \$ 775.98

Before Janet W. Blessingame, Hearing Officer  
May 9, 2018 at 10:00 a.m.

The customer contested a water and sewer bill for the above account for the period of time July 19, 2017 to October 18, 2017. The DC Water and Sewer Authority (DC Water) refused to honor the customer's dispute based upon its determination that the dispute was untimely. DC Water informed the customer that disputes must be received within 10 days of receipt of the bill or the bill must be paid in full before the next bill date. The customer appealed DC Water's decision and requested an administrative hearing.

This matter was originally scheduled for hearing on March 14, 2018 and rescheduled, at the request of the customer, to May 9, 2018. [REDACTED] telephoned DC Water to inform that she was running late for the scheduled hearing and that she anticipated arriving by 10:20 a.m. [REDACTED] telephoned a second time at approximately 10:30 a.m. stating that she could not find a parking space and wanted to continue the hearing date. The customer was instructed to continue to seek a parking space and that she would be accommodated for a hearing if she arrived by 12 noon; the customer arrived for the hearing at 11:15 a.m.

Present for the hearing were [REDACTED] and Eileen Wright, Sr. Communication Specialist, DC Water, on behalf of DC Water. Denise Page, Collection Department Supervisor, DC Water appeared as a witness for DC Water.

The property involved is a single-family residence owned and occupied by [REDACTED]. The house has three and one-half (3 ½) bathrooms, two (2) outside faucets, a dishwasher, a washing machine, and a utility sink.

[REDACTED] asserted that she disputes charges for the months of July, August and September 2017. She testified that she called DC Water Customer Service on August 28, 2017 to dispute the August water and sewer bill which reflected a turn-on/turn-off charge and a water and sewer replacement fee which the customer wanted to dispute. [REDACTED] testified that she called DC Water, again, on November 3, 2017 to add her September and October charges to her dispute.

[REDACTED] testified that her water and sewer bill dated August 24, 2017 reflects turn-off/turn-off charges of Fifty Dollars (\$50.00) each, three (3) times totaling Three Hundred Dollars (\$300.00). She asserted that her water and sewer service had not been turned-off or on plus that the bill was higher. She, further, questioned being charged for Water System

Replacement fee, Pilot fee, Right of Way fee and Stormwater fee.

With respect to her October 20, 2017 dated bill, [REDACTED] testified that she disputed the water charges and double fees. With respect to the September 21, 2017 bill, [REDACTED] stated that she disputes the bill amounts.

The customer complained that she was not given notice that DC Water was removing her water meter and she asserted that she was denied an opportunity to maintain an independent investigation. She, further, stated that she wants the meter reading obtained by DC Water at the time that the water meter was removed from her property.

[REDACTED] testified that she was out-of-town from July 5, 2017 until September 15, 2017 for work.

Ms. Wright testified that DC Water considers that charges to be valid. Ms. Wright explained that the customer has an automated meter with a device which transmits meter readings. She testified that DC Water has records reflecting meter reads from the property on an hourly basis starting July 26, 2017. She, further, testified that the meter reads reflect registration on the water meter to be occurring every hour until July 27, 2017 when service was disconnected for non-payment of the water and sewer charges. Ms. Wright asserted that the Disconnection Notice to the customer was dated July 10, 2017.

Ms. Wright testified that [REDACTED] telephoned DC Water on July 27, 2017 regarding the cut-off of her water and she was informed that the cut-off was due to non-payment of her bill. Ms. Wright testified that the customer made payment on her bill on July 28, 2017 and DC Water restored service to the property. Ms. Wright further testified that on August 2, 2017, the customer's payment was returned for NSF (Not Sufficient Funds) and the utility turned the water back off at the property as of August 9, 2017 since the customer's payment had not been honored by her bank. Ms. Wright stated that the customer made payments to the utility on August 8, 2017 and August 9, 2017, upon receipt of the August 8, 2017 payment, the utility restored service to the property. Ms. Wright stated that the customer telephoned the utility on August 9, 2017 inquiring as to why her service was turned off on August 9<sup>th</sup> and the customer was informed of the payment returned for NSF. Ms. Wright testified that the customer's tendered payment of \$253.00 was returned for NSF on August 15, 2017. Ms. Wright stated that the customer telephoned DC Water on August 21, 2017 and was informed of the returned payments. Ms. Wright, further, testified that on August 21, 2017, DC Water disconnected the customer's water and sewer service, again for non-payment.

The customer was asked as to how she knew when her water and sewer service was turned off if she was out-of-town and she replied that her kitchen faucet had a beeper system on the filtration system and when it goes to ice or holds for drinking water, she gets notice and as such, she knew when she did not have service.

Ms. Wright pointed out to the customer that all fees charged to her account are explained on the back of every Bill Summary. [REDACTED] retorted that the Bill Summary does not state that the utility will suspend service without notice if a payment check is returned. Ms. Wright responded that the customer was initially informed that service would be disconnected by a

Notice of Disconnect for non-payment of charges for services and thereafter, the customer's service was, in fact, disconnect for non-payment. Ms. Wright explained that service was twice more disconnected because the customer's payments required to restore service were returned for NSF. [REDACTED] argued that she, as a customer, should have been given notice by the utility of the return of her payment for NSF. The customer further argued that she should have been given time to pay her bill after the check return for insufficient funds and she asserted that she was entitled to a new notice of the utility's intent to disconnect her service before her service could be disconnected.

Ms. Page testified that DC Water is not obligated to notify a customer of a returned check. Ms. Page pointed out that the customer's bank notifies the customer of the returned payment and that the payment was not honored by the bank. Ms. Page explained that DC Water restored the customer's service based upon payment of the outstanding amount due and owed and was done in good faith that the customer had tendered payment. She added that when the payment was not honored by the bank for NSF, what was done by the customer in tendering a payment for which she had insufficient funds was no payment at all.

[REDACTED] argued that under the D.C. Consumer Protection Law, DC Code 28-3901 thru 3913, she is entitled to Notice before her water service is turned off again for a NSF check and no such notice was given to her. [REDACTED] also cited DC Code 28-3814 which she identified as relating to Debt Collection and she attempted to pull-up the citation on her telephone. Although she was given approximately 10 minutes of hearing time to obtain statute that she desired to present in support of her argument, the customer was unable to secure the cite on her phone.

Ms. Page asserted that the original Disconnection Notice issued to the customer by DC Water still stood because DC Water did not receive a viable payment from the customer for charges due and owed to maintain service. Ms. Wright interjected that the customer failed to make payment based upon the notice sent to her.

Ms. Wright testified that DC Water removed the water meter on January 10, 2018; [REDACTED] questioned why the meter was removed. Ms. Wright stated that the water meter was removed for testing and that the meter underwent three (3) water flow tests resulting in scores of 100.60%, 101.81% and 100.42%. Ms. Wright stated that pursuant to standards set by the American Water Works Association, a water meter has acceptable accuracy when its accuracy score is between 92% and 102%, and, as such, the meter was functioning accurately. Ms. Wright, further, stated that the water meter belongs to DC Water, not to the customer.

Ms. Wright explained that DC Water is mandated to collect certain fees from customers and she pointed out, for example, that Clean Rivers/Stormwater fees have assessed by the federal government since year 2005 and that the Replacement fee is mandated by the DC City Council. Ms. Wright stated that a full explanation of all fees charged and/or collected by DC Water is set forth in the publication "What's On Tap" which goes out to all customers with their billing statements.

Ms. Wright testified that the customer's meter reads reflect usage occurring every hour



on August 28, 2017.

██████████ asserted that DC Water did not offer to perform an interior audit of her house; Ms. Wright countered that in the log of customer contacts with DC Water, it is noted that, on August 28, 2017, the customer rejected an internal audit.

██████████, next, asserted that her water meter was not replaced on the day that the meter was removed.

Ms. Wright asserted that the return of a check payment implies that no payment was made. Ms. Wright stated that DC Water concludes that the charges are valid. She added that a water meter is not designed to break and fix itself. She stated that DC Water only tests water meters when a customer has requested a hearing. Ms. Wright pointed out that the utility received the customer's Petition for Hearing on December 18, 2017 and that the request for a meter test was put in after the petition was received by the utility.

Ms. Wright summarized that had increased water usage been the result of an underground leak, the usage would have continued and not stopped because such leaks cannot repair themselves, so an underground leak did not cause increased water usage in this instance.

██████████ complained that DC Water did not provide meter reads for the entire period in dispute and that there is no evidence to support the billing. She, also, complained that there had been no in house audit and that she did not receive notice of the turn-offs. She reiterated that no one was occupying the house during the time being disputed.

Ms. Wright stated that she has presented meter reads starting in June 2017 and that she has presented meter reads from the new meter installed at the property from January 10, 2018 to May 9, 2018.

██████████ challenged the validity of the meter test and asserted that the meter test is not scientific results. She further stated that a service technician told her that she could see the meter test on-line. She asserted that testing water flow does not mean anything regarding her water usage and that her usage and the testing of water flows are two (2) different things. She asked the name of the water meter at her property and Ms. Wright responded that she does not know the name of the water meter. Lastly, the customer complained that she was unable to pull up on her phone information on how to test water 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 single-family residence owned and occupied by ██████████. (Testimony of ██████████)
2. The period in dispute is July 19, 2017 to October 18, 2017. (Testimony of the parties)
3. The customer was in arrears in the payment of charges for her water and sewer service

Wright; Disconnection Notice dated 07/10/17)

4. The Disconnection Notice reflected that the customer owed a total balance due of \$408.29 and had a past due amount of \$218.35, that a turn-off fee of \$50.00 and a service restoration fee of \$50.00 would be applied if water service is disconnected, and, to avoid disconnection of water and sewer services by 07/24/17 or any day thereafter, the customer must remit payment in the amount of \$218.35. (Disconnection Notice dated 07/10/17)
5. On July 27, 2017, DC Water disconnected the customer's water service due to delinquent account. (Testimony of Eileen Wright; DC Water Service Order dated 07/27/17)
6. The customer was out-of-town when DC Water disconnected her water service on 07/27/17, however, she has a sensor on her kitchen faucet which alerts her of a water shut-off and, as such, the customer knew that she did not have water at her house. (Testimony of [REDACTED])
7. The customer contacted DC Water on July 27, 2017 regarding the disconnection of service to her home and was informed that the action was taken due to her non-payment of her bill. The customer tendered over the web a payment in the amount of \$428.00 on 07/28/17. (Testimony of the parties)
8. Upon tender of payment, DC Water restored (turned-on) the customer's water service. (Testimony of Eileen Wright)
9. The customer's payment of \$428.00 was not honored by her bank due to insufficient funds in her account (NSF); DC Water received notice of NFS on 08/02/17. (Testimony of Eileen Wright; DC Water Customer Ledger Information for [REDACTED])
10. On 08/08/17, the customer paid to DC Water the sum of \$200.00 by web payment. (Testimony of the parties; DC Water Customer Ledger Information for [REDACTED])
11. DC Water turned the customer's water service off on August 9, 2017 because the customer failed to pay the total amount due and owed to DC Water. (Testimony of Eileen Wright and Denice Page)
12. The customer contacted DC Water on August 9, 2017 regarding the disconnection of service and was informed that her payment was returned due to NSF. (Testimony of Eileen Wright)
13. The customer paid \$253.00 by debit card to DC Water on August 10, 2017. (DC Water Customer Ledger Information for [REDACTED])
14. DC Water restored service to the customer's property on August 9, 2017. (Testimony of Eileen Wright)
15. The customer's payment of \$253.00 to DC Water was rejected by her bank for NSF. (Testimony of Eileen Wright; DC Water Customer Ledger Information for [REDACTED])
16. DC Water turned off service to the customer's property on August 21, 2017 after notice that the \$253.00 payment by the customer was not honored by her bank due to NSF. (Testimony of Eileen Wright and Denice Page)
17. The customer made a \$200.00 web payment on 08/18/17 and a \$100.00 web payment on 08/22/17 which brought her balance due to zero (\$0). DC Water Customer Ledger Information for [REDACTED]
18. The DC Water removed and tested the water meter and the meter was determined to have 100.94% overall accuracy based upon three (3) conducted water flow tests which

100.94% overall accuracy based upon three (3) conducted water flow tests which measured at 100.60%, 101.81% and 100.42% respectively. (Testimony of Eileen Wright; DC Water meter test log)

19. DC Water is mandated to collect and/or charge to its water and sewer service customers certain fees by the DC City Council and U.S. Federal Government which include but are not limited to Clean River/Stormwater fee, Right-of-Way fee, Replacement fee; all fees are listed and explained in the publication- "What's On Tap", enclosed with each mailed Bill Summary. (Testimony of Eileen Wright)
20. DC Water charged the customer three (3) turn-off fees of \$50.00 each and three (3) turn-on fees of \$50.00 each as reflected on the customer's Bill Summary dated 08/24/17. (Testimony of the parties; Bill Summary dated 08/24/17)

#### 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 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)
3. Title 21-§425 et seq. of the D.C. Municipal Regulations establishes the criteria and procedures for terminating water and sewer services for nonpayment of any charges, penalties, interests, or fees permitted by law to be assessed against the owner or occupant of real property.
4. DC Water is required to give the owner or occupant of real property final notice specifying that service will be terminated and the date that service will be subject to termination. (See, 21 DCMR 425.2 and 425.3)
5. The DC Consumer Product Protection Act applies only to unlawful trade practices arising from a consumer-merchant relationship. Knox v. McDaniel, 117 WLR 1897 (Super. Ct. 1989)
5. The DC Department of Consumer Regulatory Affairs cannot apply the provisions of Title 28-§3905 of the DC Code (Consumer Protection Procedures) to an action of an agency of government. (See, DC Code 29-§3903(c)(2)(E))
6. Title 28-§3814 of the DC Code relates/applies only to conduct and practices in connection with collection of obligations arising from consumer credit sales, consumer leases and direct installment loans.
7. DCMR 21-§414.3- No hearing officer shall have the authority to overrule any law or regulation of the District of Columbia.

#### DECISION

In this case, the customer disputed application of turn-off and turn-on fees each time that the customer's service was disconnected and restored. The customer, also, disputed fees applied to her account. The customer asserted that she was entitled to new notice of the utility's intent to

disconnect her service prior to disconnection of service when her payment for service was not effective due to insufficient funds in her bank account. The customer cited the D.C. Consumer Protection Procedures as basis for the asserted new notice requirement and she referred to D.C. Debt Collection laws, as well, as affording to her protection from the disconnection of water and sewer service.

DC Water presented evidence of its giving the customer a Notice of Disconnection for non-payment of charges. The utility explained that the customer tendered payments, using a debit card/check over the web, and in response to the payment(s) the utility restored service after disconnection, only, to receive notice that the payment(s) were not honored or made by the customer's bank because the customer lacked sufficient funds. DC Water presented evidence that the customer, in fact, used the web to make two (2) payments to the utility, both of which were not honored by the customer's bank because the customer did not have sufficient funds to cover the payment(s). DC Water asserted that it disconnected service for non-payment and because the customer failed to pay her charges per the Notice of Disconnection, the notice remained in effect and no additional notice to the customer was warranted or required.

The customer's reliance upon the D.C. Consumer Protection Law and Debt Collection law protections is misplaced and affords to her no protection against the disconnection of her water and sewer service for non-payment of her charges. DC Water is a quasi-government entity and is subject to the D.C. government in its operations and management and is afforded the protections and authority of an agency. The D.C. Consumer Protection Law applies to merchants and consumers and is specifically not applicable to an agency of the government. Likewise, the debt collections laws of the District of Columbia are aimed at consumer credit sales, consumer leases and direct installment loans and are not applicable to a public utility's collection of services charges from its customers. DC Water is regulated by Title 21 of the D.C. Municipal Regulations and, specifically, termination of water and sewer service for nonpayment is done as set out by criteria and procedures set forth in DCMR 21-§425 et al. which states that the utility is to give a final notice to a customer that service will be terminated and the date after which the termination may occur.

In this case, after being given notice by the utility that her service would be terminated if charges were not paid by a stated date, the customer tendered a purported payment of the charges due and owed and the customer knew or should have known when she tendered the payment that she lacked sufficient funds to pay the amount due and owed to DC Water to prevent the termination of service. In essence, the customer utilized the web payment service to "float" payment whereby she made it appear to the utility that she paid the account to restore or keep on her water service, knowing that the web payment would not be honored by the bank due to insufficient funds in the customer's account. The customer tendered bad payments twice and the utility was misled twice resulting in the turn-off and turn-on of service twice. The utility acted in good faith. The Hearing Officer is convinced that the customer knew actually what she was doing and intentionally misled the utility to get her service restored. Twice the utility restored

service based upon the payment and upon notice that the customer lacked sufficient funds to pay the account as she represented in the web payment, the utility turned service off and charged the turn-off fee. DC Water gave the customer notice of its intent to terminate service and the notice fully met the criteria set forth in its regulations. The notice further informed the customer of the turn-on and turn-off fees applicable when service is terminated for non-payment of charges and it was due to the customer's actions of leading the utility into believing that she was paying her bill when she lacked sufficient funds to do so, that the customer caused the restoring of service and terminating of service when her bank notified the utility that, in fact, the represented payment was not effective because the customer did not have sufficient funds on account with the bank to make the represented payment. There is no question that the utility turned on service to the customer's property when the customer purportedly paid using her debit card on the web and it is not disputed that the payment was not made due to NSF. The Hearing Officer accordingly finds no basis for the customer to dispute DC Water charging her turn-off and turn-on fees each time that she led the utility to believe that she was paying the amount due and owed on her account and her payment(s) was not honored by her bank.

Fees charged to the customer by the utility are established by and/or mandated by the D.C. City Council or the U.S. Government. In some cases, the utility is merely the collector of the fee which is passed on to the government; in other cases, the fee is utilized for the furtherance of a determined public interest as established by the government. Notwithstanding, the purpose of the imposed fees, fees are not subject matter for bill disputes and whether a fee is appropriate or correct is not within the jurisdiction of a hearing officer in this administrative forum. (See DCMR 21-§414.3)

Lastly, no evidence was presented to support any assertion that the water charges to the account are wrong. DC Water removed and tested the water meter and the meter was determined to be functioning within accepted range of accuracy for a water meter. The customer argued that she was not given an opportunity to conduct her own independent investigation of the meter function and she complained that DC Water did not give to her notice of their intent to remove the water meter for testing. The water meter is the property of DC Water as testified by Ms. Wright who also testified that the utility is mandated to test the function of a water meter whenever a customer disputes his/her water bill. Removal of the water meter does not require customer notice and does not require the customer to be present at the property. The customer did present evidence and testified that she was not at home and away on job travel from July 5, 2017 to September 15, 2017, however, even though the utility stated that the customer's dispute was untimely, the utility did conduct an investigation by testing the water meter and it presented its meter log readings for the property for the period in dispute by the customer. While the meter reads from the property reflect some hours of no water being used at the property, the meter reads also reflect water being used at the property over the period that the customer states that she was on travel. The focus of the customer's discontent evolved around the imposition of the turn-off and turn-on fees and other fees billed to her account, as opposed to, the charges for


water usage. Nothing precluded the customer from presenting a plumber's report or other evidence challenging the accuracy of the meter reads from her property and the customer did not do so. The burden of proof rests with the customer to show that more likely than not the charges being disputed are wrong or that she should not be held responsible for payment based upon some other reason. The customer testified that she was out of town during the period in dispute, however, the evidence presented by DC Water regarding the accuracy of the water meter and its meter reads bore more weight than the customer's statement of her travel.

Based upon the foregoing, the Hearing Officer finds the fees assessed to the customer's account to be appropriate and that there is no basis to adjust the customer's account.

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

Date: July 5, 2018

Copy to:

  
15<sup>th</sup> Place, NW  
Washington, DC 20012

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

IN RE: [REDACTED]  
[REDACTED] Quebec Street, NW  
Washington, DC 20016

Case No: 2018-05-08  
Account No: [REDACTED]

Amount in Dispute - \$ 2,311.00

Before Janet W. Blassingame, Hearing Officer  
May 15, 2018 at 10:00 a.m.

The customer contested a water and sewer bill for the above account for the period of time November 15, 2016 to December 14, 2016. The DC Water and Sewer Authority (DC Water) investigated the water and sewer charges and determined that the charges were valid and an adjustment to the account was not warranted. The customer appealed DC Water's decision and requested an administrative hearing.

This matter was scheduled for hearing on May 15, 2018. Present for the hearing were: [REDACTED] represented by Stephen K. Gardner, Esquire, of Kalbian Hagerty, LLP, 888 17<sup>th</sup> Street, NW, Washington, DC 20006; Jason Wolfe, WOLFHILL Contracting; Eileen Wright, Sr. Communication Specialist, DC Water, on behalf of DC Water; and, Geneva Parker, Manager, Customer Services, DC Water.

The property involved is a single-family residence owned and occupied by [REDACTED]. [REDACTED] identified himself as a physician and he stated that he purchased the house in July 2014 and lives there with his wife and small child. The house has five (5) full bathrooms, two (2) half-bathrooms, one kitchen, radiators, a utility sink, a washing machine, a dishwasher, an irrigation system and three (3) outside faucets. [REDACTED] stated that his water and sewer bill has historically ranged from One Hundred Dollars (\$100.00) to Two Hundred Dollars (\$200.00) per billing cycle.

Mr. Gardner opened by stating that his client experienced extraordinary water usage in December 2016. He asserted that average usage is/was 12 CCF and that there is no evidence of excessive water usage by the occupants. He asserted that his client does not believe that the cause of the high-water usage was due to internal consumption. He, further, asserted that his witness, Jason Wolfe, was very familiar with the property and had conducted an internal review.

[REDACTED] testified that .6 CCF is the average daily usage at his residence as reflected on his spreadsheet mark Complainant's exhibit 1. He stated that his baby was born in June 2016. He, further, stated that his August 2016 bill was based on an actual meter read following six (6) months of estimated water usage by DC Water. [REDACTED] also, pointed out that the bill in dispute was only for 29 days of water usage.

██████████ testified that prior to the disputed bill period, his water usage had been 15 CCF for the billing period.

██████████ testified that in April 2016 his contractor re-did a bathroom, but, otherwise, there have been no repairs performed in the house. ██████████ testified that after he got the bill in dispute, he talked with Customer Service Representative Venus Marr, as well as, with Ms. Taylor, an attorney in the General Counsel's Office of DC Water. He testified that he showed his March 2016 water and sewer bill to members of an irrigation crew that was at his house and that Kevin Lawlor, the senior technician of the crew, commented on the amount of water reflected to have been used. ██████████ wrote in a letter accompanying his Administrative Hearing Petition that Mr. Lawlor stated that "Golf courses don't use this much water over an entire season. If there was a leak of this much water, you'd have sinkholes all over your yard". The customer wrote that Mr. Lawlor conducted a thorough inspection of the irrigation system and property and found no evidence of malfunction or leaks. ██████████ testified that he consulted the irrigation crew members because they were the only people at the property who knew about water. He stated that his irrigation system was turned off during the winter months.

The customer testified that he had no notice of a running toilet, that no shower had been left running, the outside faucets were off and the irrigation system was off in October and November of each year. The customer asserted that he had no drips and saw no wet spots on his floors or ceilings. He stated that he had no mold, no dampness, no mildew and his floors were not buckled. He also testified that he saw no ice accumulations in or about his house.

On cross examination, ██████████ asserted that he would hear a toilet running and he did not hear a running toilet. He acknowledged that a plumber did not inspect the property for leaks or water issues. He further asserted that he was registered with DC Water to receive high water usage alert notifications.

Jason Wolfe stated that he has been in the contracting business for twenty (20) years and that he is a licensed contractor in the District of Columbia. He stated that he has done work for ██████████ over the past year, specifically in June/July 2017, and, that he has been in all of the rooms of the ██████████ home. Mr. Wolfe testified that he has never seen any evidence of mold, mildew, a running faucet or leak and that he has not seen any water marks or peeling paint suggesting water damage. Mr. Wolfe testified that the amount of usage is equivalent to fifty-five (55) days of a shower continuously running. He stated that a shower head averages 2.1 gallons per minute. He, further, stated he looked at the toilet fixtures and determined that they were in working condition and he saw all flappers in the toilets closed. He stated that he thought that all of the fixtures had been changed except in the basement of the house. ██████████ interjected that all of the fixtures in his house had to be changed prior to his purchase. Mr. Wolfe concluded stating that he saw no evidence of ██████████ using excessive amounts of water. On cross examination, Mr. Wolfe stated that he conducted his inspection of house in June/July 2017; he



stated that he and another contractor friend had been inside of the property in Spring 2016. Mr. Wolfe acknowledged that a running toilet can be the result of a faulty flapper or faulty fill valve.

Ms. Wright testified that DC Water considers the charges to be valid based upon the meter readings from the property. She stated that there was a significant spike in registering water usage at the property between November 13, 2016 and December 19, 2016. Ms. Wright presented meter readings from the property dated November 1, 2016 thru February 14, 2017 and she pointed out that the meter reads reflected usage occurring at the property every hour starting November 13, 2016.

Ms. Wright testified that the water meter registered water usage occurring every hour at the property starting November 13, 2016 and that hourly usage continued to December 19, 2016 between Midnight and 1:00 a.m. Ms. Wright asserted that because the water meter dial stopped, the stopping of the water meter indicates that something was turned off at the property.

Ms. Wright testified that between November 13, 2016 and December 19, 2016, the customer used 261 CCF of water in 36 days and that the average daily water usage at the property was 7.250 CCF. Ms. Wright testified that there was a significant decline in registering water usage at the property between December 19, 2016 and January 13, 2017 wherein the customer used 7 CCF of water in 25 days and the average daily water usage was .280 CCF.

██████████ interjected that he was away from the home between December 25, 2016 until January 1, 2017 but was at home during the period of the alleged spike in usage.

Ms. Wright stated that DC Water did not conduct an interior inspection of the customer's home because as reflected in the telephone contact log maintained by the utility, the customer declined an interior inspection.

██████████ interjected again and stated that when he said that he and his family were away, he meant that they were out of the house most of the time, not that they were away on travel.

Ms. Wright asserted that had ██████████ signed up with DC Water for high water usage notifications (HUNA), he would have received alerts that high water usage was occurring his property. Ms. Wright pointed to an email dated 9/11/17 from Danny Bellerini, System Administrator for HUNA, DC Water, in which he stated that the customer enrolled or created an account back in 2014, however, there was no phone number or email address. Per the email from Bellerini, she pointed out that the customer had stated no preference to receive phone calls or emails but if he had, the customer would have been notified that high water usage was occurring of 11/15/16, 11/21/16, 11/27/16, 12/03/16 and 12/09/16.

Ms. Wright testified that DC Water removed and tested the water meter and the meter was determined to have 98.08% accuracy which is within accepted range for water meter

accuracy as established by the American Water Works Association. Ms. Wright asserted that the meter test affirmed that the water meter was functioning properly. Ms. Wright stated that she knows that the high usage at the property was not caused by an underground leak because the utility performed no repairs at the property and an underground leak must be repaired in order for such a leak to stop.

On cross-examination, Ms. Wright stated that the water meter was installed at the property in April 2016 and she confirmed that usage had been estimated by DC Water until the water meter was installed in April 2016. She further testified that the customer's average daily water usage was 1.703 CCF between October 27, 2015 and April 28, 2016 and she asserted that such usage is relatively high for the number of people occupying the property. Ms. Wright stated that there has been a total of four (4) water meters at the property between June 2016 and July 2017. She stated that DC Water changed the water meter initially because the MTU was not transmitting meter reads. She stated that the utility next changed the meter in order to test the water meter and when the meter was removed for testing, the meter was replaced with another water meter. She added that DC Water normally would not have tested the water meter in an instance where water usage declined, however, in this case, the meter was tested because of the customer's dispute and request for a hearing. Ms. Wright stated that she does not know the water meter's size. She further explained that the MTU is not tested because the device does not register water usage. Counsel for ██████████ stated that he has a paper that states that MTU error can cause meter read error. Ms. Wright retorted that the MTU was functioning properly and that a MTU is never tested. She declared that the water meter in place prior to the customer's dispute was not relevant to the dispute and, as such, no meter test was conducted. When noted that title of the meter test provided was "METER TEST #2", Ms. Wright asserted that there is no earlier meter test and that she labeled the test as #2 for her own purpose of identifying the document during the hearing. Counsel for ██████████ interjected again that the paper that he possesses comes from the American Water Works Association and shows that if the MTU is defective, it can result in read error.

The parties agreed that Ms. Wright would have one week to respond to the paper presented by Counsel for ██████████ and that Counsel would then have one week to counter respond to the utility's assertions.

In closing, Counsel for ██████████ asserted that his client allegedly had one month of extraordinary usage however there is no evidence of his causing excessive usage during the 29-day period. Mr. Gardner pointed out that there have been four (4) different water meters at the property- that two (2) meters had defective MTU devices and that DC Water did not test the 3<sup>rd</sup> meter's MTU. He asserted that if such amount of water as alleged had been used by his client, ██████████ would have known that the usage was occurring.

Ms. Wright closed stating that the charges are valid.

During the hearing, the customer submitted the following exhibits:

Exhibit 1- spreadsheet of meter reads, dates, billing period, irrigation status, etc.

Exhibit 2 - Bill Summary dated 12/15/16

Exhibit 3 – Letter dated May 2, 2017 to Ms. Taylor from [REDACTED]

Exhibit 4 – Factors for Water Billing Accuracy by Itron [REDACTED]

Post-hearing both parties submitted statements in support of their hearing positions. [REDACTED] submitted charts and data indicating typical leakage from various sources and argued that the data contradicts that he consumed the amount of water charged. DC Water offered alternative sources of water leaks and data amounts that could result from such leaks equivalent or greater than the usage in dispute. The utility, further, argued against the probative value of the articles presented by the customer regarding meter testing methods and billing errors and it attacked the probative value of the testimony of the customer's witness, in that, the witness was not present or doing work in the home during the period that high usage occurred. The customer, through counsel, submitted Post-Hearing Submission of [REDACTED], in which the customer asserted that the agency's post-hearing submission raised argument and facts not introduced during the administrative hearing and that the substance of the document implied that the customer had committed perjury. The customer asserted that the agency's address of the probative value of Mr. Wolfe's testimony exceeded the authorized bounds for post-hearing submissions; the customer, having asserted that the agency improperly attempted to rebut Mr. Wolfe's testimony, the customer entered into a discourse comparing his case to the case of Gatewood v. DC WASA, 82 A.3d 41, D.C. Court of Appeals 2013. The customer, further, raised a new argument asserting that the meter test performed by DC Water was unreliable because it was conducted six (6) months after the alleged spike in water usage and that six (6) months constitutes an unreasonable and unreliable gap in which to test the accuracy of a meter.

Based upon the foregoing testimony, evidence and post-hearing submissions, the Hearing Officer makes the following:

#### FINDINGS OF FACT

1. The property involved is a single-family residence owned and occupied by [REDACTED] with his wife and young child. (Testimony of [REDACTED])
2. The period in dispute is November 15, 2016 to December 14, 2016. (Testimony of the parties)
3. There was a significant increase in reported water usage occurring at the property from November 13, 2016 to December 19, 2016. (Testimony of Eileen Wright; DC Water Meter Read Log; DC Water High Usage Notification Application for November and December Water Usage)
4. Reported water usage at the property declined significantly as of December 19, 2016 between Midnight and 1:00 a.m. (Testimony of Eileen Wright; DC Water Meter Read

Log; DC Water High Usage Notification Application for December and January Water Usage)

5. The customer was not aware of any leaks or plumbing defects in or about the home during the period that high water usage allegedly occurred. ( [REDACTED] )
6. The customer declined having an interior audit for leaks conducted by DC Water. (Testimony of Eileen Wright)
7. DC Water removed and tested the water meter and the meter was determined to have 98.09% accuracy which is within the accepted standards for water meter accuracy as established by the American Water Works Association. (Testimony of Eileen Wright; DC Water Unity Contacts By Account- meter test results)
8. The utility excluded the possibility of an underground leak as having caused the high-water consumption because the usage declined without repairs being made by DC Water and an underground leak will not stop unless repaired. (Testimony of Eileen Wright)
9. The customer did not hire a plumber to inspect his property in response to the reported high-water usage. (Testimony of [REDACTED] )
10. The customer showed his March 2016 bill reflecting the high consumption to employees of his irrigation company who were at the house on April 14, 2016 to turn on the irrigation system and the employee(s) reported no signs of leaks or problems with the irrigation system at the property and expressed that the charged usage was more than that used by a golf course over an entire season and that the customer would have had sink holes all over his yard if there had been a leak. (Testimony of [REDACTED]; Letter dated May 2, 2017 to Ms. Taylor from [REDACTED] )
11. The customer received an adjusted bill from DC Water in March 2016 following the estimate of water usage at the property over a period extending from 10/7/2014 to 2/12/2016. (DC Water Billed History/Usage History Log)
12. There were no leaks or visible signs of a water problem at the property in June/July 2017. (Testimony of Jason Wolfe)
13. DC Water changed the customer's water meter in April 2016. (DC Water Billed History/Usage History Log)
14. DC Water has record of hourly transmitted meter reads from the property from 11/1/2016 to 2/14/2017. (DC Water Meter Read Log)
15. The customer enrolled or established an account with DC Water in 2014, however, no email address or phone number was provided to DC Water, and as such, the HUNA system noted high water usage occurring at the property but lacked information to send out the alerts to the customer. (Testimony of Eileen Wright; Email from Danny Ballerini to Eileen Wright date September 11, 2017)

#### 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. If a 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, DC 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. 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 in this matter failed to establish that more likely than not the bill being disputed was incorrect or for some other reason, he should not be held responsible for payment of the charge. The customer testified that he was not aware of any leaks or plumbing issues occurring at his home. He testified that he showed a March 2016 Bill Summary to employees of an irrigation system company who were at his home several months before the period in dispute and was told by an employee of the company with respect to the water usage reflected in the March 2016 Bill Summary that, if there had been a leak at the property, there would have been sink holes in his yard and that the amount of water usage reflected was more than what a golf course would use for an entire season. The customer, further, presented his contractor, as a witness, and the contractor testified that he did not see or detect any leaks or plumbing issues in the home several months after the period in dispute. The customer submitted into evidence a white paper prepared by Itrón titled "Factors for Water Billing Accuracy" and Expanded Summary entitled "Meter Testing Methods Matter" which appeared as a 2013 American Water Works Association published article. The customer, further, referred to charts and data from two (2) municipalities indicating typical leakage due to leaking toilets and/or in-ground irrigation systems and the customer asserted that a leaking toilet could not have caused the amount of

water usage charged and that his irrigation system has turned off during the period in dispute. Lastly, the customer challenged the accuracy of the meter test and argued that, in the investigation of the dispute, the MTU was not tested.

DC Water presented evidence of its test of the water meter and testimony that the meter was functioning within accepted range of meter accuracy. The utility established that the customer declined an internal audit of the property to investigate the cause of the high-water consumption and that the customer did not hire a plumber to investigate the cause of the high-water consumption. The customer referred to a prior bill which had not been disputed (March 2016) which reflected high water consumption having occurred at the property during a period prior to the period in dispute. The utility showed a reported decline in water usage occurring at the property and excluded the possibility of an underground leak as having caused the high-water consumption because the usage declined without repairs being made by DC Water and an underground leak will not stop unless repaired. DC Water attacked the probative value of testimony from the customer's witness since he had not been at the property at or close to the period in dispute. It further attacked the probative value of the articles presented by the customer and asserted the lack of relevancy to the dispute. The utility also set forth examples of possible scenarios that would cause the amount of water usage charged to the customer and it implied that the customer turned something off or a repair was performed at the property to result in the decline in water consumption.

The Hearing Officer agrees with DC Water that the articles presented by the customer have no probative value in this dispute.

The articles discuss meter test results by twelve (12) utilities in the United States on ten (10) residential meters. DC Water is not identified as one of the utilities referred to in the article. The article does discuss AMR meters, as utilized by DC Water, and, as pointed out by DC Water in its Post-Hearing Submission at 4, the article states that utilizing an AMR system can eliminate many of the potential errors inherent in the meter reading process and concludes that there are very few errors that occur with AMR technologies and that AMR technologies are often implemented to fix errors caused by aging infrastructure or human error. The article discusses meter rightsizing, proper installation, meter test flow, test bench cleanliness and the proper utility billing system settings, among other things, as factors contributing to billing accuracy, however, the testimony and evidence presented did not establish anything suggesting that such factors affected the billing in this case or that the meter reads or meter test was wrong. Ultimately, also as DC Water pointed out in its Post-Hearing Submission, the article advertises the merits of Itron's Automated Meter Reading System and serves as an endorsement of DC Water's automated meter reading (AMR) system.

The customer's witness was not present at the time that high water consumption was occurring at the property and by the time that contractor was at the property, high consumption had declined. As such, the witness testimony that he did not detect any leaks or plumbing defects has no probative value. Likewise, the hearsay testimony by the customer that the irrigation company employees questioned a March 2016 Bill Summary's reflected usage totals and found no leaks or defects in the irrigation system in April 2016, has no probative value to this dispute either. In both instances, the testimony relates to periods outside of the period in dispute and is either before high usage occurred or after the decline in reported water consumption occurring at

the property.

DC Water tested the water meter, was able to exclude the existence of an underground leak as a possible cause of the high-water consumption, that an interior inspection by the utility was declined by the customer and that there are existing alternative causes of high water consumption as possibilities in causing the high-water usage in this instance. The customer asserted that the water consumption could not have been caused by a toilet or by his irrigation system; DC Water determined in its investigation that the high usage was due to no fault of DC Water and that the usage was controlled at the premises. During the hearing, DC Water asserted that its water meter was functioning properly based upon the meter testing and that the MTU has no bearing upon registration of water usage.

The Hearing Officer finds no fault or dereliction in DC Water's investigation of the customer's dispute. The customer's argument that the length of time elapsing between the registration of high water usage on the meter and the testing of the meter was unreasonable and results in the meter test being unreliable, was a new argument not presented during the hearing and, as such, was improperly raised in post-hearing submission. Likewise, DC Water's asserting that the high-water usage could have been the result of a busted pipe, also, was a new theory not raised during the hearing. With respect to both new arguments raised post-hearing, the Hearing Officer finds no harm by or to either party because the decision herein was not based upon either. There was no presented evidence that test results of a meter tested six (6) month after registration of high water usage are unreliable. DC Water further testified, through Ms. Wright, that it tests water meters when a customer disputes a bill and that it would not have tested this particular water meter, except for the bill dispute, because usage declined. Based upon the when and why the utility tests water meters, a meter test is never performed in close time to high water usage that has stopped prior to initiation of a bill dispute and without support of the argument that six (6) month gap in testing and high-water usage is unreasonable, the Hearing Officer has no basis to accept such allegation. With respect to DC Water rising a theory of a busted pipe as causing the high-water usage, such theory was unnecessarily made because DC Water does not have a burden of proving the cause of the high-water usage registering on the meter; it must prove that the meter was functioning within accepted range of accuracy which it did establish through its testing of the meter.

In instances in which the equipment is tested and found functioning and no other checks establish why high-water consumption was occurred, the D.C. Municipal Regulations bar DC Water from adjusting a customer's account for high water consumption. (See, 21 DCMR § 408) As such, DC Water's determination that the charges are valid and an adjustment to the account charges is not warranted, is hereby AFFIRMED.

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

Date: July 5, 2018

Copy to:

Stephen K. Gardner, Esq.  
Kalbian Hagerty LLP  
888 17<sup>th</sup> Street, NW  
Suite 100  
Washington, DC 20006

Nat N. Polito, Esq.  
1776 K Street, NW, Suite 200  
Washington, DC 20006



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

IN RE: [REDACTED]  
[REDACTED] Cityscape Drive, NE  
Washington, DC 20018

Case No: 2018-05-10  
Account No: [REDACTED]

Amount in Dispute - \$ 1210.43

Before Janet W. Blessingame, Hearing Officer  
May 15, 2018 at 1:00 p.m.

The customer contested a water and sewer bill for the above account for the period of time December 27, 2017 to January 23, 2018. The DC Water and Sewer Authority (DC Water) investigated the water and sewer charges and determined that the charges were valid and that an adjustment to the account was not warranted. The customer appealed DC Water's decision and requested an administrative hearing.

This matter was scheduled for hearing on May 15, 2018. Present for the hearing were [REDACTED] and Eileen Wright, Sr. Communication Specialist, DC Water, on behalf of DC Water.

The property involved is a single-family townhouse purchased by [REDACTED] in June 2016. The house has five and one-half (5 ½) bathrooms, one kitchen, three (3) outdoor faucets, a washing machine, a dishwasher, and a wet bar. [REDACTED] stated that his water and sewer bill is generally between Sixty Dollars (\$60.00) and Eighty Dollars (\$80.00) per billing cycle.

[REDACTED] testified that he and his wife were out of town December 23, 2017 to December 26, 2017, December 30, 2017 to January 3, 2018, and January 12, 2018 to January 14, 2018. He further stated that he winterized his house by shutting off the outdoor water valves and he turned on a humidifier.

[REDACTED] testified that when he received the bill from DC Water, he contacted his builder- Ryan Homes, which came in January 2018 and inspected the house for water issues but found nothing wrong. [REDACTED] testified that he, himself, inspected the house and he saw a water mark on the wall next to a shower door. [REDACTED] stated that the shower door was sealed and adjusted fixing the problem having caused the water mark. [REDACTED] stated that he checked for dripping faucets, valves, running water/toilets, and burst pipes, and, he found no defects. [REDACTED] added that he had made no repairs.

[REDACTED] stated that he received a HUNA alert from DC Water after the water and sewer bill had been paid. [REDACTED] pointed out that his account was on auto-pay. Ms. Wright interjected and stated that the customer did not receive a HUNA alert but, instead, received a letter from DC Water advising him that high water usage had occurred at the property. [REDACTED] responded that he did not know about HUNA.

Ms. Wright testified that DC Water considers the charges to be valid based upon reads from the customer's water meter. Ms. Wright testified that there was a registered spike in water usage at the property from January 8, 2018 to January 18, 2018. She stated that no water usage registered on the water meter when the couple was away from the home on December 30, 2017. With respect to the spike, Ms. Wright stated that the dial on the water meter started moving between 11:00 p.m. and Midnight on January 8<sup>th</sup>-9<sup>th</sup> and continued until between 6:00 p.m. and 7:00 p.m. on January 18, 2018.

Ms. Wright testified that DC Water removed the water meter from the property for testing and the meter was determined to have 99.12% accuracy which is within accepted range of accuracy for a water meter based upon standards set by the American Water Works Association. Ms. Wright stated that accepted range of water meter accuracy is 95% to 102%.

Ms. Wright stated that she knows that the increased water usage which occurred at the property was not the result of an underground leak because an underground leak would have continued until repaired and that such leaks cannot repair themselves.

Ms. Wright testified that the customer was using 10 CCF of water per day during the spike in usage and that, in her opinion, the volume of water was more like a broken pipe as opposed to a toilet running, but, in this case, she did not know the source or what caused the usage. [REDACTED] interjected that he saw no ice around his house during the period of the alleged spike and that he had no burst pipes. Ms. Wright, added, that the timing of when the spike occurred suggests to her that the usage may have been caused by a running toilet.

[REDACTED] telephoned his wife to get the date that Ryan Homes was at their property; [REDACTED] stated that the builder was there on January 26, 2018. [REDACTED] retracted his earlier statement and said that when Ryan was out to his house regarding the water mark by the shower, he had not received the bill now being disputed.

Ms. Wright stated that between January 18, 2018 and January 23, 2018, the five (5) days following the spike period, the customer used .100 CCF of water per day and .500 CCF of water registered on the water meter.

[REDACTED] concluded stating that Ryan Homes was at his house on January 26, 2018, February 15, 2018 and March 30, 2018

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 [REDACTED] (Testimony of [REDACTED])
2. The period in dispute is December 27, 2017 to January 23, 2018. (Testimony of the parties)
3. Between January 8, 2018 and January 23, 2018, there was a significant increase in water usage registering on the customer's water meter. (Testimony of Eileen Wright; DC Water Meter Read Log)

4. There was a significant decline in water usage at the property after January 23, 2018. (Testimony of Eileen Wright; DC Water Meter Read Log)
5. The decline in water usage occurred without necessity of repairs being performed by DC Water. (Testimony of Eileen Wright)
6. The property owner was unaware of any plumbing problems in the home and when the owner inspected his property, he did not observe any leaks, broken pipes, running toilets or standing water(ice) which would have given him any indication that there was a plumbing or water problem existing in his home which could have caused high water consumption. (Testimony of [REDACTED])
7. DC Water performed no repairs at the property. (Testimony of Eileen Wright)
8. DC Water ruled out the existence of an underground as a possible cause of the registered high-water usage because the usage declined without necessity of repairs being performed. (Testimony of Eileen Wright)
9. DC Water removed and tested the water meter and the water meter was determined to have 99.12% accuracy. (Testimony Eileen Wright; DC Water Meter Test Results)
10. The property was inspected the Ryan Homes, the property's builder, and the builder detected no water or plumbing problems except a faulty shower door which required adjustment and sealant. (Testimony of [REDACTED])

#### 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. If a 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 July3, 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. 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 in this matter failed to establish a prima facie case that more likely than not the bill being disputed was incorrect or for some other reason, he should not be held responsible for payment of the charge. The customer testified that he was not aware of any leaks or plumbing issues occurring at his home and that his builder, also, inspected the home on more than one occasion and also failed to detect any cause of high water usage. On DC Water's part, the utility presented a meter test which established that the water meter was accurately registering water usage occurring at the property, the utility established that it billed based upon actual meter read from the property, and, it excluded the existence of an underground leak as a possible cause of the occurring high water consumption.


Pursuant to D.C. Municipal Regulations, in cases such as this one, when all tests and checks fail to find the cause of high water consumption at a property, DC Water is barred from adjusting the customer's account for high water consumption. (21 DCMR §408)

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

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

Date: July 5, 2018

Copy to:

  
Cityscape Drive NE  
Washington, DC 20018

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

IN RE: [REDACTED]  
[REDACTED] Delafield Place NW  
Washington, DC 20011

Case No: 2018-05-09  
Account No: [REDACTED]

Amounts in Dispute - \$ 567.92 & \$771.37

Before Janet W. Blassingame, Hearing Officer  
May 15, 2018 at 11:00 a.m.

The customer contested a water and sewer bill for the above account for the period of time November 12, 2017 to February 20, 2018. The DC Water and Sewer Authority (DC Water) investigated the water and sewer charges and determined that the charges were valid and an adjustment to the account was not warranted. The customer appealed DC Water's decision and requested an administrative hearing.

This matter was scheduled for hearing on May 15, 2018. Present for the hearing were [REDACTED] and Eileen Wright, Sr. Communication Specialist, DC Water, on behalf of DC Water.

The property involved is a single-family residence occupied by [REDACTED] with his wife since year 2012. The house has four and one-half (4 ½) bathrooms, one kitchen, radiators, two (2) outside faucets, a dishwasher, a washing machine and a utility sink. Historically, water usage in the home has ranged between 10 CCF and 13 CCF per billing cycle.

[REDACTED] states that his water usage was reportedly unusually high for two (2) billings. His bill dated January 26, 2018 was \$567.92 and reflected usage of 39 CCF of water. His bill dated February 28, 2018 was \$771.37 and reflected usage of 63 CCF of water. [REDACTED] testified that he contacted DC Water upon receipt of January billing because the bill was so out of the ordinary. The customer stated that his outside faucets had been turned off and that he had no running toilets. [REDACTED] testified that he hired a plumber (Jiffy Plumbers) in March 2018 and the plumber found no leaks. The customer stated that DC Water installed a new water meter at his residence, also in March 2018, but, as of the hearing date, he has yet to receive a bill from the utility since the meter was replaced.

Ms. Wright testified that DC Water determined that the charges are valid based upon meter reads from the property. She stated that according to the meter reads, there was a spike in water usage between December 13, 2017 and December 31, 2017. She testified that the water meter dials started to move on December 12, 2017 and did not stop until December 31, 2017. She stated that over the course of 18 days, the customer used 91 CCF of water and that the daily average water usage was 5.055 CCF. Ms. Wright stated that prior to the spike the customer's daily average water usage had been .181 CCF between November 21, 2017 and December 13, 2017. Ms. Wright stated that the water usage significantly declined after December 31, 2017 and between December 31, 2017 and February 20, 2018, the customer used 8 CCF of water and had a daily average usage of .156 CCF over that 55 day period.

Ms. Wright testified that DC Water sent the customer three (3) HUNA (High Usage Notice Alert) notices and that the notices were sent December 15, 2017, December 21, 2017 and December 27, 2017.

Ms. Wright stated that DC Water removed the water meter for testing on April 10, 2018 and the water meter was determined to have 100.61% accuracy which means that it performing within accepted range of meter accuracy as established by the American Water Works Association.

Ms. Wright asserted that DC Water was able to eliminate an underground leak as a possible cause of the high-water usage at the property because the usage declined without necessity of repairs and an underground leak will not stop until repaired.

Ms. Wright concluded stating that she does not know the cause of the high-water consumption but she does know that it was not due to any fault by DC Water.

██████████ stated that he went through his house looking for any leaks or plumbing issues when he got the HUNA notice but when he did not see anything wrong, he ignored the alerts. He stated that he ignored the alerts of high water usage until he got his water and sewer bill.

██████████ stated that he was out of town for four (4) days for Christmas and Ms. Wright pointed out that water usage continued to register on the water meter during the time that ██████████ was not in the home. ██████████, then, corrected his statement and he stated that he remembered that during his time away for Christmas, he had a dog sitter who has access to the house.

██████████ concluded that he hopes that his historical usage record provides sufficient support for a determination that the charges in dispute are wrong.

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 ██████████. (Testimony of ██████████)
2. The period in dispute is November 21, 2017 to February 20, 2017. (Testimony of the parties)
3. There was a significant spike in water usage reported occurring at the property starting December 13, 2017 and continuing until December 31, 2017. (Testimony of Eileen Wright; DC Water Meter Read Log)
4. The outside faucets at the property were turned off and the customer was not aware of any leaks or plumbing issues at the property that could have caused high water usage. (Testimony of ██████████)
5. After December 31, 2017, water usage at the property declined significantly. (Testimony of Eileen Wright; DC Water Meter Read Log)
6. During the period of reported high water usage occurring at the property, DC Water sent

- to the customer HUNA notices of alert; high water usage alerts were sent on December 15, 2017, December 21, 2017 and December 27, 2017. (Testimony of Eileen Wright; email dated April 10, 2018 from Danny Ballerini to Eileen Wright)
7. The customer acknowledged receiving a HUNA alert of high water usage occurring at his property, however, because the customer did not detect any problem causing the high-water usage when he inspected the property, the customer ignored the alert. (Testimony of [REDACTED])
  8. DC Water removed and tested the water meter and the water meter was determined to have 100.61% accuracy. (Testimony of Eileen Wright; DC Water Meter Test Results)
  9. DC Water excluded the existence of an underground leak as a possible cause of the high-water usage occurring at the customer's property because the usage declined without repairs being performed and underground leaks will not stop or decline unless repairs are performed. (Testimony of Eileen Wright)
  10. The customer hired a plumber to inspect his property in March 2018 and no leaks were found. (Testimony of [REDACTED])

#### 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. If a 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)
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. 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 in this matter failed to establish a prima facie case that more likely than not the bill being disputed was incorrect or for some other reason, he should not be held responsible for payment of the charge. The customer testified that he was not aware of any leaks or plumbing issues occurring at his home but he acknowledged receiving HUNA alerts of high water consumption occurring at his property. Despite receiving three (3) HUNA alerts, the customer chose to conduct his own inspection of the property and when he did not detect any leaks or plumbing issues, he chose to ignore the alerts. Two (2) months after high-water usage was no longer happening at the property, the customer hired a plumber to inspect the property; at the time of inspection by the plumber, high water usage was not longer occurring at the property and the plumber found no leaks or plumbing defects.

On DC Water’s part, the utility established, through its testing of the water meter, that its water meter was operating within accepted range of meter accuracy. The utility presented meter reads from the property for the entire period in dispute. The utility also provided explanation as to why it excludes the existence of any underground leak as a possible cause of high water consumption in this case, explaining that the usage declined with necessity of repairs and underground leaks will not stop or decline unless repaired.

Whenever a customer disputes charges to his/her account, DC Water is obligated to investigate the dispute and its possible causes. (See, 21 DCMR 403) In this instance, the utility conducted a meter test and reviewed the meter reads from the property and its HUNA alert system to determine if the customer had received notice of the high usage occurring at the property. A property owner is responsible for what occurs in and about his property and for payment of charges for water usage occurring at the property; if the charges are not paid, the property may be subject to a lien being placed upon the property by DC Water. (21 DCMR §427)

The weight of the evidence and testimony supports a conclusion that occurring at the property causing a significant spike in water usage between December 13, 2017 and December 31, 2017. The utility’s investigation established that the water meter was registering the usage occurring and that the customer was made aware of the usage through alerts sent to him by the utility. In this case, the customer elected to rely upon his own inspection of the house upon receipt of alerts from the utility that high water usage was occurring and when he did not detect any problems, he chose to ignore the warnings. No evidence or testimony established that DC Water caused the high-water usage or that its equipment was faulty in anyway to cause the charges to be wrong. DC Water is not responsible for the customer’s election to ignore warnings and unfortunately in this instance, the customer failure to heed warning has lead to no one knowing the cause of the high-water usage. Pursuant to D.C. Municipal Regulations, in cases such as this one, when all tests and checks fail to find the cause of high water consumption at a property, DC Water is barred from adjusting the customer’s account for high water consumption.




(21 DCMR §408) Contrary to the customer's hope that his historical water usage would support a conclusion that the disputed water usage and its resulting charges are wrong, historical patterns of water usage only establish what is normal range of usage for a household or property and provide nothing to protect the property owner from something occurring to effect water used at the property. When high water usage is detected occurring at a property, the property owner would be prudent to hire a plumber or request an inspection by DC Water to determine the cause of the water usage so that the usage cannot be quelled or stopped and the customer's does not incur charges for high water consumption. Here, the customer did not contact DC Water until after the high-water usage had stopped and as such, to request an inspection by DC Water was inappropriate and useless for the wrong had already occurred and declined. Likewise, by the time that the customer brought in a plumber to inspect the property, the high-water usage had ended and no the cause was found.

Based upon the foregoing, the Hearing Officer concludes that the preponderance of the evidence and testimony presented supports DC Water's determination that the charges are valid and an adjustment to the account charges is not warranted. Accordingly, DC Water's determination is hereby AFFIRMED.

By: *Jarret W. Blessingame*  
Jarret W. Blessingame, Hearing Officer

Date: *July 5, 2018*

Copy to:

  
Delafield Place NW  
Washington, DC 20011