

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

In re: Estate of Charles Taylor
c/o Teandre Taylor, P.R.
14397 Goldren Crest Drive
Chino Valley, CA 91709-4864

Service Address:
[REDACTED] Wheeler Hill Drive, SE

Account No: [REDACTED]
Case No: 22-218424

Amounts in Dispute: \$ 944.15

Before Janet W. Blassingame, Hearing Officer
March 15, 2022 at 10:00 a.m.

ORDER

The customer contested a water and sewer bill for period August 28, 2021 to September 28, 2021. The DC Water and Sewer Authority (DC Water) determined that the charges were valid and no adjustment of the customer's account was warranted. The customer requested an administrative hearing.

This matter was scheduled for a remote hearing on March 15, 2022. Present for the hearing were Arlene Andrews, Kimberly Arrington and Geneva Parker on behalf of DC Water. The customer failed to sign-in or call-in for the hearing.

The customer was afforded a forty (49) minute grace period and although the hearing was delayed until 10:49 a.m., the customer failed to appear. The letter of notification that was sent to the customer advised that "Failure to appear at your scheduled hearing may result in a default judgment being entered against you." (See, 21 DCMR 415.3)

DC Water made a courtesy telephone to the customer to ensure that no technical problem was impeding the customer's participation. Ms. Arrington telephoned the customer, who answered the phone. Ms. Arrington reported that the customer stated that he confused the time of the hearing- confusing Eastern Standard time with Pacific Time, in that he was in California. Ms. Arrington reported that the customer stated that he would call-in for the hearing in five (5) minutes. Ms. Arrington placed the telephone call to the customer at 10:20 a.m.

Based upon the conversation between Ms. Arrington, the Hearing Officer extended the 30-minute grace period normally afforded to customers to an additional 20 minutes.

Ms. Andrews, on behalf of DC Water, requested a default judgment against the customer and the Hearing Officer granted the utility's request for a default.

On March 24, 2022, T. Taylor emailed DC Water Administrative Hearings as follows:
"My apologies, I missed my hearing due to a simple time zone confusion. I assumed 10am, my time (Los Angeles, California) When it was D.C. local time."

The Hearing Officer takes into reconsideration the email received from the customer, however, declines to change the default judgment against the customer.

Based upon the foregoing described conversation between Ms. Arrington and the customer on the day of the scheduled hearing, the hearing was delayed additional time to accommodate the customer however, the customer failed to call-in or request a continuance after becoming aware of the time confusion and despite leading the Hearing Officer and DC Water's representatives to understand that he would do so within minutes of the phone call. The email received from the customer fails to address his failure to call-in after being contacted and being aware of the time confusion and the fact that the email was not sent for nine (9) days after the scheduled hearing date reflects a lack of commitment by the customer in pursuing the dispute.

Accordingly, based upon customer's failure to appear for the hearing or to request in advance that the hearing be postponed or to request a continuance when contacted on the scheduled hearing date after failing to call-in or sign-in for the hearing, a default judgment is entered against the customer and the determination that the bill is valid is AFFIRMED.

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

Date: *May 14, 2022*

Copy to:

Estate of John Taylor
c/o Teandre Taylor
14397 Golden Crest Drive
Chino Valley, CA 91709-4864


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

In re: Sodium L.L.C.
c/o Empire Leasing
[REDACTED] K Street, NW
Washington, DC 20006

Service Address:
[REDACTED] N Street, NW

Account No: [REDACTED]
Case No: 22-127068

Amounts and Dates in Dispute:
8/25/2021 – 9/21/2021 = \$14,203.30
9/25/2021 – 10/26/2021 = \$ 9,401.10

Before Jane W. Blassingame, Hearing Officer
March 24, 2022 @ 10:00 a.m.

ORDER OF DISMISSAL

The customer contested two (2) water and sewer bills for the above account for the periods of time August 25, 2021 to September 24, 2021 and September 25 2021 to October 26, 2021. The DC Water and Sewer Authority (DC Water) determined that the charges were valid and no adjustment of the customer's account was warranted. The customer requested an administrative hearing.

This matter was initially scheduled for a remote hearing on March 10, 2022 and was rescheduled to March 24, 2022 at 10:00 a.m. Present for the hearing on March 24, 2022 were Arlene Andrews and Kimberly Arrington on behalf of DC Water, as well as, Barbara Mitchell, Esquire of DC Water observing only.

The customer was afforded a thirty (30) minute grace period and although the hearing was delayed until 10:30 a.m., the customer failed to appear. The letter of notification that was sent to the customer advised that "Failure to appear at your scheduled hearing may result in a default judgment being entered against you." (See, 21 DCMR 415.3) Because the customer did appear for hearing on March 10, 2022, DC Water made a curtesy telephone to the customer to ensure that no technical problem was impeding the customer's participation. Ms. Arrington telephoned Empire Leasing and spoke with a receptionist who informed her that "he" had an emergency and did not come in. At the instruction of the Hearing Officer, Ms. Arrington recalled Empire Leasing to request identification of the individual referenced as "he". On the second call, Ms. Arrington spoke with David Gorostieta of Empire Leasing. Ms. Arrington put on the record that Mr. Gorostieta informed her that Michael [Dahan] was not available due to an emergency and no one else was available to participate in the hearing. Ms. Arrington stated that Mr. Gorostieta asked the effect if the ruling was favorable and she told him that a credit would

be applied to the account but that if the ruling was against the customer, the total amount in dispute would be due. Ms. Arrington stated that Mr. Gorostieta informed her that the customer did not want to further pursue the dispute, would not attend the hearing and would pay the bill.

As such, based upon customer's failure to appear or to request in advance that the hearing be postponed, and the representations of Mr. Gorostieta that the customer intended to pay the bills in dispute, this matter is dismissed based upon the customer's failure to appear and go forward with the dispute. The DC Water's determination that the bill is valid is AFFIRMED and, if the customer has not paid the amounts due, it is directed to do so.

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

Date: May 18, 2022

Copy to:

Sodium L.L.C.
c/o Empire Leasing
[REDACTED] K Street, NW
Washington, DC 20006

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

In re: [REDACTED]
[REDACTED] 7th Street, NW
Washington, DC 20001

Service Address:
[REDACTED] I Street, NW

Account No: [REDACTED]
Case No: 22-127605

Amounts and Dates in Dispute:
7/8/2021 to 8/5/2021 = \$ 1269.69
8/6/2021 to 9/7/2021 = \$ 995.94
10/7/2021 to 11/4/2021 = \$ 101.59

Before Janet W. Blassingame, Hearing Officer
March 24, 2022 - Noon

The customer contested water and sewer bills for the above account for the three (3) periods of time noted above. The DC Water and Sewer Authority (DC Water) determined that the customer's dispute of the bill charges for the period July 8, 2021 to August 5, 2021 was not timely. DC Water determined that the charges were valid and no adjustment of the customer's account was warranted for the charges incurred August 6, 2021 to September 7, 2021 and October 7, 2021 to November 4, 2021. The customer requested an administrative hearing.

This matter was scheduled for a remote hearing on March 24, 2022. Present on-line were: [REDACTED] the property owner, represented by his son, [REDACTED]; and, LaFatima Black and Kimberly Arrington on behalf of DC Water. Geneva Parker, DC Water, was observing, only.

The property involved is a townhouse occupied by [REDACTED], age 92 years, who lives alone. The property has four (4) levels. [REDACTED] resides on the second level. In total, the property has eight (8) bathrooms and three (3) kitchens with each level having two (2) bathrooms and a kitchen. Additionally, there is a utility sink in the basement and [REDACTED] uses a washing machine and utility sink located on the 4th level of the property. [REDACTED] has resided at the property for 26+ years. According to [REDACTED], who pays his father's utility bills, the water and sewer bill before August 2021 had been \$319.00 in June 2021, \$223.00 in April 2021, \$198.00 in March 2021, \$246.00 in February 2021 and \$367.94 in January 2021.

[REDACTED] testified that he goes over to the property monthly and that the building is used for storage in the areas not occupied by his father.

[REDACTED] testified that when he saw the first bill for \$1,200.00, he paid the bill but called DC Water and was told that the water meter was running. [REDACTED] stated that he went

to the house to inspect for water issues but did not find anything amiss. He stated that he, then, telephoned DC Water a second time and he was told by the service representative to get a plumber. [REDACTED] testified that he hired 4 Fast Plumber L.L.C. to inspect the property. He stated that the plumbing inspection took place on September 23, 2021 and the plumber found nothing wrong inside of the house but upon going outside, the plumber found the meter to be running.

[REDACTED] testified that no repairs have been performed at the property but, even so, the water and sewer bill for October 2021 was only \$108.57 for the period 9/8/2021 to 10/6/2021.

[REDACTED] testified that his father was not present in the house for various periods- 7/15/2021 to 7/30/2021 and 10/29/2021 to 12/6/2021. [REDACTED] pointed out that the high usage allegedly occurred from 7/19/2021 to 8/7/2021.

On cross examination, [REDACTED] stated that during the periods that his father was away from the house, he ([REDACTED]) did not go into the house.

[REDACTED] stated that he disputed the November 2021 bill because he believed that the charge should have been only for fees and not water usage.

[REDACTED] stated that his father left for travel on July 15, 2021 at approximately 2:00 p.m.

Ms. Black testified that the meter reads from the property are actual and are transmitted on an hourly basis. She stated that the water meter only advances when water is being used at a property. She, further, stated that water meters do not self-repair.

Ms. Black testified that DC Water pulled and tested the water meter from the property and the water meter was determined to have 96.25% accuracy which means that the meter was under registering water usage at the property. Ms. Black stated that DC Water follows the water meter standards established by the American Water Works Association which has set meter accuracy to be between 98.5% and 101.5%. Ms. Black stated that DC Water does not adjust a customer's account when a water meter is found to have under registered water usage; she stated that the utility does adjust a customer's account when a water meter is determined to have overread water usage at a customer's property. She stated, that because in this case the water meter was found to have been under registering water usage at the property, no adjustment was accorded.

Ms. Black testified that high water usage occurred at the property 7/19/2021 to 8/6/2021 and, again, 8/14/2021 to 8/31/2021.

Ms. Black testified that DC Water conducted an underground inspection at the property on January 12, 2022 and no underground leak was detected.

Ms. Black testified that DC Water sent HUNA alerts of high-water usage occurring at the property from 7/22/2021 to 8/3/2021. She stated that HUNA alerts went out on 7/22/2021,

7/25/2021, 7/28/2021, 7/31/2021 and 8/3/2021. She stated that the utility sent 3 alerts on the same day of 7/25/2021. She stated that the HUNA alerts were sent by telephone to [REDACTED] business number. [REDACTED] acknowledged that the utility utilized his correct telephone number. He stated that an employee may have thought that the calls were spam and did not advise him of the alerts.

Ms. Black concluded stating that the investigation by DC Water found no evidence on meter overread or faulty computation of the bill and as such, the utility finds that all tests and checks are inconclusive and pursuant to 21 DCMR 408.1, no adjustment to the customer's account is warranted.

On questioning by [REDACTED] Ms. Black stated that water usage at the property declined as of 8/6/2021 and, thereafter, usage was minimal until the second spike occurred between 8/14/2021 and 8/31/2021. She stated that the customer's water usage in September 2021 was normal.

Ms. Black pointed out that the plumber's inspection took place on September 23, 2021 when the plumber observed movement on the water meter. She stated that DC Water received the plumber's report on October 1, 2021. [REDACTED] interjected that he sent the plumber's report to the utility on September 23, 2021 and Ms. Black responded that the report was received in Customer Support on October 1, 2021 with initial intake having been in Customer Service. Upon [REDACTED]'s expression of frustration as to receiving slow/no response by DC Water regarding his dispute, Ms. Black stated that she called [REDACTED] on November 22, 2021, using the telephone number on file with the utility, to schedule an underground inspection at the property and whoever responded on the telephone hung-up on her. Ms. Black stated that she followed-up her telephone call regarding the scheduling of an underground inspection by sending an email to [REDACTED].

Ms. Black stated that the underground inspection was performed on January 12, 2022. [REDACTED] stated that he responded to DC Water on January 10, 2022 regarding scheduling the underground inspection. [REDACTED] complained that he was not told prior thereto of the need for an underground inspection and Ms. Black stated that if an underground leak existed at the property, such a leak does not self-repair.

[REDACTED] stated that with respect to HUNA alerts sent to his business number, his workers do not speak English well and he did not get the alerts.

Based upon the foregoing testimony and evidence adduced during the hearing as well as the entire record of these proceedings, the Hearing Officer makes the following:

FINDINGS OF FACT

1. The property involved is a multi-level townhouse used for storage and the residence of [REDACTED] (Testimony of [REDACTED])

2. [REDACTED] contacted DC Water on September 29, 2021 to inquire if he could get a credit on his prior month water bill. (DC Water Customer Interaction Note dated 9/29/2021)
3. The customer failed to dispute the bill in a timely manner for the period 7/8/2021 to 8/5/2021. (DC Water Investigation Letter determination dated 12/9/2021) The Hearing Officer notes that DC Water credited the dispute date as 9/23/2021.
4. The customer timely disputed bills for the periods 8/6/2021 to 9/7/2021 and 10/7/2021 to 11/4/2021. (Testimony of the parties)
5. High water usage occurred at the property between 7/19/2021 and 8/6/2021 and, again, from 8/14/2021 to 8/31/2021. (Testimony of LaFatima Black)
6. DC Water made HUNA alert telephone calls to the customer on 7/22/2021, 7/25/2021, 7/28/2021, 7/31/2021 and 8/3/2021. (Testimony of LaFatima Black)
7. DC Water contacted [REDACTED] by telephone on 9/21/2021 regarding his high bill and during the phone conversation, [REDACTED] was told that he had had high water usage for about 1 year and he should do dye tests on the 3 toilets in the house and hire a plumber to check for leaks. The DC Water representative, further, informed [REDACTED] of the bill dispute procedure and provided him with instructions for a bill dispute. (DC Water Customer Interaction Note dated 9/21/2021)
8. [REDACTED] contacted DC Water on 9/23/2021 to inform the utility that he hired a plumber and no leaks were detected inside of the house. (DC Water Customer Interaction Note dated 9/23/2021)
9. [REDACTED] sent to DC Water the plumber's report of 4fastPlumber LLC on 9/29/2021. (DC Water Customer Interaction Note dated 9/29/2021)
10. 4fastPlumber LLC reported on its Invoice dated 9/23/2021 that it responded to a service call for leak and high usage alert from DC Water. The plumber reported that they inspected inside and found no leaks and they checked the meter and it was moving, when water is on, indicating leak underground. (4fastPlumber LLC Invoice dated 9/23/2021)
11. DC Water investigated the customer's bill dispute and found no evidence of meter overread or faulty computation. (Testimony of LaFatima Black)
12. DC Water tested the water meter and the meter was determined to have 96.25% accuracy which is below accepted standards for water meter accuracy as established by the American Water Works Association which DC Water follows for water meter accuracy determinations. (Testimony of LaFatima Black)
13. DC Water conducted an underground leak inspection at the property and no underground leak was detected. (Testimony of LaFatima Black; DC Water Service/Work Order History Report of Jan. 12, 2022 inspection)
14. The customer did not have high water usage reflected on the October 2021 bill for the period 9/8/2021 to 10/6/2021 and as such did not dispute the bill, however, he believed that his November 2021 bill should have reflected only charges for fees and, as such, he disputed the bill. (Testimony of the parties)
15. [REDACTED]'s business telephone number was on file with DC Water for HUNA alerts, however, the customer stated that the telephone number was to his business and his workers' command of English is not good and he failed to receive the HUNA alerts made by the utility. (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. D.C. Municipal Regulations in effect at the time of the initial dispute required that all bill disputes be made in writing within thirty (30) calendar days of the bill date. 21 DCMR § 402.2.
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.")
5. If the investigation discloses meter overread or faulty computation, adjustment(s) shall be made to reflect the correct charges, as indicated by the correct reading or corrected computations. (21 DCMR § 405.1)
6. If the investigation reveals doubtful meter registration or possible meter malfunction, the Department shall remove the meter and read it. (21 DCMR § 405.2)
7. If the results of the tests under § 405.2 verify doubtful registration or meter malfunction, the bill shall be adjusted to equal the average consumption of water at the same premises for up to three (3) previous comparable periods for which records are available. 21 DCMR § 405.3)
8. Effective December 17, 2021, 21 DCMR § 405 was amended making testing result for meters based on overread as a practical matter (if underread, there will not be a change on the account.) (See, 21 DCMR § 405)
9. If the investigation discloses meter overread or faulty computation, adjustment(s) shall be made to reflect the correct charges, as indicated by the correct reading or corrected computations. 21 DCMR § 405

DECISION

The customer experienced two (2) spikes in water usage. The first spike occurred 7/19/2021 to 8/6/2021. The second spike occurred 8/14/2021 to 8/31/2021. When the customer received the water and sewer bill charges reflecting a period of the first spike in water usage, his son paid the bill which covered the period 7/8/2021 to 8/5/2021. Not until the customer received the bill covering the period 8/6/2021 to 9/7/2021 which encompassed the spike day occurring on 8/5/2021 and then, the second spike which occurred 8/14/2021 to 8/31/2021, did the customer's son contact DC Water regarding the high-water usage. [REDACTED] telephoned DC Water on 9/23/2021 in follow-up regarding a telephone call by DC Water to [REDACTED] regarding high water usage occurring at the home and instructing him to hire a plumber. [REDACTED] called DC Water to advise that he had hired a plumber and the plumber found no leaks inside of the property. [REDACTED] telephoned DC Water on September 29, 2021 to inquire if the utility would give him a credit on his "prior month bill" which would have been the bill dated 8/11/2021.

The Municipal Regulations in effect at the time of the customer's dispute of the bill for the period 7/8/2021 to 8/5/2021 dictated that the customer had to dispute the bill within 30 days of the bill date which, in this case, was 8/11/2021. (See, 21 DCMR §402.2) The deadline to dispute the August 11th dated bill invoice was September 10, 2021. DC Water notes the customer's date of dispute as September 23, 2021, even though [REDACTED] did not inquire regarding the August 11th dated bill until September 29, 2021. Even accepting the earlier call date of September 23, 2021, the customer was late and did not timely dispute the August 11th dated bill. As such, DC Water's determination that the dispute of the bill was untimely was correct.

The customer hired a plumber who inspected the property for leaks on September 23, 2021 and the plumber detected no leaks. The plumber noted that in checking the water meter, the meter was moving when water was on and the plumber stated that the movement of the meter indicated a leak underground.

DC Water conducted an underground leak inspection at the property on January 12, 2022 and no underground leak was found. DC Water, in its investigation determined, that an underground leak was not the cause of the customer's increased water usage because the water usage declined without necessity of repairs being made. DC Water's representative testified that an underground leak cannot self-repair and, if such a leak, existed it would continue until repaired. (DC Water Investigation Letters dated December 9, 2021; testimony of LaFatima Black)

In its investigation, DC Water found no evidence of meter overread or faulty computation of the customer's bill(s) and the utility had actual hourly meter reads from the property. The utility, further, tested the customer's water meter and the meter was determined to have 96.25%

accuracy which means that the meter was underreporting water usage at the property. Lastly, DC Water presented evidence and testimony of its efforts to alert the customer that high water usage was occurring at the property. The utility telephoned the customer, using the telephone number on file for the account, eight (8) times between July 22, 2021 and August 3, 2021. [REDACTED] [REDACTED] acknowledged that the telephone number on file with the utility was his business number but he denied, personally, receiving the alerts, stating that his workers answer the telephone and failed to relay the messages to him due to language limitations. The utility, also, telephoned and spoke with [REDACTED] on September 21, 2021.

Ms. Black testified, during the hearing, that DC Water does not adjust a customer's account will the water meter is determined to be underreading usage. The DC Municipal Regulations relating to water meter malfunction were amended in December 2021 to clarify that the utility does not adjust when a water meter under registers water usage. (21 DCMR § 405, as amended effective December 17, 202) Prior to amendment of the regulation, 21 DCMR 405 did not distinguish between meter under registration and meter over registration but stated if the results of the meter test verified doubtful registration or meter malfunction, the bill shall be adjusted to equal the average consumption of water at the same premises for up to three (3) previous comparable periods for which records are available. 21 DCMR § 405.3)

Here, the evidence established that the customer experienced two (2) periods of increased water usage at the property and because the water meter was underreading water usage, the customer was not billed for the total amount of water used or wasted at the property during the spikes in usage. If the Hearing Officer were to order the utility to adjust the customer's account based upon a faulty water meter, the customer would reap a windfall by not paying for water billed to account and not paying for the true of amount of water used or wasted. DC Water clearly established that the water meter registered usage at the property and, in this case, the customer was not billed the total amount due the utility because the water meter underread the water usage.

The weight of the evidence is that the utility and its equipment did nothing to cause the increased water usage at the property. There was no meter overread and no underground leak. The customer's plumber found no interior leak but observed the meter running and thought that the running meter was suggestive of an underground leak. DC Water tested for an underground and no underground leak was found. The usage declined without necessity of repairs being performed which suggests that the usage was controlled inside the premises even though not found when the plumber inspected. 21 DCMR § 408 bars adjustment of a customer's bill when all checks and tests provide no reasonable explanation for excessive water consumption.

[REDACTED] testified that his father was away from the home for a portion of the first spike period- the first spike started four (4) days after the elder [REDACTED] left the property on July 15th and stopped six (6) days after he returned from travel. [REDACTED], also, testified that the property is used for storage for his business and he and his wife have access to the

property. The Hearing Officer notes that the property is multi-level with water sources on multiple levels- 8 bathrooms/3 kitchens/2 utility sinks- not occupied by the elder [REDACTED], but accessible and used for his son's business purposes. [REDACTED] testified that the water valve in the basement was turned off but the water is on for the utility sink, even in the basement.

Based upon the foregoing, the Hearing Officer concludes that the customer has failed to establish by the preponderance of the evidence that the bills in dispute overcharge him for water and sewer service. The evidence does establish that the bills are wrong to the detriment of the utility because the water meter was underreading usage at the property. DC Water is not seeking to re-bill the customer and, as such, the customer has suffered no wrong. The amendment of 21 DCMR 405 makes clear that the utility only adjusts a customer's account will the meter test determines that the customer has been overcharged for water usage. Here, the customer has been undercharged. Accordingly, the determination of DC Water 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: May 18, 2022

Copy to:

[REDACTED]
[REDACTED] 7th Street, NW
Washington, DC 20001

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

In re: Central Union [REDACTED]
c/o [REDACTED]
[REDACTED] Foote Street, NE
Washington, DC 20019

Account No: [REDACTED]
Case No: 22-136946

Amount in Dispute: \$904.14

Before Janet W. Blassingame, Hearing Officer
March 29, 2022 at Noon.

The customer contested a water and sewer bill for the above account for the period of time July 22, 2021 to August 19, 2021. The DC Water and Sewer Authority (DC Water) determined that the charges were valid and no adjustment of the customer's account was warranted. The customer requested an administrative hearing.

This matter was originally scheduled for a remote hearing on March 22, 2022 but was continued due to the request of [REDACTED] who stated that there was an emergency preventing his attendance. DC Water had no objection to a continuance and the continuance was granted. The matter was re-scheduled for March 29, 2022. Present on March 29, 2022 were: [REDACTED], Board of Trustee Chairman and Treasurer; [REDACTED], Trustee Board member; and, [REDACTED], Trustee Board member, on behalf of Central Union Baptist Church; and, LaFatima Black and Kimberly Arrington on behalf of DC Water, as well as, Kelly Fisher, Esq. of DC Water, observing only.

The property involved is Central Union Baptist Church (hereinafter referred to as "the Church") which has been located on its current site since year 1938. The Church has bathroom facilities for both men and women. In the Men's Bathroom, there are two (2) commodes, two (2) urinals and two (2) wash basins. In the Women's Bathroom, there two (2) commodes and three (3) wash basins. The Church has a small kitchen with a commercial sink and a utility sink in the basement. There are no outside faucets but there is a faucet in the basement. The Church's seating capacity is 140 worshipers but during the Covid-19 Pandemic, the Church was closed until June 6, 2021 when it re-opened, and, then, the Church closed, again, in December 2021. During the period in dispute, the Church held services on Sunday with approximately 30 – 45 members in attendance each week. The Church has not been and currently is not open for weekly activities or for funerals. All church trustees have keys to the Church, as does, [REDACTED] and a janitor employed by the Church.

Both [REDACTED] and [REDACTED] testified that they would have heard any running water in a toilet when they leave the Church. They explained that the bathroom facilities are located near the exit door by the security system. They stated that the protocol is to check to make sure all doors are secure, that there is no running water, that the lights are out and the security alarm is

on before leaving the Church.

Ms. Black interjected that the Church account was not signed-up for HUNA alerts until October 1, 2021 and that no email address or phone contact had previously been provided to DC Water.

██████████ stated that he pays the Church's bill and that he called DC Water when he received the bill at issue. ██████████ professed to not being astute regarding computer technology and he was not aware of the HUNA alert system by DC Water. ██████████ testified that he was told by the DC Water service representative that there was constant running water at the Church for 4 – 5 days.

██████████ testified that he saw no evidence of running water when he was at the Church and he added that no one can access water from outside of the Church. ██████████ stated that he lives in the neighborhood of the Church and regularly watches the Church for anything suspicious.

██████████ asked regarding DC Water's maintenance of the water meter; ██████████'s answer was not responded to by DC Water's representatives.

██████████ testified he came over to the Church upon receipt of the bill and walked around the facility looking for evidence of wetness and/or visible water. He stated that he checked the bathrooms and kitchen and saw nothing amiss.

██████████ testified that there is team of members who sanitize the doors, faucets and handles before and after each church services and no team member has reported anything amiss.

Ms. Black testified that the meter reads are actual and transmitted by signal from the water meter on an hourly basis. She stated that the water meter only advances when water is being used. She, further, stated that a water meter cannot self-repair.

Ms. Black testified that DC Water pulled and tested the water meter from the Church and the water meter was determined to have 100.97% accuracy. She stated that DC Water follows the water meter accuracy standards established by the American Water Works Association and that meter accuracy is considered to be 98.5% to 101.5% and, as such, the water meter was operating appropriately at the Church.

Ms. Black testified that a spike in water usage occurred at the Church from Saturday, July 24, 2021 to Friday, July 30, 2021. She stated that water usage returned to normal after July 30th. Ms. Black emphasized that the increased water usage was not due to an underground leak because the usage declined and an underground leak would have required repair in order for usage to decline. She also stated that the Church was not signed up to receive HUNA alerts until October 1, 2021.

Ms. Black testified that DC Water's investigation of the dispute revealed no evidence of meter overread or faulty computation of the bill, and, as such, it is the conclusion of the utility that tests and checks provide no reasonable explanation of the increased water consumption and accordingly, there is no basis to adjust the customer's account. Ms. Black referred to 21 DCMR §408.1.

██████████ referred to his letter to DC Water dated 9/21/2021 in which he posed questions to the utility; ██████████ complained that DC Water did not respond to the questions that he raised in the letter. ██████████ then, asked what was the failure rate of automated reading systems. Both Ms. Black and Ms. Arrington responded to ██████████'s question by acknowledging that MTU's do sometime fail but they pointed out that if there is a failure in transmittal of the meter read, a failure code will be seen in the system and if there is no failure in transmitting the meter read, one will see the meter reads. ██████████ then, clarified his question, stating that he was asking about mis-reads. Ms. Arrington replied the system will identify the type of failure in reads, however, there were no failures identified in the record of the Church's meter reads. ██████████ commented that if the system has been consistent, does DC Water note a customer's high usage and ██████████ added that the Church did not receive mail notice of high-water usage occurring at the Church. Ms. Arrington stated that HUNA is a curtesy and that the customer, when signing up for the service, elects to receive notice of high usage by email, text or telephone. Ms. Arrington added that DC Water sent out a flyer to its customers about the HUNA system.

██████████ explained that the Church has a team which does set-up one hour before church service and the team after the service sanitizes the property. He stated that the team is in the Church on Sunday from approximately 9:00 a.m. to Noon. He stated that, during the Pandemic, the church was off-limits to its members.

██████████ stated that he worked at Washington Gas and Light and use to run tests when problems occurred. Ms. Black pointed out that with respect to water meter reads, the read is by satellite and the water meter was tested on February 4, 2022 and passed. ██████████ asked how often are water meters serviced? Ms. Black responded that meter reads are monitored to see if transmissions are coming in from a property and if a problem is seen regarding meter reads from a property, the utility will send a service technician to investigate. Ms. Black stated that the water meter at the Church was placed in year 2018.

██████████ asked if DC Water was performing any work near the Church and Ms. Black responded that she could find no record of DC Water doing work near the Church.

██████████ asked how many gallons did the Church consume and it was noted that 140,182 gallons of water was used.

Ms. Black reiterated that DC Water called regarding the customer's dispute on October 27, 2021 and October 29, 2021 and got no response and that a call was made on January 10, 2022 with the telephone ringing but no answer. She stated that she finally spoke with the Church's representative on January 10, 2022.

Based upon the foregoing testimony and evidence adduced during the hearing, as well as, the record in this matter, the Hearing Officer makes the following:

FINDINGS OF FACT

1. The property involved is Union Central Baptist Church. (Testimony of ██████████)
2. The period in dispute is July 22, 2021 to August 19, 2021. (Testimony of the parties)
3. During the Covid-19 Pandemic, the Church was open for Sunday service from June 6, 2021 until December 2021. During the period that the Church was open, only the Sunday

service was held with no activities or funerals conducted. Approximately, 30 – 45 members would be in attendance for the Sunday service. (Testimony of [REDACTED])

4. During the period in dispute, the Church's pastor and members of the Board of Trustees as well as a maintenance worker had access to the Church at all times and a team of workers/volunteers worked on Sundays to set-up for Sunday services and the sanitize after service. (Testimony of [REDACTED] and [REDACTED])
5. High water usage registered on the water meter between July 24, 2021 to July 30, 2021 when usage declined and returned to normal. (Testimony of LaFatima Black)
6. There was no evidence of wetness apparent at the Church and no one heard water running or detected any faulty fixture at the Church. (Testimony of [REDACTED] and [REDACTED])
7. The Church did not receive any alert of high-water usage occurring at the Church because it was not signed up with DC Water to receive HUNA alerts. (Testimony of the parties)
8. DC Water tested the water meter and the meter was determined to have 100.97% accuracy. (Testimony of LaFatima Black)
9. DC Water investigated the customer's dispute and found no evidence of meter overread or faulty computation of the bill. (Testimony of LaFatima Black)
10. There is no evidence of meter read malfunction and the utility has consistent meter reads from the property. (Testimony of Kimberly Arrington)
11. DC Water ruled out the existence of an underground leak as a possible cause of high-water usage occurring at the Church because usage declined and the nature of an underground leak requires repair of the leak before usage will decline. (Testimony of LaFatima Black)

CONCLUSIONS OF LAW

1. The burden of proof is on the customer to show, by a preponderance of evidence, that the decision of DC Water is incorrect. (21 DCMR 420.7 and 420.8)
2. D.C. Municipal Regulations 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 show that more likely than not the bill in dispute was wrong or for some other reason it should not be held responsible for payment.

DC Water investigated the customer's dispute of the bill and found no meter overread or faulty computation of the bill. The utility tested the water meter and acceptable meter accuracy was found. The utility, also, was able to rule out the existence of an underground leak. The utility

has hourly meter reads from the property reflecting that a spike in water usage registered on the water meter for six (6) days in July 2021.

The evidence established that the Church, while not providing weekday activities to its members, was open for Sunday service during the period at issue and that numerous individuals had access to the premises throughout the week. While no one associated with the Church observed water/wetness or heard running water, no one investigated high water occurring at the Church until the bill was received and by time of bill receipt, the high-water usage was over. The Hearing Officer notes that testimony was that the building was inspected after each Sunday service and nothing was seen to be amiss before the building was closed and the alarm set. The Hearing Officer, also, notes that water usage is not always heard and no dye tests were performed on the toilets and no plumber inspected for leaks during the spike period.

Unfortunately, the Church was not registered to receive HUNA alerts during the period at issue and, as such, the occurrence of high-water usage was not apparent or investigated during its occurrence.

21 DCMR § 408 establishes that when 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.

Ultimately, the property owner is responsible for what occurs at a property and, in this case, water was used/consumed/loss and the Church is responsible for payment of its water bill. Accordingly, the determination of DC Water that the charges are valid and no adjustment of the account is warranted is hereby AFFIRMED.

[The Hearing Officer notes that only the General Manager of DC Water has the discretion to approve an account adjustment if the same will further a significant public interest. In this case, the Church's officials were informed of this possible alternative path for relief from the high-water usage charge, however, they were also informed that the Hearing Officer has no authority to consider public interest or to grant relief based upon public interest.]

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

Date: *May 19, 2022*

Copy to:

Central Union Trustee


NE
Washington, DC 20019

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

In re: [REDACTED]
[REDACTED] 6th Street, SE
Washington, DC 20032

Account No: [REDACTED]
Case No: 22-212102

Amounts and Dates in Dispute:

9/28/2021 – 10/27/2021 = \$203.98
8/6/2021 – 9/29/2021 = \$222.50 (untimely)

Before Janet W. Blessingame, Hearing Officer
March 22, 2022 at Noon.

The customer contested the above referenced water and sewer bills. The DC Water and Sewer Authority (DC Water) determined that the customer failed to file a timely dispute for the bill period 8/6/2021 to 9/29/2021 and that the charges were valid and no adjustment of the customer's account was warranted for the period 9/28/2021 to 10/27/2021. The customer requested an administrative hearing.

This matter was scheduled for a remote hearing on March 22, 2022. Present for the hearing were: [REDACTED] with her mother, [REDACTED]; and, Arlene Andrews and Kimberly Arrington on behalf of DC Water, as well as, Kelly Fisher, Esq. of DC Water, observing only.

The property involved is a row house owned by [REDACTED]. The house has one and one-half (1 ½) bathrooms, one kitchen, a dishwasher and one outside faucet. [REDACTED] has lived in the house for three (3) years and lives alone. Prior to August 2021, [REDACTED] stated that her water and sewer bill was between Sixty Dollars (\$60.00) and Seventy Dollars (\$70.00) per billing cycle and by November 2021, the bill had returned to normal and was approximately Seventy-two Dollars (\$72.00).

[REDACTED] testified that in August 2021, she experienced a water back-up at the property and on August 27, 2021, she contacted Michael & Son to address the issue. She stated that the plumber determined that she had a small clog in her sewer. She stated that the sewer line was snaked by the plumber and she thought that everything was OK but, then, she received a bill from DC Water for \$200.00.

[REDACTED] stated that Michael & Son could not find anything wrong in the house, so she telephoned DC Water.

[REDACTED] stated that she received no high-water usage alerts from DC Water during the periods at issue. She did, however, state that she received an alert from the utility in October 2021.

██████████ interjected that she feels that it is unfair to her daughter that the burden of proof on her daughter.

Ms. Andrews stated that HUNA alerts are a courtesy provided to DC Water customers and that the utility did attempt to alert ██████████ of high usage occurring at the property prior to her receipt of her utility bill. Ms. Andrews stated that DC Water sent an email and telephoned the customer on September 19, 2021; ██████████ stated that she had been harassed by an old boyfriend and that the telephone number used by the utility had been changed/old and that the email was to her previous employment email and that she changed employment in year 2020. Ms. Andrews stated that DC Water, also, alerted the customer on October 20, 2021 and ██████████ acknowledged that she got the alert.

██████████ testified that DC Water was working in her yard on August 11, 2021 with respect to a waste pipe. She stated that she saw the DC Water logo on a worker but she did not see a DC Water truck. She stated that she saw the worker when she looked out of her window and when she did so, she saw people in her yard. ██████████ stated that she had had no prior yard work before she saw the people in her yard and that she had had no prior problems regarding water service or billing by the utility.

Ms. Andrews testified that the meter reads upon which the customer was billed were actual reads which are transmitted, hourly, to data collection towers.

Ms. Andrews stated that DC Water pulled the water meter at the property and tested the meter. She testified that the water meter was determined to have 100.57% accuracy. She stated that DC Water follows the standard established by the American Water Works Association that water meter accuracy is from 98.5% to 101.5%.

Ms. Andrews asserted that water meters only advance when water is being used. She, also, stated that there are no misreads on automated water meters and that a water meter cannot auto-repair.

Ms. Andrews testified that DC Water received two (2) plumber's reports. She stated that the first report by Michael & Son dated 8/27/2021 was that a toilet was not flushing properly and that the second report dated 11/9/2021 was that the plumber checked fixtures and no leaks were found.

Ms. Andrews testified that the increased water usage was not due to an underground leak because the usage declined and an underground leak would have required repair before usage would have declined.

Ms. Andrews stated that high water usage occurred at the property from September 12, 2021 to October 18, 2021. She reiterated that DC Water sent alerts of high-water usage to the customer.

Ms. Andrews surmised that something may have been fixed or turned off at the property.

Ms. Andrews stated that she was initially told that DC Water was at the property on August 11, 2021 and she could find no record of the utility having been at the property on that

date. She stated, however, that DC Water was at the property on August 21, 2021 because multiple homes in the area had a sewer-cleanout installed.

Ms. Andrews stated that DC Water's investigation found no evidence on meter overread, faulty computation of the bill or meter malfunction.

Ms. Andrews concluded that all tests and checks resulted in inconclusive finding of the cause of the increased consumption and pursuant to regulation, the customer is not entitled to an adjustment of her account.

On cross examination of Ms. Andrews by [REDACTED] stated that DC Water has been on her street several times and Ms. Andrews responded that there is no record of how many times the utility has been on [REDACTED]'s Street. [REDACTED] retorted that her water has been turned-off 6 -7 times for repair of the sewer line/pipe.

Ms. Andrews stated that the meter reads reflect that the customer's usage would run then stop and that such a pattern indicates a toilet malfunction. [REDACTED] responded that she worked from home and that her toilet would have consistently been running if defective.

[REDACTED] stated that she does not understand how her daughter's water can be cut-off 7 times within years 2020 2021. She stated that it does not make sense and DC Water should have more information.

Ms. Andrews stated that sewer work is performed on the public side and does not affect a customer's water usage. Ms. Arrington added that a customer is not charged for water when water is cut-off.

Based upon the evidence and testimony adduced during the hearing and record in this matter, the Hearing Officer makes the following:

FINDINGS OF FACT

1. The property involved is row house owned and occupied by [REDACTED]. (Testimony of [REDACTED])
2. The customer's dispute of charges for the period 8/6/2021 to 9/27/2021 (bill date 9/29/2021) was not timely. (DC Water Investigation Letter dated 1/14/2022)
3. The period in dispute is 9/28/2021 to 10/27/2021 (bill date 10/29/2021). Testimony of the parties)
4. High water usage occurred at the property September 12, 2021 to October 18, 2021. (Testimony of Arlene Andrews)
5. DC Water attempted to alert the customer of high-water usage occurring at the property in September 2021, however, the contact information on file with the utility was out-of-date regarding the customer's email and telephone contact number; an alert was successful in October 2021. (Testimony of Arlene Andrews)
6. Water usage at the property declined after October 18, 2021. (Testimony of Arlene Andrews)
7. The customer had Michael & Son at the property twice. On 8/27/2021, the plumber repaired a flush issue in a toilet. On 11/9/2021, the plumber checked for leaks and

running water and found nothing amiss. (Michael & Son invoices dated 8/27/2021 and 11/9/2021)

8. DC Water was performing work on the sewer line at and in the vicinity of the customer's home. (Testimony of the parties)
9. Sewer work does not affect a customer's water usage because the work is performed on the public side of the water meter; the effect of the utility work was that the customer experience turn-offs of water service when the work was being performed. (Testimony of Arlene Andrews)
10. DC Water's investigation of the bill dispute found no evidence of meter malfunction, meter overread or miscalculation of the charge. (Testimony of Arlene Andrews)
11. DC Water tested the water meter and the meter was determined to have 100.57% accuracy. (Testimony of Arlene Andrews)
12. DC Water ruled out the existence of an underground leak as the cause of excessive water usage at the property because usage declined without necessity of repairs being made and the nature of underground leaks is that such a leak must be repaired in order for usage to decline. (Testimony of Arlene Andrews)

CONCLUSIONS OF LAW

1. The burden of proof is on the customer to show, by a preponderance of evidence, that the decision of DC Water is incorrect. (21 DCMR 420.7 and 420.8)
2. D.C. Municipal Regulations 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 show that more likely than not the bill in dispute was wrong or for some other reason she should not be held responsible for payment.

DC Water investigated the customer's dispute of the bill and found no meter overread or faulty computation of the bill. The utility tested the water meter and acceptable meter accuracy was found. The utility, also, was able to rule out the existence of an underground leak. The utility has hourly meter reads from the property reflecting that a spike in water usage registered on the water meter from September 12, 2021 to October 18, 2021 and then, usage declined.

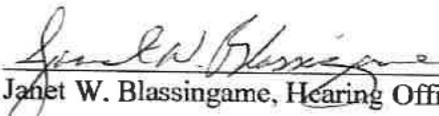
The customer speculated that sewer work by DC Water might have caused the increased water usage, however, DC Water provided testimony that sewer work is performed on the public side and does not affect water used by a customer. Ms. Andrews, further, testified that only when water is used and, as such, is going thru the water meter does usage registers on the water meter.

Additionally, testimony was that during the times that work was performed on the sewer line, the customer's water was turned off.

DC Water showed that its equipment was functioning properly and that the usage registered on the water meter. By the time that the plumber inspected the property for leaks in November 2021, water usage had declined and, as such, it is understandable that the plumber found no leaks or running water. DC Water speculated that something was turned off or repaired to cause the decline in water usage and during testimony, Ms. Andrews, also, asserted that the pattern of water usage in this case was indicative of a toilet problem.

21 DCMR § 408 establishes that when 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.

Ultimately, the property owner is responsible for what occurs at her property when nothing is found to relieve the customer of responsibility for payment of the bill. Accordingly, the determination of DC Water that the charges are valid and no adjustment of the account is warranted is hereby AFFIRMED.


Janet W. Blassingame, Hearing Officer

Date: May 18, 2022

Copies to:


6th Street, SE
Washington, DC 20032

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

In re: Hafizullah Salihi
5326 Buxton Court
Alexandria, VA 22315

Service Address:
[REDACTED] Livingston Road, SE

Account No: [REDACTED]
Case No: 22-128980

Amounts in Dispute: \$3,275.06

Before Janet W. Blassingame, Hearing Officer
March 17, 2022 at Noon.

The customer contested a water and sewer bill for period August 26, 2021 to September 27, 2021. The DC Water and Sewer Authority (DC Water) determined that the charges were valid and no adjustment of the customer's account was warranted. The customer requested an administrative hearing.

This matter was scheduled for a remote hearing on March 17, 2022. Present for the hearing were: Hafiz Salihi, the property owner; as well as, Arlene Andrews, Kimberly Arrington and Geneva Parker on behalf of DC Water.

The property involved is a 12-unit apartment building, having nine (9) 2-bedroom units and three (3) 3-bedroom units. Each unit has a kitchen and bathroom. The building is monitored by a single water meter and the water and sewer bill has ranged between Eleven Hundred Dollars (\$1,100.00) and Twelve Hundred Dollars (\$1,200.00) per billing cycle. Mr. Salihi has owned the building since year 2005.

Mr. Salihi testified that when he received the bill being disputed, he called DC Water but, also, checked all of the toilets and showers in the apartments. Mr. Salihi stated that the inspection was done by him and his maintenance man approximately 1 or 1½ weeks after receipt of the bill. Mr. Salihi stated that he employs a maintenance person Monday thru Friday from 9:00 a.m. to 5:00 p.m.

Mr. Salihi stated that he considered the October 2021 bill to be a little high, as well, but he was not sure if the prior bill to the bill in dispute was high.

Mr. Salihi showed a document reflecting the water meter in the basement of the building as a Neptune meter model T-10.

Mr. Salihi stated that the water meter had a recent read of 2513.820 gallons. Mr. Salihi stated that his maintenance person maintains a log of the water meter's monthly reads. He stated that the meter read of August 31, 2021 was 2256260.

Mr. Salihi asserted that the meter reads had been consistent each month.

Ms. Andrews asserted that the meter reads were actual and are transmitted by a little grey box attached to the water meter to a tower in the District of Columbia. She stated that a water meter only moves when water is being used and that there are no misreads on automated water meter because the meter reads are transmitted remotely. She stated that the meter reads are transmitted on an hourly basis.

Ms. Andrews testified that the customer called DC Water on October 12, 2021 and stated that a toilet was left running. She stated that the customer spoke with customer service representative, O. Vigil.

Ms. Andrews testified that the customer was paid by DC Water Cares Multi-Family \$4,078.00 for water usage in the building.

Ms. Andrews stated that DC Water's investigation disclosed the existence of a leaky fixture in the building and, as such, pursuant to 21 DCMR § 406.2, no adjustment to the customer's account is warranted.

Mr. Salihi asked Ms. Andrews what was the time of the call to DC Water and she responded that the call was received by the utility on Friday, October 12, 2021 at 5:13 p.m. Mr., Salihi remarked that the utility was closed after 5:00 pm and Ms. Andrews responded that if the call was in the line to be answered, then, that would account for a lateness.

Mr. Salihi stated that the DC Care Program related to tenant rent and not payment of the water bill. He, further, referred to the DC Water Investigation Report and Ms. Andrews explained that the utility only bills when a CCF of water is used. She stated that one CCF equals 768 gallons of water. Mr. Salihi, also, pointed out that there was minimal water usage during some hours during the spike in usage and that on random days, there was no reported water usage.

Ms. Andrews stated that the spike in water usage at the building started in August 2021. She explained that because the building is a multi-family building, there will be constant usage, but, there was increased water usage from 8/21/2021 to 12/25/2021. Ms. Andrews stated that when the increased water usage is due to a malfunctioning toilet, water usage will vary.

Mr. Salihi asked how old was the water meter and Ms. Andrews responded that the meter was placed in June 2021.

Mr. Salihi stated that he had a high-water bill prior to his current disputed bill and the water meter was replaced by the utility. Ms. Andrews stated that in this instance, the customer called stating that there had been a running toilet and the water usage declined. Mr. Salihi denied that he said that he had a running toilet. At the point of Mr. Salihi denying having told the service representative that there had been a running toilet, Ms. Andrews elaborated that the customer told the service representative that a tenant of the building had had Covid and he could not check the apartment unit until the tenant recovered. Ms. Andrews relayed that the customer said that when he gained access to the inside of the unit, he found a running toilet.

Ms. Andrews stated that the call made on October 12, 2021 was the customer's initial call to DC Water regarding the bill and the customer asked if he could get an adjustment due to the situation of the tenant having Covid and the service representative told the customer that DC Water does not adjust a bill when increased water usage is caused by an internal fixture.

Ms. Parker testified that the Multi-Family Assistance Program which is known as "MAP" was created to assist multi-family providers based on a 12-month period and number of units where there is a qualifying tenant. Ms. Parker clarified that DC Water has no relationship with tenants in multi-family properties. She stated that in the DC Water assistance program, 90% goes to the tenant and 10% goes to the owner. She stated that all funds are credited to the DC Water account and eligibility is based on the low-income occupant. She stated that the owner is to reduce the tenant's rent or HOA fees. She stated that the customer received \$4,078.92 which was applied to the water bill based upon historical usage.

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

FINDINGS OF FACT

1. The property involved is a 9-unit multi-family building owned by Hafizullah Salihi. (Testimony of Mr. Salihi)
2. The period in dispute is August 26, 2021 to September 27, 2021. (Testimony of the parties)
3. On October 12, 2021, the customer telephoned DC Water regarding his bill and he told the service representative that one of the tenants had had Covid which prevented him from getting access to inside of the unit but after the tenant's recovery and when he was able to access the unit, he found a running toilet. (Testimony of Arlene Andrews)
4. A DC Water customer service representative memorialized a conversation with the customer on October 12, 2021 as - "SALIHI, HAFIZULLAH. [REDACTED] [REDACTED] Owner. Address and account number verified. Good phone # and email. Called in regards to current high bill. Customer stated that a toilet was left running for several days before he was able to locate source of leak. Advised customer that we're

unable to adjust due to being a fixture leak.” (DC Water Interaction Note [REDACTED] Livingston Rd. SE 10/12/2021 17:13:28 OVIGIL)

5. There was increased water usage registered on the water meter starting in August 2021. (Testimony of Arlene Andrews)
6. DC Water ruled out the existence of a faulty water meter and an underground leak because water usage declined and the customer had stated that he found a running toilet in the building. (Testimony of Arlene Andrews; See, DC Water Investigative Report dated 12/10/2021)

CONCLUSIONS OF LAW

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

DECISION

The customer in this matter failed to show that more likely than not bill being disputed was wrong or for some other reason, he should not be responsible for payment.

The customer engaged in a telephone conversation with a DC Water service representative and during the conversation, the customer stated that he found a running toilet in the building which had been running for several days before he was able to obtain access inside of the apartment. During the hearing, the customer denied informing the utility of the existence of a running toilet but DC Water’s hearing representative recounted the conversation in her testimony and the service representative with whom the customer spoke memorialized the conversation, during the normal course of working in the Interaction Notes maintained by DC Water whenever a customer contacts the utility. As such, the Hearing Officer finds the customer’s denial of the conversation as not credible.

DC Water had meter reads from the property which had been transmitted remotely on an hourly basis. It had documentation of the customer’s admission of finding a running toilet. The utility further ruled out the existence of an underground leak and determined that there was no need to test the water meter because of the customer’s statement of finding a running toilet.

DC Municipal Regulation- 21 DCMR 406- bars adjustment of a customer’s bill if excessive water consumption is the result of a leaking faucet, household fixtures, and similar leaks or the malfunctioning water-cooled air conditioning equipment.

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


Janet W. Blassingame, Hearing Officer

Date: May 14, 2022

Copies to:

Hafizullah Salihi
5326 Buxton Ct.
Alexandria, VA 22315

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

In re: [REDACTED]

[REDACTED] Brandywine St. NW
Washington, DC 20016

Account No: [REDACTED]
Case No: 22-78202

Amount in Dispute: \$780.17

Before Janet W. Blassingame, Hearing Officer
March 22, 2022 at Noon.

The customer contested a water and sewer bill for the period February 6, 2021 to March 5, 2021. The DC Water and Sewer Authority (DC Water) determined that the charges were valid and no adjustment of the customer's account was warranted. The customer requested an administrative hearing.

This matter was scheduled for a remote hearing on March 15, 2022. Present for the hearing were: [REDACTED] and [REDACTED] represented by Elizabeth Beltran, Assistant People's Counsel, Office of People's Counsel; Arlene Andrews and Kimberly Arrington on behalf of DC Water, as well as, Kelly Fisher, Esq. of DC Water, observing only; Tracey Butler, paralegal, Office of People's Counsel, observing only; Rosheeda Boyd, Community Outreach Specialist, Office of People's Counsel; Arrelle Anderson, Associate Director, Consumer Service and Water Division, Office of People's Counsel; and, Jason Cumberbach, Engineer, Office of People's Counsel.

The property involved is a single-family residence having two (2) bathrooms, one kitchen, two (2) outside spigots, radiators, a washing machine, and a dishwasher. Four (4) people have resided in the house since mid-August 2020. The water and sewer bill has averaged in the low \$100's per billing cycle.

In Ms. Beltran's opening statement, she asserted that the spike in water usage was an anomaly and that the volume of water allegedly used was so severe that it was equivalent to two (2) water tankers. She asserted that the only plausible explanation was to view the smart meter as having had a system error or firm error. She stated that the meter test was performed nine (9) months after the alleged spike. She, further, asserted that the charge creates an economic hardship upon her client.

[REDACTED] stated that with respect to the outside spigots, only one spigot is functional and that the other spigot has been turned off at the valve.

[REDACTED] testified that DC Water had been sending high water usage alerts for a week and he called the utility, using the emergency call number, on February 18, 2021 and was told to check the property for leaks. [REDACTED] stated that when he did check the property, he could not find anything amiss.

██████████ stated that he was told on February 19, 2021 that the high usage had stopped and he was told to get a plumber. ██████████ stated that he had a plumber out to the property within one week but that DC Water did not come out until after he filed the plumber's report on April 9, 2021.

██████████ stated that he has a problem with the account name and he complained that ██████████ was not identified on the account. The customer, further, complained that he was told that DC Water has 25 days to respond to his dispute of the bill but that he experienced a pattern of non-response by the utility. He asserted that he received telephone calls from the utility regarding bill arrears but the utility failed to respond to his bill dispute. He stated that he was told that his dispute was being escalated but, nevertheless, DC Water did not come out to the property and he was told that the utility believed that the bill was correct and that water had been provided. ██████████ complained that he was notified by DC Water that starting December 31, 2021, water shut-off would resume and he got repeated notifications of past due arrearage owed to the utility and imposition of late fees. He stated that, ultimately, the late fees were removed.

On cross examination, ██████████ acknowledged that he received from the utility a letter with the adjudication form enclosed. He, also, stated that the water meter was inside of the house.

██████████ testified that he scheduled a plumber to come out to the house on February 22, 2021. He, also, stated that he called DC Water and got different answers as to what to do to address the problem of alleged increased water usage. He stated that the plumber checked the property and found that all toilets were pressurized and everything was operating normally. He, also, stated that the plumber checked the water meter, as well. He, further, stated that the plumber told him that 50.05 CCF of water, as was allegedly consumed during the spike, would have left obvious damage. He identified that plumbing company as Thomas Clark and that, on February 22, 2021, the plumber found no leaks and upon checking the water meter, the plumber observed that the meter was not spinning.

██████████ asserted that when he called DC Water, he got a one-word response. He stated that he was added to the water and sewer account but he does not recall when his name was added to the account. He stated that the utility rejected the plumber report and he felt that the utility's rejection was based upon a technicality. He stated that he sent an email to the utility on March 23, 2021 and DC Water responded in April 2021 to inform Mark that he (Tim) was not on the account and, as such, could not dispute the bill. He stated that his brother, Mark, called DC Water to dispute the bill and Mark was told to get a plumber on February 19, 2021.

On re-direct, ██████████ complained that it took his calling the utility three (3) times before he was able to get the protocol regarding how to submit the plumber's report.

Jason Cumberbach testified that he developed a graph representing data of monthly consumption for 2 years at the property. He stated that the graph time period is 1/8/2020 to 1/3/2022. Mr. Cumberbach testified that consumption during the spike was 10x the customer's normal rate of usage. He stated that the customer had a consistent rate of usage prior to the spike of 4 – 5 CCF per month but, the spike lasted 7 days or 162 hours. Mr. Cumberbach showed a video of the customer's basement and he pointed out that there is no impediment around the water meter, no external leaks or visual leaks. Mr. Cumberbach said that it is his conclusion that

the increased water usage was due to system error of either the MTU reader or the smart component of the water meter itself. He asserted that often error can occur due to system upgrade and that it is a firmware issue.

Mr. Cumberbach explained that the data used was in 12 formats- hourly and monthly and that he did 2 graphs- AMR readings by the month and Raw MR reading.

Mr. Cumberbach stated that 37,000 gallons of water alone is equivalent to a swimming pool.

On cross-examination, Mr. Cumberbach stated that he formed his opinions in this matter based upon data from DC Water.

Upon a question by the Hearing Officer, Mr. Cumberbach stated it was his opinion that the usage was a glitch or system error or impediment in data collection and that the customer did not use the water but that the usage was not real or physical usage of water at the property. He stated that there were no leaks or cracks and the plumber found that the usage was not caused by a toilet. He stated that the spike was from the 11th to the 18th. He further stated that the spike looks like a digital error because the rate of usage is the same.

Mr. Cumberbach stated that he has experience with meter programing. He asserted that upgrades can cause a glitch and that in this instance, each hour of usage during the spike had the exact same usage rate. He asserted that the rate of usage was too exact, too calculated, and, that a toilet flow would change within hours. He stated that here the usage was not due to human consumption but was data error. He, further, stated that for the rate of usage alleged, a pipe would have had to bust.

On questioning by Kimberly Arrington, Mr. Cumberbach answered that he has done testing on meters but not, specifically, upon water meters. He asserted that the content of an AMI meter and smart meter technology is the same. Mr. Cumberbach stated that his background was as a Mechanical Engineer and that he has a degree from Howard University. He stated that he worked 15 years for electric and gas companies and he has been employed at the Office of People's Counsel for 8 years in the Litigation Division which involves electric, gas and water issues. He stated that his duties involve review of applications by utilities and cases.

Upon a question by Ms. Beltran, Mr. Cumberbach stated that DC Water provided the usage rate by hour and the spreadsheet developed was of cumulative usage per hour.

Ms. Andrews testified that the meter reads were actual. She explained that the meter system has two (2) components- the water meter and the MTU. She stated that the MTU transmits the meter reads from the water meter. She, also, stated that the water meter only advances when water is being used and high usage is most likely due to a leak. She stated that a water meter cannot auto-repair.

Ms. Andrews stated that DC Water pulled the water meter for testing on December 9, 2021 and the meter was determined to have 100.26% accuracy. She explained that DC Water abides by standards established by the American Water Works Association and that water meter accuracy is 98.5% to 101.5%.

Ms. Andrews testified that the utility sent the customer HUNA alerts of high-water usage occurring at the property on February 13, 2021 and February 19, 2021. She stated that water usage decreased on February 18, 2021 and that the spike period was February 11, 2021 to February 18, 2021. Because water usage decreased without repairs, she surmised that the usage was controlled at the premises.

Ms. Andrews testified that DC Water's investigation found no evidence on meter overread, faulty computation or meter malfunction and, as such, no adjustment is warranted. Ms. Andrews cited the municipal regulation regarding inconclusive findings as the basis for the utility determination.

Ms. Arrington stated that when a service technician pulls a water meter for testing, the technician verifies the transmitted meter read with the read on the meter. She stated that, in this case, the transmitted meter read and the meter reading were in-line. She, also, stated that no fail code appears on the customer's meter read record. She, further, stated that there has been no system upgrade by the utility.

Mr. Cumberbach acknowledged that meters do not self-repair but asserted that because the meter has two (2) components- the meter and MTU-something could be a system error in transmitting and receiving data. He stated that it would be like a calibration error. He stated that his opinion was based on information given to him. He stated that sometimes there is a system glitch or error in the technology side or a calibration error. He stated that he doesn't know if the transmitter or tower received the error. He pointed out that the meter was tested but not the MTU. Ms. Arrington interjected that if the MTU has an error in transmission, the error shows in the system.

Ms. Andrews acknowledged that a note was placed on the account in error that the meter failed; she reiterated that the meter in this matter passed testing for accuracy.

██████████ stated that he has three (3) points that he wished to make. First, that 50.05 CCF calculates into 3 gallons per minute or 7 fluid ounces per second. Second, that a MTU can conflict with other devices such as, airways and cell phone towers. He stated that he knows Mr. Cumberbach's background but he does not know the backgrounds of the DC Water representatives. Three, that his case should have been over a long time ago and that it has been pending for over a year. He stated that DC Water made repeated statements that were contrary to its actions.

██████████ asserted that no system is perfect and that errors do not always pop-up. He stated that he was at home during the period at issue and he knows what amount of water was being used. He stated that it is frustrating how DC Water has handled their dispute. Ms. Arrington apologized if DC Water's service was not up to par.

In closing, Ms. Beltram argued that the plumber established that there were no running toilets or leaks at the property. She pointed out that there is no data on firmware upgrade and she complained that her client was subjected to illegal bill collection practices by the utility. She asserted that it is impossible to consume that much product and that the utility would be unjustly enriched. Lastly, she demanded that DC Water remove late fees and penalties from the customer's account.

Ms. Andrews declined to make a closing argument.

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

FINDINGS OF FACT

1. The property involved is a single-family residence occupied by brothers, [REDACTED] and [REDACTED]. (Testimony of [REDACTED])
2. The period in dispute is February 6, 2021 to March 5, 2021. (Testimony of the parties)
3. There was a spike in water usage at the property between February 11, 2021 and February 18, 2021. (Testimony of Arlene Andrews)
4. Water usage at the property declined as of February 18, 2021. (Testimony of Arlene Andrews)
5. DC Water sent HUNA high water usage alerts to the customer on February 13, 2021 and February 19, 2021. (Testimony of Arlene Andrews)
6. [REDACTED] telephoned the utility about the high-water usage but because he was not named on the account, the customer service representative could not discuss the account with him; [REDACTED], who was listed on the account, then, called DC Water on February 19, 2021 regarding the HUNA alert received and he was told to hire a plumber to inspect the property for leaks. (Testimony of Timothy and [REDACTED] DC Water Interaction Note dated 2/19/2021)
7. The customer hired Thomas E. Clark Plumbing, Inc. and a plumber inspected the property on February 22, 2021 and found no leaks, running toilets or movement on the water meter. (Testimony of [REDACTED]; plumber's report dated 2/19/2021 by Thomas E. Clark Plumbing, Inc.)
8. When [REDACTED] telephoned the utility on February 25, 2021, the customer service representative informed him that by the time the plumber had inspected the property, the usage had already declined. (See, DC Water Interaction Note dated 2/25/2021)
9. The account was billed based upon actual meter reads transmitted by a MTU located on the water meter; there were no error notifications in the customer's meter read log. (Testimony of Arlene Andrews)
10. The investigation by DC Water found no meter malfunction, overread or computation error and the existence of an underground leak was ruled out because the usage declined without necessity of repair. (Testimony of Arlene Andrews; DC Water Investigation Report dated 9/3/2021)
11. The utility pulled and tested that water meter and the meter was determined to have 100.26% accuracy. (Testimony of Arlene Andrews)

CONCLUSIONS OF LAW

1. The burden of proof is on the customer to show, by a preponderance of evidence, that the decision of DC Water is incorrect. (21 DCMR 420.7 and 420.8)
2. DC Water is obligated to investigate a challenge to a bill by doing any or all of the following:
 - (a) Verify the computations made in the formulation of the water and sewer charges;

- (b) Verify the meter reading for possible meter overread or doubtful registration;
- (c) If feasible, check the premises for leaking fixtures, underground invisible leaks, and house-side connection leaks;
- (d) Check the meter for malfunction;
- (e) Check the water-cooled air conditioning system, if any, for malfunction; and
- (f) Make a reasonable investigation of any facts asserted by the owner or occupant which are material to the determination of a correct bill.

See, 21 DCMR 403.

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

DECISION

The customer failed to show by a preponderance of the evidence that more likely than not the bill in dispute was wrong or for some other reason, the customer should not be responsible for its payment.

The customers asserted that their usage had been consistent until the period in dispute and that the usage had to be error on the part of DC Water and/or its equipment because they did not use the amount of water charged. They pointed, in support of their position, to a plumber's report and the testimony of Mr. Cumberbach, an engineer, employed by the Office of People's Counsel. In essence, Mr. Cumberbach asserted that, based upon the data received and analyzed by him from DC Water regarding the customers' usage, it was his opinion that increased water usage had not occurred at the property, that it was not real, but, instead, was based upon a system error either in the MTU transmissions or the water meter. He testified that such a "glitch" can occur when there is a system upgrade. In support of his opinion, Mr. Cumberbach developed a data analysis chart/graph and he pointed out that no leaks were found or toilet defects were found by the plumber and there was the exact same usage rate each hour of the increased usage. He, further, asserted that human usage would not have been consistent and that this was a data error. Mr. Cumberbach asserted that AMI content and smart meter technology were the same, so his lack of experience in testing a water meter as oppose to other types of meters was not relevant. He stated that his education and work background was as a mechanical engineer and that he had 15 years of experience with electric and gas companies and had been with the Office of People's Counsel for 8 years where he performed technical review of utility applications and was involved in case litigation.

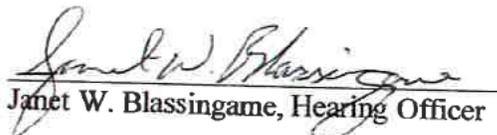
Ms. Beltran did not introduce Mr. Cumberbach was an expert and she did not attempt to have him certified as an expert witness, as such, he was a fact witness.

DC Water presented evidence of a meter test in establishing accuracy of the water meter and its investigation of the bill dispute, found no meter overread, faulty computation or meter malfunction. The utility established that there were no MTU transmission errors on the customer's meter read log. The utility, also, established that it sent HUNA alerts to the customers on high water usage occurring at the property during the period in dispute and thru its meter reads, the utility was able to pinpoint the spike period and when high usage declined.

With respect to the plumber's inspection of the property and report of finding no leaks or running toilet, the utility informed the customer before the hearing and testimony was given at the hearing, that by the time that the plumber was out to the property for the inspection, the high usage had the declined.

The customers express frustration with the utility regarding the time of response and instructions as to what to do regarding the HUNA alerts, citing that they were told to hire a plumber and upon submitting the plumber's report, were told that usage was down by the time that the inspection occurred. (Testimony of Timothy and [REDACTED], DC Water Interaction Note date 2/29/2021) Notwithstanding the issues with DC Water's customer service for which an apology was made during the hearing, the weight of the evidence was that the water usage occurred and nothing was wrong with DC Water's equipment. Mr. Cumberbach's testimony was based upon speculation of a system error having occurred, and DC Water refuted his testimony by testimony and evidence of no error notations on the meter read log, testing of the water meter, and verification of the meter read when the meter was pulled for testing,

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


Janet W. Blessingame, Hearing Officer

Date: May 18, 2022

Copies to:

[REDACTED]
[REDACTED] Brandywine Street, NW
Washington, DC 20016

Elizabeth Beltran, Esq.
Office of the People's Counsel for the District of Columbia
1133 15th Street, NW, Suite 500
Washington, DC 20005-2710

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

In re: Peter Choharis
9812 Meriden Road
Potomac, MD 20854

Service Address:
[REDACTED] Woodley Road, NW

Account No: [REDACTED]
Case No: 22-67805

Amounts and Dates in Dispute:
6/3/2020 – 7/2/2020 = \$ 1,725.91
7/3/2020 – 8/4/2020 = \$ 1,213.35

Before Janet W. Blassingame, Hearing Officer
March 10, 2022 at 10:00 a.m.

The customer contested water and sewer bills for periods noted above. The DC Water and Sewer Authority (DC Water) determined that the charges were valid and no adjustment of the customer's account was warranted. The customer requested an administrative hearing.

This matter was scheduled for a remote hearing on March 10, 2022. Present for the hearing were: Peter Choharis and his wife, [REDACTED]; Arlene Andrews and Kimberly Arrington on behalf of DC Water, as well as, Kelly Fisher, Esquire and Geneva Parker, DC Water, observing only.

This is a two (2) unit residential property owned by Peter Choharis. Mr. Choharis and his wife lived at the property from year 2001 until 2020. One unit is street level and the second unit occupies two (2) upper levels. Each unit has a kitchen, dishwasher and washing machine. The lower unit has one bathroom; the upper unit has one and one-half (1 ½) bathrooms. The upper unit, also, has radiators. The building has one outside faucet and is monitored by one water meter. The property was vacant after January 2020 until December 2021. Interior renovations were started in July 2021. Exterior renovations were started in Fall 2020 and the workers had access to a porta-potty. Mr. Choharis stated that he would check on the property approximately every two (2) weeks when the property was vacant and he would sometimes use the toilets. He stated that the water valves remained turned on in the property until the interior faucets in the Fall of 2021.

Ms. Ubillus stated they receive a paper bill from DC Water and that she would review the bill every month. She stated that the bill in dispute was delayed and came almost with the August water and sewer bill. She stated that she signed up to receive HUNA alerts from the utility but she did not receive any alerts.

The parties verified that the customers were signed up to receive HUNA alerts.

Mr. Choharis testified that a plumber came to the property in Fall 2021 for interior renovations.

Mr. Choharis stated that he went to the house and shut-off all interior faucets and, then, later, he shut-off the main water valve.

Mr. Choharis stated that no usage registered on the water meter until July 2020 and that usage was back to no registration in September 2020. He stated that he unplugged the refrigerator. He stated that he received no HUNA alerts but he did receive calls from a credit agency to pay his bill. He stated that his wife called DC Water on July 30, 2020 to inquire regarding the whereabouts of the July 2020 water and sewer bill. He stated that the July bill statement came together or just about the same time as did the August bill statement.

Mr. Choharis stated that he mitigated the problem by shutting off the water after they received the July bill statement. The July bill statement is dated July 2, 2020 but was delayed in receipt. Mr. Choharis stated that he did not call a plumber when he got the high bill because of the planned renovations which were to start in the future. He stated that he did a self-inspection of the property and shut-off the valves.

Mr. Choharis asserted that he has no explanation as to why he did not receive a HUNA alert that high usage was occurring at the property.

Ms. Andrews testified that the meter reads from the property were actual and were transmitted on an hourly basis by an automated signal. She stated that the water meter was pulled on January 10, 2022 and tested on February 14, 2022. She testified that the water meter was determined to have 99.15% accuracy. She explained that DC Water follows standards set by the American Water Works Association that water meter accuracy is between 98.5% and 101.5%.

Ms. Andrews asserted that a water meter only advances when water is being used. She stated that there are no misreads because the readings are automated. She, also, stated that the usage was not due to an underground leak because the usage declined. She added that HUNA is a courtesy by DC Water which provides no guarantee that a leak will be found.

Ms. Andrews pointed out that 21 DCMR §308 dictates that the utility must read a customer's water meter on a quarterly basis.

Ms. Andrews stated that there were no overreads or faulty computation of the customer's account and the water meter passed testing. As such, she concludes that because all tests and checks were inconclusive as to the cause of the increase usage, the customer is not entitled to an adjustment of the account.

Mr. Choharis stated that the renovations were primarily downstairs involving floors, countertops and painting. He added that renovations included the back deck on the upper level, electrical work, painting, repair of a leak from the air conditioner, fire alarms and a washing

machine.

On cross-examination, Ms. Andrews stated that there was still registration on the water meter even though everything thing was turned off. She stated that she was unable to say what was the source of the water usage.

Ms. Andrews stated that 1 CCF is equivalent to 748 gallons of water.

Ms. Andrews stated that the spike in water usage stopped on July 12, 2020 at 4:00 p.m. and that there had been no water usage until June 17, 2020 at 1:00 p.m. when the usage started.

Ms. Arrington stated that the customers used 92,624.84 gallons of water between June 3, 2020 and July 2, 2020. She stated that the utility has no duty of care to alert customers by HUNA. She stated that between July 3, 2020 and August 4, 2020, the customers used 64,455.16 gallons of water.

Ms. Andrews asserted that HUNA is a curtesy. Mr. Choharis asserted that customers pay for capital improvements which include the HUNA service. Ms. Andrews retorted that it is an owner's responsibility to monitor his property. To which, Mr. Choharis stated that DC Water has a duty of care to its customers and to the environment. Ms. Andrews responded that HUNA is not a capital improvement but was developed by DC Water's IT Department.

Ms. Fisher interjected that the question of HUNA is irrelevant as to whether the customer had a leak causing increased water usage. She stated that the public duty doctrine is not owed to individuals but to the public at large.

Mr. Choharis asserted that he received no alerts of high usage occurring at his property and asks why he received no HUNA alert. Ms. Andrews responded that HUNA is dependent on customer data and data may be unavailable at any time. She reasserted that HUNA is a curtesy. She added that there may have been maintenance issues.

Mr. Choharis cited 21 DCMR §408 pointing out that the regulation regarding inconclusive findings says that the DC Water General Manage may approve an adjustment. Mr. Choharis asked if the General Manage looked at his bill for adjustment or if whoever interprets and applies the regulation looked at his bill. Ms. Andrews responded that the bill does not involve a public interest. Mr. Choharis argued that the amount of water loss is a public interest. Ms. Fisher inserted that DC Water Customer Service makes the determination as to a dispute and what is in the public interest. Ms. Fisher testified that the General Manager has delegated to the Customer Service Department his discretion pursuant to 21 DCMR §408 as to whether it is to the public interest to adjust a customer's bill. Ms. Fisher stated that, in this case, the utility is not exercising discretion to adjust the customer's bill. She added that the Hearing Officer has no discretionary authority upon 21 DCMR §408.

Mr. Choharis referred to page 11 of the Customer Interaction Note where on 9/28/2021 –

Arrington said "was unable to give a credit".

Ms. Arrington stated that there are different areas within DC Water Customer Service and that customer service representatives do not have authority to give adjustments to customer. Mr. Choharis asked, then, who does have authority and Ms. Arrington stated that she, Arlene Andrews and another person can give adjustments to customers. Ms. Arrington stated that Title 21 Chapters 3 and 4 are relevant.

Ms. Arrington stated that she believes that the water usage was due to a fixture leak and waste.

Mr. Choharis asserted that DC Water did not look at or consider 21 DCMR §408 but only looked at 21 DCMR §406 and he asserted that the utility's failure to consider was error.

Ms. Fisher stated that only the General Manager has sole discretion under 21 DCMR §408 and there is no significant public interest involved in this dispute since this is an individual as opposed to a hospital. Mr. Choharis responded that 21 DCMR §408 is available to residences and the regulation is not limited. He argued that 21 DCMR §408 should have been applied. He stated that there is no record of a fixture leak.

Ms. Fisher explained the Clean River Charge/Impervious Area charge regarding sewer run-off water has nothing to do with high water usage alerts but the charge relates to water control and cleaning the Potomac River and reducing pollution in the Atlantic Ocean and Potomac River.

Ms. Arrington asserted that she believes that the customers' increased water usage was based on a fixture leak and waste. She asserted that 21 DCMR §406 controls the dispute.

In closing, Mr. Choharis stated that his argument is two-fold. First, that there is authority to adjust his account and that authority has been delegated to Customer Service but they applied 21 DCMR §406 as opposed to 21 DCMR §408 where is no evidence of a leak. Second, that water loss is in the public interest. He asserted that the utility's failure to consider an adjustment was error of law. Mr. Choharis, further, asserted that the utility has a duty of care to the environment and to its customers. He stated that customers paid for HUNA to protect against huge bills and in his case, the utility did not alert him regarding a huge water loss. He asserted that because he was not alerted, he was unable to mitigate his loss and water was wasted. Mr. Choharis argued that DC Water has an obligation to ensure that HUNA works. He stated that the utility failed to alert him for one and one-half months. He asserted that the utility violated its duty of care to him and to the environment. He also asserted that HUNA is not a free service and that customers pay for the service. Mr. Choharis stated that DC Water cannot avoid its duty of care to its customers and that the utility is an environmental steward. In conclusion, Mr. Choharis stated that his dispute has an equity component.

Ms. Fisher gave a closing statement on behalf of DC Water. She asserted that there was evidence of an internal leak because the increased water usage stopped without need of repair. She asserted that the customer is misreading 21 DCMR §408. She stated that the regulation has an exception and that is that an adjustment may be granted at the sole discretion of the GM or delegate. She asserted that the discretion is not exercised always and that the utility does not determine a public interest to exist in every bill dispute. Ms. Fisher asserted that an internal fixture leak in a private home is never considered a significant public interest. She asserted that homeowners have a duty to determine the internal condition of their property. She stated that HUNA is a curtesy and that no customer can rely upon HUNA to determine the existence of leaks at their property. She asserted that DC Water is only required to conduct quarterly meter reads. She asserted that the discretion vested in the General Manager is solely left to DC Water. Ms. Fisher asserted that there is evidence of the existence of an internal leak. She added that DC Water chose not to exercise discretion in this matter.

Mr. Choharis retorted that 21 DCMR §406 was not applied correctly. He asserted that 21 DCMR §406.2 and 406.3 require the utility to investigate and DC Water did not investigate. Mr. Choharis reasserted that he went regularly to the house and monitored the situation at the house. He asserted that the only investigation by DC Water was to conduct a meter test in February 2022. Mr. Choharis asserted that he questions if the meter had a problem in year 2020 and he asserted that DC Water has a duty to prove that the meter was working at the time of the problem. He asserted that the evidence is clear that there was no determination made pursuant to 21 DCMR §408. The customer asserted that sole discretion has perimeters and its exercise cannot be arbitrary and capricious. Mr. Choharis asserted that he has demonstrated that consideration of the furtherance of public interest was not given in his dispute and he was told that there was no authority to make an adjustment. Mr. Choharis asserted that HUNA not working is against public interest. He asserted that when there are inconclusive findings, a customer can rely upon entitlement to an adjustment based upon public interest because loss of water is contrary to public interest.

Ms. Arrington interjected that Arlene Andrews did refer to 21 DCMR §408.

Mr. Choharis retorted that Ms. Arrington said the dispute determination was based upon 21 DCMR §406.

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

FINDINGS OF FACT

1. The property involved is a two-unit residence owned by Peter Choharis. (Testimony of Peter Choharis)
2. The period in dispute is August 25, 2021 to October 26, 2021. (Testimony of the parties)

3. The property became vacant in January 2020 and remained vacant until December 2021. While the property was vacant, renovation work was started in the Fall of 2020 on the exterior and renovation work in the interior of the property was started in July 2021. Prior to start of renovations, the property owner would come by the property approximately every two (2) weeks. (Testimony of Peter Choharis)
4. During the exterior work on the house, the workers used a porta-potty outside; the property owner sometimes used the house toilets when he visited the property. (Testimony of Peter Choharis)
5. From January 2020 when the property became vacant until June 2020, there was no registration on the water meter. (Testimony of the parties; DC Water Meter read log)
6. Water usage began registering on the water meter on June 17, 2020 at 1:00 p.m. and stopped on July 12, 2020 at 4:00 p.m. (Testimony of Arlene Andrews)
7. Between July 3, 2020 to August 4, 2020, over 64,000 gallons of water registered on the customer's water meter. (Testimony of Arlene Andrews)
8. The customer was unaware of water registering on the water meter at the property until he received his July 2020 water and sewer bill which the customer and his wife, both, testified arrived late. (Testimony of Peter Choharis and [REDACTED])
9. Upon receipt of the July 2020 bill statement, the property owner went to the property and shut-off the water to fixtures. (Testimony of Peter Choharis)
10. The property owner mitigated the problem by shutting off the water in the house after he received the July 2020 water and sewer bill. (Testimony of Peter Choharis)
11. When renovation to the interior of the property was started, the contractor shut-off the main water valve. (Testimony of Peter Choharis)
12. No HUNA alerts were received by the customer from DC Water regarding the water usage which occurred at the property. (Testimony of the parties)
13. DC Water has actual hourly meter reads transmitted electronically from the property and the meter read record does not reflect any error in transmission or read. (Testimony of Arlene Andrews; DC Water Meter Read Log)
14. DC Water tested the water meter and the meter was determined to have 99.15% accuracy. (Testimony of Arlene Andrews)
15. DC Water ruled out the existence of an underground leak as a possible cause of the water usage because the usage declined and underground leaks require repair in order for usage to decline. (Testimony of Arlene Andrews)
16. DC Water's investigation found no overread or faulty computation of the customer's bill. (Testimony of Arlene Andrews)
17. DC Water advertises HUNA to its customers and refers to the program as a courtesy. (Testimony of Arlene Andrews and Kimberly Arrington)
18. The General Manager of DC Water has delegated his discretion of determining if an account is to be adjusted in furtherance of a significant public interest to the utility's Customer Service Department and that specific employees within the department have authority to exercise the discretion. (Testimony of Kimberly Arrington)
19. DC Water made the decision that adjustment of the customer's account did not fall within the perimeters of the discretionary authority to adjust for a significant public interest. (Testimony of Kimberly Arrington and Arlene Andrews)

CONCLUSIONS OF LAW

1. The burden of proof is on the customer to show, by a preponderance of evidence, that the decision of DC Water is incorrect. (21 DCMR 420.7 and 420.8)
2. DC Water is obligated to investigate a challenge to a bill by doing any or all of the following:
 - (a) Verify the computations made in the formulation of the water and sewer charges;
 - (b) Verify the meter reading for possible meter overread or doubtful registration;
 - (c) If feasible, check the premises for leaking fixtures, underground invisible leaks, and house-side connection leaks;
 - (d) Check the meter for malfunction;
 - (e) Check the water-cooled air conditioning system, if any, for malfunction; and
 - (f) Make a reasonable investigation of any facts asserted by the owner or occupant which are material to the determination of a correct bill.
See, 21 DCMR 403.
3. D.C. Municipal Regulations bar adjustment of a customer's bill when all checks and tests provide no reasonable explanation for excessive water consumption. (See 21 DCMR 408 which states: "In cases in which all checks and tests result in inconclusive findings that provide no reasonable explanation for excessive consumption, no adjustment shall be made to the bill for any portion of the excessive consumption, except as may be approved by the General Manager, based upon a demonstration by the owner or occupant that such an adjustment will further a significant public interest.")
4. D.C. Municipal Regulations relating to water and sanitation bar adjustment of a customer's bill if excessive water consumption is the result of a leaking faucet, household fixtures, and similar leaks or the malfunctioning water-cooled air conditioning equipment. (21 DCMR 406)
5. The public duty doctrine is a doctrine in tort law where a government entity (such as a state or municipality) cannot be held liable for the injuries of an individual resulting from a public officer's or employee's breach of a duty owed to the public as a whole as distinguished from a duty owed to the particular individual. Merriam-Webster's Dictionary of Law 1996
6. Promissory Estoppel- That which arises when there is a promise which promisor should reasonably expect to induce action or forbearance of a definite and substantial character on part of promisee, and which does induce such action or forbearance, and such promise is binding if injustice can be avoided only by enforcement of promise. New Eureka Amusement Co. v. Rosinsky, 126 Ps. Super. 444, 191 A. 412, 415; Black's Law Dictionary, Revised Fourth Edition. 1968.
7. In order to establish promissory estoppel against the government, the party asserting the estoppel must show that the government "made a promise, that [the party] suffered injury due to reasonable reliance on the promise and that enforcement of the promise would be in the public interest and would prevent injustice." District of Columbia v. McGregor

- Properties, Inc., 479 A.2d 1270, 1273 (D.C.1984).
8. [T]o successfully raise an estoppel argument against the District, [Mr. Mamo] must show that the District made a promise, that [he] suffered injury due to reasonable reliance on the promise and that enforcement of the promise would be in the public interest and would prevent injustice." Mamo V. district of Columbia, 934 A.2d 376,(D.C. 2007)(quoting Hospitality Temps Corp. v. District of Columbia, 926 A.2d 131, 139 (DC2007) (quoting District of Columbia v. McGregor Props., 479 A.2d 1270, 1273 (D.C.1984)); see also Leonard v. District of Columbia, 801 A.2d 82, 86 (D.C.2002); Chamberlain v. Barry, 606 A.2d 156, 158 (D.C.1992)
 9. 'The doctrine of equitable estoppel, if applicable against the government at all, may be invoked only where there is a showing of some type of affirmative misconduct by a government agent.'" Mamo V. district of Columbia, 934 A.2d 376,(D.C. 2007) (quoting Leekley v. District of Columbia Dept of Employment Servs., 726 A.2d 678, 680 (D.C.1999) (quoting Robinson v. Smith, 683 A.2d 481, 492 (DC.1996))
 10. In general, to "hold a party liable under the doctrine of promissory estoppel there must be a promise which reasonably leads the promisee to rely on it to his [or her] detriment, with injustice otherwise not being avoidable." Bender v. Design Store Corp., 404 A.2d 194, 196 (D.C.1979) (quotations and cites omitted); accord Moss v. Stockard, 580 A.2d 1011, 1034 (D.C.1990). Under the RESTATEMENT OF CONTRACTS (SECOND) § 90(1) (1979). A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise. Thus, to make out a claim of promissory estoppel the following questions must be answered in the affirmative: "First, was there a promise? Second, should the promisor have expected the promisee to rely on the promise? [Third,] did the promisee so rely to his [or her] detriment?" Bender, 404 A.2d at 196.
 11. DC WASA is not a department of the Mayor's office or an agency. See D.C. Code § 34-2202.02(a) (2001) (noting that WASA is an independent authority of the District of Columbia government, "a corporate body, created to effectuate certain public purposes, that has a separate legal existence within the District government."). However, WASA is subject to "all laws" that are applicable to agencies in the District, which would include the APA. D.C. Code § 34-2202.02(a), (b). In addition, the owner or occupant of a property who wishes to contest a water or sewer service bill is specifically authorized to do so "in accordance with" the procedures set forth in the APA. D.C. Code § 34-2305.
 12. The obligation to pay fees owed to WASA resides with the owner of the property to which services are provided. In essence, the obligation to pay runs with (and can be secured by a lien on) the property where the water services were rendered.
 13. The Restatement (Second) of Torts §§ 323, 324A (1965) (emphasis added) sets forth the requirements for the torts of negligent and intentional breach of a special duty:
§ 323. Negligent Performance of Undertaking to Render Services

One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for *physical harm* resulting from his failure to exercise reasonable care to perform his undertaking, if

(a) his failure to exercise such care increases the risk of such harm, or

(b) the harm is suffered because of the other's reliance upon the undertaking. (See, *Service Employees Int'l Union Health and Welfare Fund v. Phillip Morris, Inc.* 83 F. sup. 2d 70 (D.D.C. 1999))

14. A special duty cannot be created by corporate advertisements to the general public; a special duty cannot be premised on general corporate statements or advertisements aimed at the general public. In response, for a special duty to exist, the acknowledgment of that duty must have been made directly to the beneficiary, not to the general public through advertisements. "Converting a company's marketing into a special undertaking to inform the public about the known risks of its products would subject every manufacturer that advertises its products to liability for a 'special duty' created by such marketing, and that duty would be violated by every material omission in such advertising. "*Steamfitters Local Union v. Phillip Morris*, 171 F.3d 912 at 936. (See, *Service Employees Int'l Union Health and Welfare Fund v. Phillip Morris, Inc.* 83 F. sup. 2d 70 (D.D.C. 1999))
15. That absent a special relationship creating a municipal duty to exercise care for the benefit of a particular class of individuals, no liability may be imposed upon a municipality for failure to enforce a statute or regulation. *Platt v. District of Columbia*, 467 A. 2d 149 (D.C. Court of Appeals 1983).
16. The property owner is the ultimate responsible party to pay for water and sewer services at a property and the obligation to pay runs with the property where the water services are rendered. See, *Euclid Street, LLC v. D.C. Water and Sewer*, 41 A. 3rd 453, D.C. Court of Appeals 2021

DECISION

The customer in this matter attacks his liability for payment of the disputed water bills based upon four (4) arguments- One- the property was and had been vacant and no water registered on the water meter until the period in dispute and, as such, the reading was wrong or the meter was defective because there was no explanation of cause found; Two- DC Water had a duty to warn the customer of alleged high water usage occurring at the property and the utility failed to do so, thus, preventing a mitigation of excessive water loss/usage; Three- HUNA is not a curtesy but a service by DC Water which its customers pay for and rely upon to protect themselves and the environment against water loss/waste; and, Four- the utility applied the

wrong statutory regulation in its investigation of the customer's dispute and consideration should have been given pursuant to 21 DCMR §408 but the utility only considered and applied 21 DCMR§ 406.

The evidence and testimony presented established that, even though the property was vacant, the customer was regularly inside of the property during the periods in dispute and had access to and did, on occasion, utilize the bathrooms. It was established that, upon receipt of the July 2020 water and sewer bill which reflected that water usage was occurring at the property, the property owner went to the property and turned off the fixtures. The customer's July 2020 billing period ended July 2, 2020 and the customer and his wife testified that the July 2020 bill statement was received late. The property owner testified that he turned off the water to the fixtures in the house after receipt of the July 2020 bill and that he mitigated the problem by shutting off the water in the house after he received the July 2020 water and sewer bill.

DC Water conducted an investigation of the customer's dispute and presented evidence that the water meter passed testing for accuracy. The utility, further, found no evidence of meter overread or faulty computation and the utility ruled out the existence of an underground leak as a cause of the water usage which occurred at the property.

DC Water has a duty to investigate a customer's bill dispute and it did so, in this case, by testing the water meter, ruling out the existence of an underground leak and looking for overread and faulty computation of which it found no evidence.

When all tests and checks fail to provide a reasonable explanation of the cause of excessive usage at a property, Municipal Regulation 21 DCMR §408 dictates that DC Water does not adjust a customer's account for any portion of the excessive water 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.

Testimony established that the General Manager of DC Water has delegated the discretion of determining if an account adjustment would be in furtherance of a significant public interest to the utility's Customer Service Department and that specific employees within the department can exercise such discretion. The customer argues that his bill dispute was not considered for adjustment; DC Water asserted that the customer's account was considered and was determined not qualified for adjustment under the discretionary powers pursuant to 21 DCMR 408.

The customer's argument is multi-pronged. He asserted that 21 DCMR 408 is applicable in his dispute because the utility has a public duty to the environment and to him, its customer, to prevent loss of water. He asserts that, as a customer of the utility, he pays for the HUNA alert system and the system failed to work in his case when excessive water usage occurred at his property and, as such, the utility breached its promise of alerts causing excessive loss of water and preventing him from mitigating his damage.

Counsel for DC Water referred to the customer's arguments as based upon "public duty doctrine" which she asserted is not owed to an individual but to the public at large. The customer argued that the utility owed such a duty to him because he pays for water and sewer service and, further, that the utility owes a duty to the public as an environmental steward.

The public duty doctrine is a doctrine in tort law where a government entity (such as a state or municipality) cannot be held liable for the injuries of an individual resulting from a public officer's or employee's breach of a duty owed to the public as a whole as distinguished from a duty owed to the particular individual. Merriam-Webster's Dictionary of Law 1996

DC Water is not a department of the Mayor's Office or an agency of the District of Columbia but is an independent authority having separate legal existence. See, D.C. Code § 34-2202.02(a) (2001)

Even if one argues that the concept of negligence in a duty to care to individuals extends to a quasi-government entity such as DC Water, the case law regarding the concept refers to the need to show the existence of a special duty of care to the individual beyond the general duty owed to the public at large. In order to establish a special duty of care, the customer would have had to show a direct and continuing contact between himself and the utility and that he was justified in relying upon the utility to prevent water loss. See, Platt v. D.C., at 151; Warren v. District of Columbia, 444 A. 2d 1 (D.C. 1981) (en banc); Morgan v. District of Columbia, 468 A. 2d 1306 (D.C. 1983) (en banc).

The customer failed to establish that he has any special relationship with the utility. He was a customer, like thousands of other individuals. There is no evidence that the utility made any special promises to him or provided any unique service specific to him that would establish a special duty of care.

Promissory estoppel is another doctrine to look for support of the customer's arguments. This equity doctrine arises when there is a promise, that someone to whom the promise was made reasonably relies upon the promise and suffers injury due to reasonable reliance on the promise. To make out a claim of promissory estoppel, the following questions must be answered in the affirmative: "First, was there a promise? Second, should the promisor have expected the promisee to rely on the promise? And third, did the promisee so rely to his detriment" Bender v. Design Store Corp., 404 A. 2d 194 at 196.

To the questions necessary to establish promissory estoppel, the Hearing Officer finds that the customer cannot affirmatively answer the questions.

DC Water presents its HUNA service as a curtesy provided to customers; it makes no promise to a customer that high usage will be prevented or preventable. HUNA is presented to the general public and DC Water customers to alert the public/customers to the threat of leaks and the problem of excessive water usage. The utility's statements and marketing of the service make no promise that a customer will not incur water loss, leaks or high bills due to excessive water usage, but instead attempts to help the customers, if they elect to sign-up for the service, avoid such known risks of water service.

In Steamfitters Local Union v. Phillip Morris, 171 F. 3d 912, the Court discusses that converting a company's marketing into a special undertaking to inform the public about the

known risks of its products would subject every manufacturer that advertises its products to liability for a 'special duty' created by such marketing, and that duty would be violated by every material omission in such advertising. Caselaw established that a special duty to an individual cannot be premised on general corporate statements or advertisements aimed at the general public. at 936.

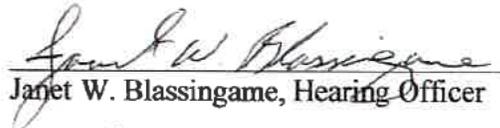
The Restatement (Second) of Torts §§ 323, 324A (1965) set forth the requirements for the torts of negligent and intentional breach of a special duty when undertaking to render service. It refers to a service offered as having to be necessary for the protection of the other person or his things to prevent physical harm resulting from failure to exercise reasonable care to perform a service whether offered gratuitously or for consideration.

The problem faced by the customer in meeting his burden of proof to rid himself of responsibility for water used at his property is that the property owner is the ultimate responsible party to pay for water sewer services at a property and DC Water never promised to protect him or any other property owner from such liability. See, Euclid Street, LLC v. D.C. Water and Sewer, 41 A. 3rd 453, D.C. Court of Appeals 2021.

The customer's argument that the utility is a steward of the environment has no application to his responsibility to pay his water bills.

Lastly, the customer asserts that he was not accorded consideration for an account adjustment pursuant to 21 DCMR 408. The Hearing Officer finds nothing in the facts of this case that triggers consideration of an account adjustment based upon the discretion reserved to the General Manager or his delegates. The regulation refers to a "significant public interest". If being a steward of the environment is stretched to preventing all water loss including that incurred by individual customers, no customer would ever have to pay charges for excessive water use. As noted by counsel for the utility, the customer is not "a hospital" ... The Hearing Officer does not view public interest as narrowly as pertaining only to hospitals; however, this case is about a private individual and not about any organization or entity serving the general public. Moreover, the regulation refers to a "significant public interest" which is a higher standard and such a determination is left in the sole discretion of the utility's General Manager.

Based upon the foregoing, the Hearing Officer finds that the customer has failed to meet his burden of proof and has not established that more likely than not the charges at issue are wrong or for some other reason, he should not be held responsible for payment. Accordingly, the determination by DC Water that the charges are valid and no basis exists to adjust the customer's account is hereby AFFIRMED.


Janet W. Blessingame, Hearing Officer

Date: May 19, 2022

Copy to:

Mr. Peter Choharis
9812 Meriden Road
Potomac, MD 20654

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

In re:



Hawthorne Place, NW
Washington, DC 20016

Account No:
Case No: 21-424908

Period and Amount in Dispute:

8/13/21 – 10/14/21 \$384.43

Periods and Amounts Timely Disputed and
Adjustment Warranted:

4/14/21 – 5/13/21	\$201.83
5/14/21 – 6/11/21	\$192.67
6/12/21 – 7/14/21	\$186.68
7/15/21 – 8/12/21	\$249.08

Before Janet W. Blassingame, Hearing Officer
March 8, 2022 at Noon.

The customer contested water and sewer bills spanning fifteen (15) billing periods. The four (4) periods and amounts noted above are accepted by DC Water as having been timely dispute and warranting adjustment. The period 8/13/21 to 10/14/21 is in dispute. DC Water determined that the charges are valid and no adjustment if warranted. The following periods, DC Water asserts were not timely disputed and no adjustments were warranted:

8/12/20 – 7-14/20	\$207.82
7/15/20 – 8/13/20	\$184.69
8/14/20 – 9/14/20	\$191.80
9/15/20 – 10/14/20	\$205.24
10/15/20 – 11/13/20	\$214.28
11/14/20 – 12/11/20	\$150.88
12/12/20 – 1/13/21	\$197.78
1/14/21 – 2/11/21	\$191.34
2/12/21 – 3/11/21	\$205.58
3/12/21 – 4/13/21	\$243.98

This matter, initially, came before the Hearing Officer upon two (2) Motions to Dismiss Administrative Hearing Petition by the DC Water and Sewer Authority (DC Water). The utility sought to separate the customer's bill disputes based upon timeliness of filing. An Opposition was filed on behalf of the customer by the Office of the People's Counsel for the District of Columbia in which it was pointed out that the utility had adjusted the customer's account due to

the water meter failing in testing. It was found that the utility adjusted the customer's account starting at April 14, 2021 but rejected the dispute of the April 13, 2021 bill and the bills prior thereto as untimely. The Hearing Officer determined that the regulations do not premise relief, when a meter is determined defective, upon when the customer disputes his bill. The Hearing Officer noted that DC Water gave no explanation of how the period of account adjustment was determined but appeared to limit its examination of appropriate account adjustment period to when the customer timely disputed a bill.

The Hearing Officer found that under the regulations, the utility is to adjust the customer's account back to encompass the period that the meter was defective, but, in this case that DC Water sought to cut-off examination of the period that the meter may or may not be defective, by viewing the customer's failure to timely dispute certain bills as the cut-off for relief.

The customer contended that all of his bills, dating back to July 14, 2020, should have been adjusted. The Hearing Officer made no determination as to when the adjustment should start or end, however, the Hearing Officer did determine that DC Water opened door, thereby waiving its time limit on bill disputes in this matter by testing the water meter, finding the meter defective and adjusting the customer's account for a period of time. The Hearing Officer believed that by testing the water meter in its investigation of the customer's later bill disputes, the utility waived its time limitation regarding the untimely bill disputes and DC Water had an obligation to allow the customer to go forward and make his argument as to when the water meter became defective and the appropriate period of account adjustment based upon the meter test failure.

The Hearing Officer ruled that the utility's rising of the existence of a defective toilet and the existence of a sprinkler system at the property pertained to fact issues relating to the cause of the water usage and what period should be applicable to the adjustment of the customer's account. The fact that there was a defective toilet and a sprinkler system does not bar the customer from a hearing. Both sides have a right to make argument and prove their respective position in this matter.

HISTORICAL BACKGROUND:

The customer contacted DC Water regarding his bills on April 14, 2021 and thereafter, established an extended history of complaining regarding his water and sewer bills based upon his belief that the bills were incorrect based upon what usage should be for two (2) people residing in the home. The customer complained that he was being overcharged starting with the July 14, 2020 bill and the customer continued to complain to the utility up to including his September 2021 bill. During the course of complaining regarding his bills, the customer submitted a plumber's report which noted a faulty toilet flapper. DC Water issued Investigation Reports on June 8, 2021 in which it denied the customer's disputes regarding the bills at issue- June 11, 2020 to April 13, 2021 as the same were considered untimely and that based upon their review of the account charges for the dispute bill dated May 13, 2021, no adjustment was warranted. The customer, also, disputed his bills dated June 11, 2021, July 14, 2021, August 12, 2021 and September 15, 2021. DC Water investigated the June, July and August bill disputes and determined that no adjustments were warranted. The utility removed the water meter on August 18, 2021 and conducted a meter test on August 24, 2021. The result of the meter test was that the

meter failed as over registering. A new water meter was placed at the property and it was subsequently tested and passed testing. On November 12, 2021, DC Water wrote the customer to inform him that the water meter failed testing in August 2021 and that his account would be adjusted for the period April 14, 2021 to August 18, 2021.

The customer contended that all bills should be adjusted because his water meter failed testing. DC Water asserted that this matter was moot in that a full refund had been issued for the timely disputed bills. DC Water asserted that a refund beyond the date of the installation of the operable meter was not justified and it implied that no refund is appropriate for any period pertaining to the untimely filed bill disputes. DC Water, further, made reference to the existence of a defective toilet flapper at the premises and a sprinkler system.

In the Order denying the Motion to Dismiss, the Hearing Officer cited 21 DCMR § 405 stating that the regulation instructs that if the bill dispute investigation discloses meter overread, adjustment(s) shall be made to reflect the correct charges. Also, cited was 21 DCMR §309.3 stating that the regulation instructs that if a meter fails to register correctly as determined by qualified personnel of the utility, the water charge for the interval in which the incident occurred shall be based on the average previous water consumption for that interval. 21 DCMR § 308.4 was cited as instructing that if a meter failed to register correctly, the water charge for the interval in which the incident occurred shall be based upon on the average previous water consumption for that interval.

The Hearing Officer found that the utility sought to impose its time limit for dispute of water bills found in 21 DCMR § 402 which is thirty (30) days after the bill date and that, clearly, the customer had failed to dispute many of the bills in a timely manner. Citing 21 DCMR § 402 is a claim processing rule, the Hearing Officer pointed out that the utility may waive such rules as had been the case in Gatewood v. DC WASA, 82 A.3d 41, D.C. Court of Appeals 2013) Comparing the case to Gatewood, the Hearing Officer noted that Mr. Gatewood failed to timely dispute his water and sewer bill, however, the Court of Appeals found that the utility can and did waive its time limitation imposed in a claim processing rule. Pointing out that the utility, ultimately, tested the customer's water meter and the meter was determined to be defective, the Hearing Officer reasoned that under the regulations, the utility is to adjust the customer's account back to encompass the period that the meter was, in fact, defective regardless of when the customer filed a bill dispute. The Hearing Officer pointed out that DC Water had sought to cut-off examination of the period that the meter may or may not be defective, by viewing the customer's failure to timely dispute certain bills as the cut-off for relief and that the utility adjusted the customer's account starting at April 14, 2021 but rejected the dispute of the April 13, 2021 bill and the bills prior thereto as untimely. The Hearing Officer declared that the regulations do not premise relief when a meter is defective upon when the customer disputes his bill.

MARCH 8, 2022 - HEARING PROCEEDINGS:

This matter was scheduled for a remote hearing on March 8, 2022. Prior to the hearing date, DC Water announced that it would like to make an oral pre-hearing motion for reconsideration on the record at the hearing. OPC objected to DC Water's proposed motion as it is untimely and violates the customer's Due Process rights. OPC wrote that pursuant to both Rule 59 of the DC Superior Court Rules and the Office of Administrative Hearings Rule 2828.2, a

Motion for Reconsideration must be filed within 10 calendar days of service of the Order. It was pointed out that both rules allow an untimely Motion to be treated as a motion for relief from final order with a limited review on grounds which include clerical mistake, inadvertence, surprise, fraud and newly discovered evidence. Counsel for the customer cited The District of Columbia Water and Sewer Authority Department of Customer Services Case No. 19-467234 *In re: Laura Gross*, Order dated January 7, 2020. It was asserted that DC Water had until January 24th to file their Motion, but waited until March 3rd to email intent and until March 8th to present the motion orally. Counsel asserted that the utility's motion was six weeks out of time. Counsel, further, stated that DC Water failed to state ground for its Motion in its email request, violating the customer's Due Process rights thus, negating any foundation for a defense since the basis of the motion is unknown.

On March 8, 2022, present for the hearing were: [REDACTED] and [REDACTED] represented by Elizabeth Beltran, Esquire, Office of People's Counsel (OPC); Barbara Mitchell, Esquire, Office of General Counsel, DC Water on behalf of DC Water; LaFatima Black, D.C. Water; Kimberly Arrington, DC Water; Geneva Parker, DC Water; Arrelle Anderson, OPC; observing only were: Kelly Fisher, Esquire, DC Water; and, Marchim Williams.

Ms. Beltran opened on behalf of the customers stating that the overcharges should be refunded. She stated that DC Water should refund the customer all money overcharged to him due to the faulty water meter. She stated that the utility adjusted for timely disputes but there are no time limits regarding overcharges for a faulty meter. She asserted that the utility would be unjustly enriched if it kept overpayment. She added that DC Water customers are captive consumers. Ms. Beltran added that water and sewer bills need to reflect the bill dispute challenge date.

Ms. Beltran cited Owens v. DC WASA, 156 A. 3d 715- 2717 DC Ct Appeals, as authority that the water and sewer bill needs to reflect a challenge date and she stated that the Court in the Owens case found that the water and sewer bill gave insufficient notice to customers of their rights to contest their bills.

Ms. Mitchell on behalf of DC Water opened by making a Motion for Reconsideration of the Order denying the utility's Motion to Dismiss Administrative Hearing Petition. Ms. Mitchell pointed out that the Hearing Officer cited Gatewood v. DC WASA and that the Gatewood case is distinguished from the case at issue She stated that Mr. Gatewood's claim had been heard on the merits whereas, here, a Motion to Dismiss was filed. She asserted that DC Water did not waive its time limitation for bringing a bill dispute in this case.

Ms. Mitchell stated that the utility pulled the water meter on August 24, 2021 and that May 2021 was the 1st timely bill dispute by the customer.

Ms. Black stated that DC Water had determined that the customer's bills from July 14, 2020 to April 13, 2021 were not timely disputed and no adjustment was warranted. She stated that the utility determined that the customer did timely dispute four (4) bills and that the October 2021 bill had been found to not warrant adjustment due to inconclusive findings. Ms. Black stated that the October 14, 2021 bill was adjusted, in part, for usage on the old water meter.

Ms. Beltran argued that Rule 59 of the DC Superior Court Rules of Civil Procedure and OAH Rule 2828.2 state that a motion for reconsideration must be made within 10 calendar days of service of the Order. Ms. Beltran pointed out that DC Water's motion for reconsideration is being made six (6) weeks late after the order was issued and served. She asserted that to entertain the motion for reconsideration denies due process to the customer.

Ms. Mitchell stated that DCMR 21-420.5 states that the Rules of Civil Procedure are not binding in these proceedings. She asserted that neither Rule 59 or 2828.2 apply here. She stated that Rule 59 relates to judgments and that the order at issue here did not terminate the matter.

Ms. Mitchell cited DC v. Tschudin, 390 A. 2d 986, 988, stating that the case explains what is a final order and that it disposes of a matter on the merits. Ms. Mitchell asserted that after a motion to dismiss, a dispute must go to hearing and that, pursuant to 21 DCMR 416.2, DC Water may request dismissal at hearing.

Ms. Mitchell stated that when the Municipal Regulations were drafted, the thought was that DC Water would immediately determine when a meter was faulty. She stated that evidence erodes over time and that it is unfair to the utility because it cannot test before a customer gives it notice of a problem. She argued that the time limit applied to disputing the bill and adjustment. She asserted that it is not fair to the utility to have to try and determine when the water meter became faulty. She asserted that there is no discretion to entertain untimely bill disputes.

Ms. Beltran stated that it is concerning that bill dispute is to find if the meter was defective. She stated that she reserves the right to submit argument in writing.

██████████ testified that he first noticed spikes in water consumption at the home in year 2020. He stated that he was working at home due to the Pandemic. He stated that he reached out to DC Water regarding the usage on April 14, 2021.

██████████ stated that he had a sprinkler system installed at the property and he questioned whether the spike in water usage was due to the sprinkler, so he decided to run thru the winter cycle. He stated that a plumber was called out to the property in April 2021 and the plumber found a running toilet. ██████████ stated that the plumber replaced the toilet flapper but thereafter, there was no change in the water bill. ██████████ testified that he called the plumber a second time and the plumber found no leaks. He added that the plumber told him that neither the flapper nor a leak caused the increased water usage. ██████████ stated that in May 2021, DC Water told him that the utility was not going to do anything. The customer complained that he had to reached out to DC Water 4 – 5 times before the utility pulled the water meter in August 2021 for testing.

██████████ stated that his wife saw someone pulling the water meter; he complained that the utility gave no notice that the meter was being pulled. He added that the service technician said that their bill should be approximately \$120.00 per billing cycle.

██████████ stated that the plumber found nothing wrong with the sprinkler system.

██████████ stated that DC Water sent no HUNA alerts.

██████████ stated that, prior to June 2020, his water bill was approximately \$120.00 per billing cycle. He pointed out that as of April 11, 2019, there was a drought and he was watering twice a day with a hose and over 14 days, his bill was \$198.31. He stated that it was as of June 2020 that his water bill got out of control.

██████████ stated that he is disappointed with the adjustment period of 4/2021 to 8/2021. He stated that when he got the April 13, 2021 bill, he called the next day and told the representative that he thought something was wrong. He stated that the representative told him to get a plumber. He stated that DC Water, then, told him that his dispute was not timely.

██████████ testified that his water bill was back to normal by December 2021, maybe even by November 2021. He stated that his bill now averages \$110.00 per billing cycle. He stated that his water bill in February 2020 was \$93.00, in February 2022, his bill was \$112.00.

██████████ complained that, after DC Water was told of a toilet flapper issue at the property, DC Water did nothing to resolve the issue of high usage/high bill which started before there was an issue of the toilet flapper.

██████████ stated that he wants DC Water to listen to its consumers. He asserted that the utility has acted in bad faith.

██████████ stated that his mother died in January 2021.

██████████ stated that the sprinkler system pipes were installed July 13, 2020 and that the system was operational as of the first week of August 2020.

██████████ asserted that the high-water bills started in June 2020.

The customer acknowledged that his current water and sewer bill statements reflect the date that one must dispute the bill.

██████████ testified that she was working from home when she saw the technician. She stated that the technician told her that he was replacing the water meter. She stated that she told the technician that the bills seem really high and the technician asked her how high the bill had been. ██████████ stated that the technician told her that he had a family of 4 and that her bill should be around \$120.00.

On cross-examination, ██████████ stated that the sprinkler was installed 5/20/2021 and that the pipes were installed in July/August 2021. He stated that he noticed an increase in his July 2020 bill.

██████████ acknowledged that the plumber found a faulty toilet flapper.

██████████ stated that DC Water suggested to him installation of a sub-meter. Mr. Roberts stated they use the sprinkler based upon need depending upon condensation and rain.

██████████ stated that his current bill seems higher than average and it seems that something remains amiss.

██████████ stated that he was at home working during the Pandemic but started going into the office 1 – 3 days per week as of January 2022.

██████████ complained that, even though he called into DC Water regarding his high bill, the service representative with whom he spoke, did not inform him of the dispute process.

On cross-examination, ██████████ stated that the service technician did not come to the property in August 2021. Reference was made to the DC Water customer contact notes and ██████████ stated that DC Water responded to her by telling her to get a plumber and that the cause of increased usage may be a toilet or hose bib. She stated that she was told that the utility was not doing internal audits due to Covid.

██████████ interjected that the plumber performed dye tests at the home. On re-direct, ██████████ stated that his July 2020 bill encompassed the period 6/12/2020 to 7/14/2020 and that the period was before the sprinkler was working. He stated that work was started on St. Patrick's Day 2020.

Ms. Black testified that the meter reads are actual and were transmitted by signal. She stated that the water meter only advances when water is being used. She stated that the read was hourly. She, further, stated that the water was pulled on the 19th and tested on 24th (August). She stated that the water meter failed accuracy at 101.77%. She stated that meter accuracy based upon the standards sets by the American Water Works Association is 98.5% to 101.5%. She stated that the utility adjusted the customer's account by \$383.56. Ms. Black stated that a new water meter was installed at the property on August 29, 2021 and that the meter was tested on December 7, 2021 and that meter passed with accuracy of 100.21%.

Ms. Black stated that the customer had a plumber at the property on May 14, 2021 at which time a toilet flapper was replaced.

Ms. Black stated that an underground leak was not present at the property and that usage was inconsistent.

Ms. Black testified that there were spikes in water usage at the property between 6/2020 – 11/2020 and, again, 4/2021 to 11/2021.

Ms. Black stated that DC Water thought that the customer's sprinkler system may have contributed to the increased water usage at the property.

Ms. Black testified that even after installation of the new water meter at the property, there have been registering spikes in water usage and that there were spikes as of August 19, 2021.

Ms. Black stated that the customer did not receive HUNA alerts because the threshold for such alerts was not reached.

Ms. Black cited 21 DCMR § 402.1 as the bill dispute time limit. She stated that the utility did not investigate bill charges prior to the customer's timely dispute of his bill.

Ms. Black asserted that the water meter in place October 2021 passed testing and that the cause of increased water usage is inconclusive pursuant to 21 DCMR §408.1 with respect to a

portion of the bill dated October 14, 2021.

Ms. Mitchell, in closing, argued that a customer's timely dispute of a bill is the basis for any account adjustment,

Ms. Beltran requested to submit her closing in writing. She was granted until March 22, 2022 to submit her Closing Statement and DC Water was given two (2) weeks thereafter to file any response if desired.

POST-HEARING:

Both parties filed Closing Statements.

OPC argued that the case centers on a broken water meter and DC Water's failure to inspect its meters as required by the Regulations. The counsel asserted that the onus should not be upon the customer to alert the utility to a potential issue with his water meter and that DC Water should have a procedure to inspect their meters on a regular basis and if it had such a procedure, the utility would have discovered the customer's faulty water meter. Counsel, further, argued the customer established that the meter was broken and that there were no leaks other than a singular toilet flapper to which the irregular spikes cannot be attributed and that DC Water did not meet its burden of proof to establish that the random, irregular spikes were not due to the broken meter. Lastly, counsel argued that the utility would be unjustly enriched if not order to adjust the customer's bill for the period of July 14, 2020 through April 13, 2021 and to also reimburse the customer for the payment of alleged unnecessary plumber visits.

DC Water argued the it has already adjusted the customer's account in appropriate amount for the meter overread discovered after the customer's timely bill dispute. Counsel asserted that providing any additional adjustment is unwarranted because (1) the customer was untimely despite his knowledge of high usage, (2) the customer did not meet his burden to prove that DC Water was responsible for the high usage as opposed to increased time at home due to the public health emergency, the sprinkler system, or the leaking flapper; (3) DC Water would be unfairly prejudiced; (4) the customer has already been compensated for the interval in which the meter was overreading, (5) DC Water complied with all billing dispute notice requirements; and (6) DC Water complied with District of Columbia Municipal Regulations on inspection. Counsel argued that the customer gave up the right to recover from July 2020 to March 2021 when he did not dispute any bills during that time even though he was aware that his bills were high during that time period. Counsel argues that DC Water did not waive the timeline for filing a bill dispute and without a waiver, the Hearing Officer cannot consider the untimely billing disputes. It was asserted that to permit the customer to recover beyond what has already been applied to the account, would reward the customer's late filing and set an unfair and dangerous precedent. Counsel pointed out that regulatory timelines are not suggestions nor are they discretionary. Counsel argued that the customer has not met his burden to show that the high usage was not the result of an internal issue such as staying home during the pandemic, the flapper leak, sprinkler system, or other conditions at the property and because of the customer's delay in disputing the bill, it cannot be determined when the meter overread occurred and whether the meter alone caused the alleged high water usage. It was also pointed out that the meter failed by only .27% of passing accuracy. Counsel asserts that because the customer is far outside of the claim

processing timeline, DC did not have an opportunity to timely gather evidence necessary to firmly address the cause for the high usage and DC Water cannot now say whether the high-water usage was from the flapper leak, the sprinkler system or another property condition. It was pointed out that D.C. Official Code §34-2202.16(f)(4) regarding the requirement that the deadline to dispute a bill must be printed on the front of the bill became effective March 16, 2021, thus, bills remaining in dispute are outside of the effective date of the law. Lastly, Counsel asserts that there is insufficient evidence that DC Water failed to comply with §304.6 regarding the requirement for periodic inspection of water meters and it was asserted that because the meter removed from the customer's property was under four years old, the utility would not inspect or replace such a meter.

Based upon the foregoing evidence and testimony adduced during the hearing, closing statements of counsel and the record in this matter, the Hearing Officer makes the following:

FINDINGS OF FACT

1. Starting in June 2020, the customers noticed increased water usage occurring at their home. (Testimony of [REDACTED] and [REDACTED])
2. Due to the public emergency caused by the Covid-19 Pandemic, the customer began working from home and continued to do so until January 2022 when [REDACTED] started going into the office 1 – 3 days per week. (Testimony of [REDACTED])
3. The customers started the installation of a sprinkler/irrigation system in July 2020. (Testimony of [REDACTED])
4. [REDACTED] mother died in January 2021. (Testimony of [REDACTED])
5. The customer contacted DC Water by email on April 14, 2021 stating that “something is off with my water bill and need some help. My bills have drastically increased since last June and we are not doing anything different. Thoughts?...” (DC Water Interaction Records dated April 14, 2021)
4. DC Water responded to the customer's email on April 15, 2021, in part, as follows “Thank you for contacting us with your request. We have reviewed the usage at the property, and our record shows that there have been multiple spikes each month in your usage starting in July 2020. These spikes would last about a day or two and then decline. Multiple spikes within a month can contribute to higher monthly consumption and leads to higher bills. While we are unable to determine what may be causing the high usage, however, this type of usage typically comes from toilet leak(s) or outside hose bibs that go undetected. At this time, if you suspect a possible leak, we recommend that you hire a licensed plumber to inspect your property. DC Water has suspended all internal fixture audits for leaks due to the pandemic crisis within the City. Our automated meter reads indicate that the charges are valid and billed on actual meter readings...” (DC Water Interaction Notes dated April 15, 2021)
5. On May 14, 2021, a plumber inspected the property and found a defective toilet flapper on the second floor; the plumber replaced the toilet flapper. (Testimony of [REDACTED] [REDACTED] Tim Whistler Plumbing & Gasfitting invoice dated May 14, 2021)
6. On May 20, 2021, the customer emailed DC Water stating that he wanted to dispute the April 13, 2021 bill based upon his original inquiry and the current bill of May 13, 2021. (DC Water Interaction Notes May 20, 2021)

7. On June 8, 2021, the customer advised a DC Water service representative that he was disputing bills from June 2020 to current; the service representative advised the customer that all, except his May 2021 invoice, were untimely disputes. (DC Water Interaction Notes dated June 8, 2021)
8. On June 8, 2021, DC Water wrote to the customer that the review of the account charges for the disputed bill dated 5/13/2021 was completed and it was determined that an adjustment was not warranted. The utility, further, advised that the dispute of the bills dated 6/11/20, 7/14/20, 8/13/20, 9/14/20, 10/14/20, 11/13/20, 12/11/20, 1/13/21, 2/11/21, 3/11/21, 4/13/21 are considered untimely and that bills may be challenged in writing within 30 days of the bill date. (DC Water Interaction Notes dated June 8, 2021)
9. The customer requested an administrative hearing on June 14, 2021. (DC Water Interaction Notes dated June 14, 2021)
10. The customer disputed bills dated June 11, 2021, July 14, 2021, August 12, 2021 and September 15, 2021 and after its investigation, DC Water determined that no adjustments were warranted; the customer requested administrative hearings. (The record in this matter; DC Water Investigation Reports dated November 9, 2021)
11. DC Water filed Motions to Dismiss Administrative Hearing Petitions and an Opposition was filed by the customer; the Motion was denied and the dispute was scheduled for hearing. (The record in this matter)
12. Spikes in water usage occurred at the property from June 2020 to November 2020 and from April 2021 to November 2021. (Testimony of LaFatima Black)
13. DC Water pulled the water meter for testing in August 2021 and the meter failed having 101.77% accuracy. (Testimony of LaFatima Black; DC Water Interaction Note dated 10/27/2021- Meter Shop Test)
14. DC Water advised the customer in November 2021 that the account would be adjusted due to the meter failing testing and the utility adjusted the customers' account for the bills dated May 13, 2021, June 11, 2021, July 14, 2021 and August 12, 2021 which was the period of 4/14/2021 to 8/18/21 (127 days); the adjustment was in the amount of \$383.56. (Testimony of LaFatima Black; DC Water Bill Investigation Letter dated 11/9/2021)
15. On December 7, 2021, DC Water tested the water meter placed at the property in August 2021 and the meter passed testing registering 100.21% accuracy. (Testimony of LaFatima Black; DC Water Meter Test Results dated 12/7/2021)
16. with respect to the customer's bill dated October 14, 2021, however, because a portion of the billing cycle was monitored by the meter which failed testing, the customer's account was adjusted proportionately in the billing cycle- 8/13/21 – 10/14/21. (Testimony of LaFatima Black)
17. DC Water ruled out the existence of an underground leak as a possible cause of the increased water consumption. (Testimony of LaFatima Black)
18. At the start of the administrative hearing, DC Water made an oral Motion for Reconsideration of the Order denying the Motion to Dismiss and the customer, through counsel, opposed the same. (The record in this matter)

CONCLUSIONS OF LAW

1. The burden of proof is on the customer to show, by a preponderance of evidence, that the decision of DC Water is incorrect. (21 DCMR 420.7 and 420.8)
2. DC Water is obligated to investigate a challenge to a bill by doing any or all of the

following:

- (a) Verify the computations made in the formulation of the water and sewer charges;
 - (b) Verify the meter reading for possible meter overread or doubtful registration;
 - (c) If feasible, check the premises for leaking fixtures, underground invisible leaks, and house-side connection leaks;
 - (d) Check the meter for malfunction;
 - (e) Check the water-cooled air conditioning system, if any, for malfunction; and
 - (f) Make a reasonable investigation of any facts asserted by the owner or occupant which are material to the determination of a correct bill.
- See, 21 DCMR 403.

3. D.C. Municipal Regulations relating to water and sanitation bar adjustment of a customer's bill if excessive water consumption is the result of a leaking faucet, household fixtures, and similar leaks or the malfunctioning water-cooled air conditioning equipment. (21 DCMR 406)
4. Under DC Municipal Regulations that applied at the time, the time limit for a customer to dispute a bill was within 30 calendar days after the bill date. (21 DCMR §402)
5. If at any time, a meter fails to register correctly or bears evidence of having been tampered with, as determined by qualified personnel of the Department, the water charge for the interval in which the incident occurred shall be based on the average previous water consumption for that interval. (21 DCMR §309.3)
6. If the results of the tests under §405.2 verify doubtful registration or meter malfunction, the bill shall be adjusted to equal the average consumption of water at the same premises for up to three (3) previous comparable periods for which records are available. (21 DCMR §405.3)
7. Pursuant to both Rule 59 of the DC Superior Court Rules of Civil Procedure and the Office of Administrative Hearings Rule 2828.2, a Motion for Reconsideration must be filed within 30 calendar days of service of the Order. Both rules allow an untimely Motion to be treated as a motion for relief from final order with a limited review on grounds which include clerical mistake, inadvertence, surprise, fraud and newly discovered evidence. (Rule 59 of the DC Superior Court Rules of Civil Procedure; The Office of Administrative Hearings Rule 2828.2; See, also The District of Columbia Water and Sewer Authority Department of Customer Services Case No: 19-467234 *In Re: Laura Gross* dated January 7, 2020.
8. Gatewood v. D.C. WASA, 82 A. 3d 41, D.C. Court of Appeals 2013- a claim processing rule may be waived intentionally or by action.
9. 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.”)

10. An owner or occupant may request a dismissal by filing a written petition with the hearing officer or orally requesting dismissal at the hearing. 21 DCMR §416.1)
11. The hearing officer may, on his or her own motion, dismiss a hearing demand, either entirely or as to any stated issue, under any of the following circumstances:
 - (a) Where the matter has previously been the subject of a hearing or an owner or occupant has previously been afforded an opportunity for a hearing on the same matter, and the owner or occupant has failed to preserve his or her right to a hearing;
 - (b) Where the owner or occupant demanding a hearing is not a lawful owner or occupant or does not otherwise have a right to a hearing....
 - (c) Where the owner or occupant has failed to file a timely hearing demand pursuant to the provisions of this chapter;
 - (d) Where the hearing officer, in his or her opinion, finds that a petition filed in any proceeding does not raise a question of fact or law or the claim is frivolous.
(See, 21 DCMR §416.2)
12. D.C. v. Tschudin, 390 A. 2d 986, 988 discusses when an order or judgment is final and, as such, the time for filing appeal begins to run. The Court found that if nothing more than a ministerial act remains to be done, . . . the decree is regarded as concluding the case and is immediately reviewable." Republic Natural Gas Co. v. Oklahoma, *supra* 334 U.S. at 68, 68 S.Ct. at 976; see also Board of Commissioners v. Lucas, 93 U.S. 108, 23 L.Ed. 822 (1876
13. Each water meter shall be inspected periodically by representative of the Authority. Inspection shall be conducted in accordance with standards determined to be appropriate by the General Manager. 21 DCMR 304.6
14. Owens v. DC WASA, 156 A. 3d 715, 2717 D.C. Ct of Appeals- found DC Water's paper bill was inadequate and did not provide all the information required under 21 DCMR §401.1 (2001)
15. DC Code 34-2202.16(f)(4) became effective March 16, 2021 and now requires the deadline to dispute a bill to be printed on the front of DC Water's water and sewer bill statements/

DECISION

This most pertinent fact in this matter is that the customer's water meter failed testing. The issue, then, is what is the period of adjustment to be afforded to the customer.

In denying DC Water's Motion to Dismiss Administrative Hearing Petitions, the intent of the Hearing Officer was to give the customer an opportunity to make his case as to the period of adjustment, in that, DC Water had adjusted the account for four (4) billing cycles but the customer was asserting that the increased water usage was attributable to the faulty water meter

much earlier than recognized by the utility. The utility limited its adjustment period to when the customer disputed his bill and not before the bill dispute.

DC Water made an oral Motion for Reconsideration of the Order denying its Motion to Dismiss pointing out that the Hearing Officer cited the *Gatewood* case as basis for deciding that the utility waived its time limit for filing a bill dispute. Counsel pointed out that in *Gatewood*, the customer was granted an administrative hearing thus causing the waiver of time limit but, here, the utility did not waive and, in fact, filed its Motion to Dismiss. OPC, on behalf of the customer argued, among other assertions, that DC Water's Motion for Reconsideration was untimely, in that, it was made six (6) weeks after service of the Order and pursuant to Rule 59 of the DC Superior Court Rules of Civil Procedure and Rule 2828.2 of the DC Office of Administrative Hearings Rules of Practice and Procedure Act the time limit was 30 days. DC Water countered that neither rule applies in this matter because the Order at issue was not a judgment or final order on the merits. Counsel of DC Water asserted that 21 DCMR §416.2 allowed an oral motion to dismiss to be made at the hearing.

With respect to the Motion for Reconsideration, the Hearing Officer denies the Motion, but, acknowledges that it was error to cite the Gatewood case in support of the Order. Notwithstanding the error, the ultimate conclusion of the Hearing Officer does not change. 21 DCMR §309.3 states that "If at any time, a meter fails to register correctly or bears evidence of having been tampered with, as determined by qualified personnel of the Department, the water charge for the interval in which the incident occurred shall be based on the average previous water consumption for that interval." The Hearing Officer interprets the regulation to require DC Water to determine "the interval in which the incident occurred" and, for that reason, the customer should be granted a hearing to make a case as to when the meter failed if he did not agree regarding the period of adjustment granted by the utility. The utility did not waive its time limit for disputing a bill, however, the regulation requiring an adjustment when a meter is found to be defective has no time limit and inquiry is appropriate to determine the interval of defect.

With respect to 21 DCMR §416.2 allowing a motion to dismiss at hearing, the utility had already made its motion, in writing and prior to the hearing, and the same was denied. The Hearing Officer does not believe that the regulation gives "two bites of the apple" regarding the same issue. Here, the fact that the oral motion was termed a motion for reconsideration does not change the aim of the motion which was to bar the customer from disputing the bills incurred from 6/12/2020 to 4/13/2021, as being untimely. As stated in the Order, the Hearing Officer made no determination as to when the adjustment should start or end but only that the customer can go forward and make his argument as to when the meter became defective and the appropriate period of account adjustment. Had the water meter not failed testing, there would be no issue and the customer would not have an opportunity to make argument regarding the period of adjustment. The customer did fail to timely dispute his bills for the period 6/12/2020 to 4/13/2021 and that fact was noted in the Order, however, for reasons stated above, the utility was

wrong to limit its determination of the adjustment solely based upon when the customer disputed the water and sewer bill.

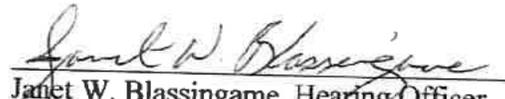
With respect to the customer's dispute of the account adjustment period granted to him based upon the meter failure, the Hearing Officer believes that the customer has failed to establish that the utility's calculation was wrong based upon a preponderance of the evidence. Had the customer not delayed in raising a concern regarding the noticed increased water usage at the property, the utility would have had to investigate the cause and could have determined what factor(s) existed when the increase initially occurred. Use of the bill dispute date is fair and reasonable under the circumstances of this case, since the customer waited so long to bring the increased usage to the utility for investigation. Under the circumstances presented, use of the dispute date was not arbitrary but a reasonable measure of compensation since several things could have caused and/or contributed to increased consumption at the property and it is speculative that the water meter was defective since July 2020. The only thing that the meter test establishes is that as of the date of testing, the meter was over-registering water usage and, thus, failed in accuracy. The evidence and testimony established that there were several factors occurring in the customers' lives and at the property which could have caused or contributed to increased water consumption during the period at issue. First, due to the Pandemic, the customers were working from home. Second, a sprinkler system was installed at the property in July 2020 and, even though the customers stated that the system was not operational until August 2020, the fact remains that plumbing work was being performed near or about the time that the customer noticed increased water usage. Third, a faulty toilet fixture was found at the property and, even though the customer asserted that the toilet defect did not exist as far back as July 2020, his statement is speculative and self-serving since a plumber was not called to inspect the property to determine a cause of the increased usage. As such, the toilet might have been defective and undetected. Lastly, DC Water replaced the water meter in August 2021 and, thereafter, tested the new meter in December 2021 and the meter passed testing. Testimony was that increased water usage continued after the defective water meter was replaced and registered on the new water meter. Continuing spikes in water usage after meter replacement suggest another cause of increased water usage exists at the property even though at some point in time the prior water meter became defective.

Moreover, the customer testified that he noticed increased usage in July 2020 but did not notify the utility of any concern. The customer cited the Pandemic, work and the death of his mother as factors causing him not to focus on water issues. Counsel for DC Water asserted that when the regulations were drafted, the thought was that DC Water would immediately determine if a meter were defective. The derivative of the argument is that it was not contemplated that a customer would delay disputing a high bill for months and, in this case, almost a year. Counsel pointed out that evidence erodes over time and she asserted that the utility is prejudiced in not being able to have tested the meter when the customer asserted the increased usage began.

Likewise, the Hearing Officer finds that the customer is prejudiced because he cannot prove that the water meter was the cause of the increased water usage when he, first, noticed the same.

DC Water, during the hearing, did acknowledge a further account adjustment and that it has or will adjust the customer's account for the bill dated 10/14/2021 because a portion of the time period reflected in the bill was based upon registration by the defective water meter. The October billing period was 8/13/2021 to 10/14/2021 and the new water meter was installed on August 19, 2021.

Based upon the foregoing, it is the conclusion of the Hearing Officer that the determination by DC Water of the appropriate period of adjustment has not been overcome by a preponderance of the evidence and, as such, the determination by the utility is hereby AFFIRMED.


Janet W. Blassingame, Hearing Officer
Date: May 18, 2022

Copy to:


Hawthorne Place. NW
Washington, DC 20016

Elizabeth Beltran, Esquire
Office of Peoples' Counsel
1133 15th St. NW, Ste. 500
Washington, DC 20005

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

IN RE: Wayne D'Angelo
4500 Dolphin Lane
Alexandria, VA 22309

Service Address:
[REDACTED] 9th Street, NE

Account No: [REDACTED]
Case No: 21-552774

Amount in Dispute: \$ 1,212.69

Before Janet W. Blassingame, Hearing Officer
January 11, 2022 at 10:00 a.m.

The customer contested a water and sewer bill for the above account for the period of time December 5, 2020 to March 4, 2021. The DC Water and Sewer Authority (DC Water) determined that the charges were valid and no adjustment of the customer's account was warranted. The customer requested an administrative hearing.

This matter was scheduled for a remote hearing on January 11, 2022. Present were Wayne D'Angelo, the property owner; and, Arlene Andrews and Kimberly Arrington on behalf of DC Water.

The property involved is two (2) family rental rowhouse owned by Wayne D'Angelo. The property was converted to a two (2) family rental in year 2018. Each unit was one and one-half (1 ½) bathrooms, one kitchen and a washing machine. Each unit has a separate heater and air conditioning unit. There is one outside faucet. The property is monitored by a single water meter. According to Mr. D'Angelo, when both units are occupied, the water and sewer bill ranges between \$110.00 and \$120.00 per billing cycle.

Mr. D'Angelo asserted that he contacted DC Water in June 2020 regarding his tenants' report of low water pressure at the property. Mr. D'Angelo testified that a service technician conducted a pressure test on September 29, 2020 and during the course of working, the technician damaged the water meter causing water to leak from the meter and run into the street. Mr. D'Angelo testified that the service technician told his tenant that there was an issue with the water meter and the technician would be back. Mr. D'Angelo stated that the water leak existed for two (2) months before DC Water came back to the property on December 10, 2020 and attempted to repair the water meter. Mr. D'Angelo stated that DC Water excavated in the yard of the property and in doing so, in replacing the water meter, cut the gas line to the property. Mr. D'Angelo testified that the DC Water employees merely re-buried the line, by putting dirt back over the gas line, instead of either repairing the line or notifying the gas company that the gas line was severed. The customer stated that when the gas company came out to the property, he was told that the gas line had been cut. Mr. D'Angelo asserted that the actions or inaction of the DC Water service technicians caused his property to be without heat and hot water for five (5) days in December.

Mr. D'Angelo testified that DC Water returned to the property on December 21, 2020 and replaced his water meter and fixed the water leak. Mr. D'Angelo asserted that it was his understanding that the water leak was from the water meter and that DC Water repaired the leak. The customer asserted that DC Water failed to turn the water on to the property after the water meter was replaced and that the property was without water service from December 21, 2020 to December 26, 2020. Mr. D'Angelo stated that he contacted DC Water regarding the lack of water in the house on December 21, 2020 and, again, on December 24, 2020. The customer stated that he contacted the contractor who previously re-built the property and had him turn the water back on to the house on December 26, 2020. Mr. D'Angelo stated that his contractor found the water shut-off to the house. He stated that he does not know where the water had been shut-off but he believes that his tenants would not have known how to shut-off the water. Mr. D'Angelo testified that he had the contractor checked for leaks and contractor found some issues.

Mr. D'Angelo complained that he paid the water bills sent to him after the water meter replacement but that DC Water recalculated his charges for the period December 21, 2020 to March 4, 2021 and sent a revised bill to him. Mr. D'Angelo acknowledged that the paid billings had been based upon estimated water and sewer usage.

On cross examination, Mr. D'Angelo stated that his tenants returned to the property, after holiday, in early January 2021. He stated that he does not know the exact dates of the tenants' returns. Mr. D'Angelo, further, stated that his contractor made repair to a running toilet in 2021 sometime before he received the revised billing statement from DC Water in March 2021. Mr. D'Angelo, also, acknowledged that he did not give the utility a plumber's report documenting the contractor's turn-on of water at the property and he does not have a report that the contractor found no leaks at the property.

Mr. D'Angelo clarified that this dispute does not involve his assertions that he incurred property damage due to acts by DC Water resulting in sediment in house fixtures. The customer stated that he understands that a claim for damages must be filed with the utility. He stated that he assumed, based upon his research, that spikes in water usage at the property were due to replacement of the water meter, whereas the fact that there was a running toilet at the property was the result of sediment in the fill-tank. Mr. D'Angelo stated that he repaired the defective toilet and did not have a plumber's report regarding the toilet.

Mr. D'Angelo complained that DC Water gave no notice of excessive water usage occurring at his property. He reiterated that he believes that the excessive water usage was caused by DC Water's work at the property. He asserted that the excessive water usage started after DC Water's service technicians were at the property.

Mr. D'Angelo argued that the March 2020 bill was for a period in excess of 90 days and that pursuant to the equitable doctrine of laches, he should be protected from payment for excessive water usage. The customer asserted that DC Water had meter readings from his property which reflected that excessive water usage was occurring but the utility did not send the him any notice of what it knew regarding the excessive water usage. Mr. D'Angelo stated that he was blindsided by the bill received from DC Water. Mr. D'Angelo, further, cited the Gatewood case and stated that the case established that DC Water was obligated to investigate his dispute of

the billing and the utility could not simply say that usage declined at the property. The customer asserted that the utility failed to verify that no overread occurred, there was no underground leak and there was no meter malfunction. Mr. D'Angelo asserted that the utility determined that his dispute lacked merit without investigation.

Mr. D'Angelo referred to case #19-3231722, which he found on the utility's website, and he asserted that the case dictates that the utility's obligation to investigate in a bill dispute extends beyond doing a meter test for the administrative hearing. Mr. D'Angelo asserted that DC Water should have done, at least, quarterly readings of his water meter.

Ms. Andrews referred to an email received by DC Water on July 21, 2020 notifying the utility of a water pressure issue at the property. Ms. Andrews stated that the utility sent a service technician to the property regarding the water pressure on August 12, 2020 and the technician reported finding no leaks and no sounds on the water service. Ms. Andrews stated that the property's tenant called the utility on September 28, 2020 regarding water pressure at the property and DC Water responded on September 29, 2020 by sending a service technician to the property and the service technician reported that good water pressure was found on the service line when he dropped the meter and that after reassembling the meter, the technician found a leak on the street side of the meter.

Ms. Andrews testified that DC Water was back at the property on December 10, 2020 at which time excavation was done and a leak was found on the plastic service. Ms. Andrews stated that she believes that the reference to the "plastic service" was a reference to the service line. Ms. Andrews stated that DC Water repaired the leak.

Ms. Andrews stated that DC Water replaced the water meter at the property on December 21, 2020 and that Mr. D'Angelo contacted the utility on December 24, 2020 stating that there had been no water at the property since December 21, 2020. Ms. Andrews testified that when a DC Water service technician was dispatched to the property on December 24, 2020, the service technician found the water service to be on.

Ms. Andrews testified that the water meter reads from the property are actual meter reads which have been and are transmitted by signal, on an hourly basis, to receiving towers located throughout the City. She stated that the water meter only advances when water is being used. She asserted that there are no misreads on an automated meter device.

Ms. Andrews testified that the water meter at the property was pulled and tested by DC Water and the meter was determined to have 101.04% accuracy. Ms. Andrews explained that DC Water abides by the standards set by the American Water Works Association that meter accuracy is 98.5 % to 101.5% and as such, the customer's water meter was determined to be operating in-line with accepted water meter standards.

Ms. Andrews testified that water usage at the property spiked between December 26, 2020 and January 8, 2021 and, again, between January 12, 2021 and March 30, 2021. She stated after March 30, 2021, water usage returned to within normal range. Ms. Andrews stated that DC Water verified that no underground leak was present at the property and they determined that the

increased water usage was controlled at the property. Ms. Andrews clarified her statement saying that there was no underground leak at the property during the periods of increased water consumption at the property and that the underground leak that was detected at the property was prior to and repaired before the referenced spikes in water usage.

Ms. Andrews testified that no meter overread, faulty usage computation or meter malfunction was found in the utility's investigation.

Ms. Andrews stated that the customer disclosed to DC Water that a running toilet was found at the property.

On cross examination, Ms. Andrews stated that the new water meter was installed at the property on December 21, 2020 and was transmitting reads from the property as of installation. She stated that the utility did not give the customer his water bill based upon actual meter reads until March 4, 2021. Ms. Andrews stated that sometimes it takes time to place the new meter on a customer's bill/account. Ms. Andrews asserted that the utility gave the customer a bill based upon an actual meter reading within 90 days. Mr. D'Angelo interjected that the utility took longer than 90 days. Mr. D'Angelo stated that he counted 89 days for the billing period but then the utility took additional time for mailing the bill to him.

Ms. Arrington stated that the bill period started on December 21, 2020 and the account was invoiced on March 4, 2021. She stated that the invoice bill date was March 20, 2021 and, thereafter, the water bill was mailed to the customer. Ms. Arrington stated that no account notes regarding invoicing the customer are found in the utility's contact notes.

Mr. D'Angelo pointed out that March 20, 2021, the bill date, was a Saturday and as such, the earliest possible date that he could have received the water bill was Monday, March 22, 2021.

Ms. Andrews stated that the meter test was performed on October 27, 2021 and the meter was pulled on October 21, 2021.

Ms. Andrews stated that DC Water put the customer on a straight-line connection after the water leak repair on December 10, 2020 and the customer remained on the straight line until the new water meter was set on December 21, 2020.

Ms. Arrington acknowledged that the customer would not know to make repairs due to increase water usage until he received a water bill.

Ms. Andrews stated that DC Water was present at the property on September 29, 2020 due to the tenant calling the utility regarding a complaint of low water pressure. She, further, stated that because the detected water leak was on the public side of the water meter, no excess water due to the leak registered on the water meter or was billed to the customer.

Mr. D'Angelo complained that he was unaware that a new water meter had been placed at the property until he received the March 20, 2021 dated invoice. Ms. Andrews stated that the

water bills received by the customer between the time of meter replacement to the March 20th billing were based upon estimated usage on the previous water meter. Ms. Andrews stated that the customer did not receive HUNA alerts regarding the property because he had not set up an on-line account. She stated that the customer set up his on-line account in August 2021. Ms. Arrington interjected that in her opinion the threshold for high water usage notification was too high and that it is currently 6x normal usage before an alert would be sent to the customer that high water usage was occurring at the property. Ms. Arrington stated water consumption might not have met the threshold for HUNA alert, however, no alert was possible until the customer's account was linked to the water meter and that was done by the utility in March 2021.

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

FINDINGS OF FACT

1. The property involved is a two-family rental property row house owned by Wayne D'Angelo. (Testimony of Wayne D'Angelo)
2. The period in dispute is December 5, 2020 to March 4, 2021. (Testimony of the parties)
3. Between December 10, 2020 up to March 4, 2021, DC Water sent the customer water and sewer bills based upon estimated usage and the customer paid the bills as received, however, the utility sent a revised/corrected bill to the customer dated March 20, 2021 for the period December 5, 2020 to March 4, 2021 and it is the corrected bill in dispute. (Testimony of the parties; Bill Summary dated March 20, 2021.)
4. The March 20, 2021 Bill Summary received by the customer reflects that the customer was billed based upon estimated usage from December 5, 2020 to December 20, 2020 (16 days) on meter number [REDACTED] and the customer was billed based upon actual usage on meter number [REDACTED] from December 21, 2020 to March 4, 2021 (74 days). (Bill Summary dated March 20, 2021.)
5. The property had an underground leak found by DC Water on September 29, 2020 on the public side of the water meter and the utility repaired the leak on December 10, 2020. (Testimony of the parties; DC Water Service/Work Order Reports dated Sep. 29, 2020 and Dec. 10, 2020)
6. DC Water replaced the water meter at the property on December 21, 2021. (Testimony of Arlene Andrews)
7. Between December 10, 2020 and December 20, 2020, DC Water had the water service at the property on a straight line which meant that actual water usage at the property was not going thru or registering on the water meter and the customer was billed based upon estimated water usage. (Testimony of Arlene Andrews; Bill Summary dated March 20, 2021.)
8. DC Water began receiving meter reads from the property based upon the new water meter installed as of December 21, 2020. (Testimony of Arlene Andrews)

9. There were two (2) spikes in water usage at the property. The spikes occurred December 26, 2020 to January 8, 2021 and January 12, 2021 to March 30, 2021. (Testimony of Arlene Andrews)
10. The property owner was unaware of increased water usage/spikes occurring at the property until he received the March 20, 2021 dated Bill Summary. (Testimony of Wayne D'Angelo)
11. The DC Water HUNA alert system was not activated during the periods of high usage occurring at the property because the customer had not established an on-line account with the utility and his new water meter was not connected to his account.. (Testimony of Arlene Andrews)
12. DC Water did not bill the customer based upon actual water usage at the property between December 20, 2020 and March 4, 2021 because it had delay in connecting the customer's bill account to the new water meter and, as such, was billing the customer based upon estimated water usage until the utility connected the account to the new water meter and sent the customer a revised bill based upon actual water usage, i.e., the Bill Summary dated March 20, 2021. (Testimony of Arlene Andrews Andrews)
13. The customer acknowledged that running toilets were repaired at the property by him and he asserted that the toilets were defective as a result of sentiment caused by DC Water's negligence in jamming the inlet valves in each toilet during the meter repair causing the valves in the toilet to continually run. The property owner failed to state when the toilets were repaired but stated that the constant overflow within the toilet tank continued for some time without notice. (Testimony of Wayne D'Angelo; April 14, 2021 email by Wayne D'Angelo to DC Water Customer Service)
14. The increased water usage occurring at the property declined on or about March 30, 2021. (Testimony of Arlene Andrews)
15. DC Water tested the water meter at the property during the period in dispute and the meter was determined to have 101.04% accuracy. (Testimony of Arlene Andrews)
16. During the periods of increased water usage occurring at the property, the utility determined that an underground leak was not the cause of the excessive water usage. (Testimony of Arlene Andrews)
17. During its investigation of the property owner's bill dispute, the utility found no evidence of meter overread, bill miscalculation/faulty computation or meter malfunction. (Testimony of Arlene Andrews)

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. Meters shall be read quarterly or at such other times as the General Manager shall determine. (21 DCMR 308.1 and 309.1)

3. 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)
4. If at any time, a meter, data collection device or transmitter fails to register correctly or collect, deliver or transmit data, the water charge for the interval in which the incident occurred shall be based on the average previous water consumption for that interval. (See, 21 DCMR 308.4)
5. D.C. Municipal Regulations relating to water and sanitation bar adjustment of a customer's bill if excessive water consumption is the result of a leaking faucet, household fixtures, and similar leaks or the malfunctioning water-cooled air conditioning equipment. (21 DCMR 406)
6. 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.

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

DECISION

The testimony and evidence established that high water usage was occurring at this property during the period in dispute. The property owner acknowledged that, at some point in time, running toilets were discovered at the property and he repaired the toilets. Exactly when the discovery was made and when the repairs were performed was not established during the hearing, however, the property owner testified that he learned of the running toilets after receiving the revised bill from the utility dated March 20, 2021.

The property owner contended that negligence by DC Water employees caused the toilets to be defective, however, the cause of the running toilet was not the subject of the hearing and no finding is made regarding who or what caused the defective toilets. During the course of the

hearing, the parties agreed that the property owner must file and prove a damage claim with the utility and the property owner has not done so. As such, causation of the toilet defects was not before the Hearing Officer and not relevant to this hearing.

Normally, a customer's bill is not subject to any prospect of adjustment when high consumption and the subsequent high charge is caused by a faulty household fixture, such as in this case running toilets, however, in instances where a customer can establish that he has been caused harm, through no fault of his doing, because the utility delayed in performing a task resulting in harm to him, the customer may be relieved from liability based upon the equitable defense of laches.

21 DCMR § 406 bars adjustment of a customer's bill if excessive water consumption is the result of a leaking faucet, household fixtures, and similar leaks or the malfunctioning water-cooled air conditioning equipment. A toilet is a household fixture and as noted above, during the period in dispute, running toilets were found and repaired at the property. Apart from asserting that DC Water caused the running toilet problem at the property, the property owner testified that he was unaware that he had a problem of increased water usage at the property because he received no notice from the utility that high water usage was occurring. It was established that the property owner was billed based upon estimated usage from December 10, 2020 to March 4, 2021, which he paid, and, only after he received a back-billing for charges based upon an actual meter read did he have any knowledge that something was wrong regarding water usage at the property.

21 DCMR 308.1 and 309.1 dictates to DC Water that it must read its water meters quarterly. Based upon testimony and evidence, DC Water invoiced the property owner a revised bill dated March 20, 2021, which was a Saturday and as such, a non-business day. In the past, three (3) business days have been allowed for receipt of mail and, as such, the property owner, under normal circumstances, would be expected to have received the bill by March 24, 2021. The Hearing Officer takes note that the U.S. Postal Service has been experiencing longer than normal delivery mail times over the past year, however, for purposes of this matter, the problems of the postal service are not relevant, for based upon normal mail delivery expectation, the property owner received the bill beyond 90 days.

The testimony and evidence established that the March 20, 2021 dated bill reflected a bill period of 90 days – 16 days billing on the old water meter and 74 days billing on the meter installed on December 20, 2020. According to the Bill Summary, the bill period ended March 4, 2021 which is exactly 90 days of billing, however, the bill is dated 16 days after the billing period ended and when one adds on 3 business days for mail delivery, the utility did not send the customer a bill based upon actual meter read until 106 days, at minimum.

DC Water has no specific regulation regarding back-billing or limitation on its ability to back-bill. The authority to back-bill comes through its broad authority to charge and collect for water and sewer service. (See, D.C. Code §34-2202.03(11)). In this case, the utility back billed the customer after estimating water usage following installation of a new water meter.

This is not an instance that DC Water failed to obtain meter reads from the property. This is an instance where the utility had information at hand, in the transmitted meter reads from the new water meter, which could have allowed the property owner to mitigate his loss of water, but for, the utility failing to link the meter reads received with the property owner's account. The fact that DC Water had meter reads reflecting high water usage occurring at the property owner's property and failed to communicate to the customer knowledge available to the utility for a period exceeding 90 days is/was unreasonable delay.

According to testimony of DC Water's representative at the hearing, the utility was delayed in connecting the new water meter to the customer's account and, as such, it sent estimated bills to the customer until it applied the meter reads from the new water meter to the account and re-billed the customer based upon those actual meter reads.

Some water authorities have addressed the issue of back-billing but DC Water has not done so. Some other water authorities have established back-billing practices relating to length of time that they can back-bill or the types of customers subject to back-billing. The water authorities that have passed regulations addressing back-billing have indicated that they have done so to protect the interests of consumers in promptly settling their accounts while at the same time providing a reasonable time for utilities to correct inaccuracies in billing. For example, the NY Water Authority has a statutory limit on back-billing. (See, *Perry Thompson Third Co., v. City of New York, et al.*, 279 A.D.2d 108; 718 N.Y.S.2d 306; 2000 N.Y. App. Div. LEXIS 13984, citing the Governor's Mem Approving L. 1979, ch 233, 1979 Legis Ann, at 147.)

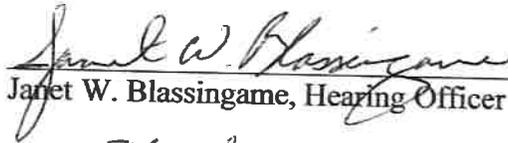
In this case, the property owner was sent and paid water and sewer bills based upon estimates of water usage at the property. During the period at issue, high water usage occurred for two (2) periods of several days and the property owner testified that he had no knowledge that high water usage was occurring at the property until he received the revised water and sewer bill some 106 days after having been charged based upon estimate. The property owner testified that he repaired the running toilets after receipt of the revised bill.

Pursuant to the equitable doctrine of laches, the property owner must have been prejudiced by DC Water's delay and the delay must have been unreasonable. The testimony was such that DC Water was receiving meter reads from the property following installation of the new water meter on December 20, 2020 but because the account was not connected to the water meter, the customer did not receive a bill from the utility which reflected actual water usage at the property. Theoretically, had someone at DC Water looked at the transmitted meter reads, s/he would have seen the spikes in water usage at the property and the property owner could have received notice of what was occurring at his property. Likewise, had there been no delay in connecting the meter reads received by the utility to the customer's bill account, the property owner might have received HUNA alerts from the automated system regarding high water usage occurring at the property and, even if HUNA alerts were not activated, if the customer had

received a bill based upon actual meter reads in a timely manner, the customer would have been afforded an opportunity to mitigate the loss of water at his property earlier than he did after receiving the March 20, 2021 dated bill.

Accordingly, the Hearing Officer determines that the customer is entitled to the defense of laches and should not be responsible for payment of the extended bill caused by the utility's delay in connecting the meter reads transmitted from the property from the water meter to the property owner's account within a reasonable period of time.

DC Water's determination that the charges in the adjusted bill dated March 20, 2021 for the period December 5, 2020 to March 4, 2021 are valid is hereby REVERSED. DC Water's estimate of water usage for said period shall be reinstated on the customer's account and the customer's responsibility for payment shall be based upon the estimated water usage as previously charged.


Janet W. Blassingame, Hearing Officer

Date: March 10, 2022

Copies to:

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