

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

IN RE: [REDACTED]
[REDACTED] 4th Street, NW
Washington, DC 20011

Account No: [REDACTED]

Amount in Dispute - \$ 789.20

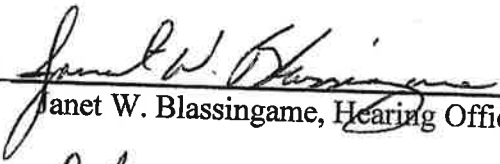
Before Janet W. Blassingame, Hearing Officer
September 6, 2017 at 10:00 a.m.

ORDER OF DEFAULT

The customer contested a water and sewer bill for the above account for the period of time July 12, 2016 to October 8, 2016. The DC Water and Sewer Authority (DC Water) investigated the water and sewer charges and determined that an adjustment to the account was not warranted. The customer appealed DC Water's decision and requested an administrative hearing.

This matter was scheduled for hearing on September 6, 2017. Eileen Wright, Senior, Customer Care Associate, DC Water, was present for hearing on behalf of DC Water.

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 her that "Failure to appear at your scheduled hearing may result in a default judgment being entered against you." (See, 21 DCMR 415.3) As such, based upon customer's failure to appear or to request in advance that the hearing be postponed, a default judgment is entered against the customer and the determination that the bill is valid is **AFFIRMED**.

By: 
Janet W. Blassingame, Hearing Officer
Date: Oct. 10, 2017

Copy to:

Ms. [REDACTED]
[REDACTED] 4th Street, NW
Washington, DC 20011

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

IN RE: [REDACTED]
[REDACTED] Whittier Street, NW
Washington, DC 20020

Account No: [REDACTED]

Amount in Dispute - \$ 234.03

Before Janet W. Blassingame, Hearing Officer
September 6, 2017 at 11:00 a.m.

The customer contested water and sewer bills for the above account for the period of time November 6, 2016 to December 13, 2016. The DC Water and Sewer Authority (DC Water) investigated the water and sewer charges and determined that the charges were valid and an adjustment to the account was not warranted. The customer appealed DC Water's decision and requested an administrative hearing.

This matter was previously scheduled for hearing on May 16, 2017 and the customer failed to appear. An Order of Default was entered dated June 30, 2017. The customer contacted DC Water asserting that she had been hospitalized for surgery in April 2017 and did not receive the Notice of Hearing. DC Water agreed to reschedule the matter for hearing and the Order of Default is/was vacated. The matter was scheduled for hearing on September 6, 2017 and [REDACTED] and her husband, [REDACTED] appeared, as did Eileen Wright, Senior, Customer Care Representative, on behalf of DC Water.

The property involved is a single family home owned and occupied by [REDACTED] and [REDACTED]. The property has four and one-half (4 ½) bathrooms, a dishwasher, a washing machine, a wet bar, one kitchen, and two (2) outside faucets. The couple has lived in the home since July 2015 and stated that their water and sewer bill has historically ranged between Sixty-six Dollars (\$66.00) and Eighty Dollars (\$80.00) per billing period.

Mrs. [REDACTED] testified that she immediately telephoned DC Water upon receiving the bill dated December 19, 2016. She testified that even though the bill states that it was based upon an actual meter read, the customer service representative with whom she spoke stated that she would send someone to the property to obtain an actual meter read.

Mrs. [REDACTED] stated that DC Water had opened the fire hydrant near her property and that water ran from the fire hydrant for an entire day. The customer stated that in March of 2015, DC Water was working in her neighborhood performing a street repair due to a leak and that her water and sewer charge jumped then, as well.

Mrs. [REDACTED] testified she was home during the period in dispute and that she did not notice any leaks and she did not hear any running water. She testified that the appliances in the home are newly refurbished, that she and her husband did not have guests during the period and that there was nothing unusual occurring in their home. She stated that the toilet in the

basement is turned off and that the outside faucets are shut-off.

Mrs. [REDACTED] testified that except for the bill being disputed, her bill has been consistent and that water usage in the home returned to within normal range for the next billing cycle.

Mr. [REDACTED] testified that he walked around his house and performed a top to bottom survey of the property and found everything in working order and no leaks or defects.

Mrs. [REDACTED] complained that a late charge was assessed against her water and sewer account.

Mrs. [REDACTED] noted that during an ANC meeting she learned that DC Water was upgrading all of its water meters. She further stated that she saw on channel 4 News on March 2, 2017, a report of water meter problems. She concluded that she views the bill in dispute as an anomaly for her house and usage.

Ms. Wright testified that DC Water considers the charge valid based upon meter reads from the property. Ms. Wright stated that the MTU at the property was not transmitting as it should have been and for that reason, when the customer contacted DC Water regarding her bill, the customer service representative told her that she would send a service technician to read the meter.

Ms. Wright testified that DC Water had a meter read from the property on November 6, 2016 but received no other meter read transmission until December 18, 2016. Ms. Wright stated that when the service technician came out to the property to obtain a meter reading on December 13, 2016, it was found that high water usage had occurred.

Ms. Wright testified that DC Water did an equipment check at the property on January 12, 2017 during which the meter was removed. Ms. Wright stated that the water meter was not tested and she does not know why the meter was removed from the property.

Ms. Wright stated that when fire hydrants are opened, it is done to flush the system. She stated that a customer may experience low water pressure but no increase in his/her water usage because water is not going thru the customer's water meter. Mrs. [REDACTED] interjected that both times that DC Water was working in her neighbor, her water usage increased.

Ms. Wright testified that she cannot determine when high water usage occurred at the customer's property however, since the new water meter has been placed at the property, there have been no spikes in water usage and the customer's water usage has been within historical levels.

Mr. [REDACTED] affirmed that once the new meter was installed at the property, their water usage converted back to within historical usage levels.

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

Hearing Officer makes the following:

FINDINGS OF FACT

1. The property involved is a single family home owned and occupied by [REDACTED] and her husband, [REDACTED]. (Testimony of [REDACTED])
2. The period in dispute is November 6, 2016 to December 13, 2016. (Testimony of the parties)
3. High water usage was recorded upon the water meter sometime during the period in dispute resulting in a water bill to the customer higher than normal. (Testimony of the parties)
4. The MTU at the property failed to transmit meter readings between November 7, 2016 and December 17, 2016. (DC Water meter read log; testimony of Eileen Wright)
5. The water meter was read by a service technician on December 13, 2016. (Testimony of Eileen Wright)
6. The customers were unaware of any leaks or plumbing issues within their house which would have cause high water usage to occur. (Testimony of [REDACTED] and [REDACTED])
7. DC Water removed the water meter from the property on January 12, 2017 and installed a new meter. (Testimony of Eileen Wright)
8. DC Water did not test for accuracy the water meter removed from the property. (Testimony of Eileen Wright)
9. There has been no recorded high water usage occurring at the property since installation of the new water meter. (Testimony of the parties; DC Water's Billed History/Usage History)
10. DC Water ruled out the existence of an underground leak as a possible cause of high water usage at the property because usage declined without necessity of repairs being performed. (DC Water Investigation letter dated January 17, 2017)

CONCLUSIONS OF LAW

1. The burden of proof is on the customer to show, by a preponderance of evidence, that the decision of DC Water is incorrect. (21 DCMR 420.7 and 420.8)
2. Once the customer establishes a prima facie case that s/he did not use and/or was not responsible for payment of the water as charged, the burden shifts to DC Water to rebut the customer's claim that s/he did not use the water as charged. (Gatewood v. DC WASA, Case No: 12-AA-368, decided DC Court of Appeals on July3, 2013)
3. 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)
4. 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.

- 5. If the investigation of the bill challenge reveals doubtful meter registration or possible meter malfunction, the Department shall remove the meter and test it. (21 DCMR 405.2)
- 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)

DECISION

The customers in this matter were able to establish a prima facie case that more likely than not the bill that they disputed was incorrect. Their case was based upon their inspection of the property and lack of any knowledge or information of any leaks or plumbing defects existing in or about the property and the fact that their water usage had been consistent throughout their ownership of the property except for the one billing in dispute and as soon as the water meter was replaced at the property, their water usage returned to within historical usage levels.

On DC Water's part, its MTU failed to transmit during the period in dispute so the utility was unable to determine exactly when high water usage occurred at the property. DC Water did not conduct an interior inspection of the property for leaks and, even though DC Water removed and replaced the water meter, the utility did not test the water meter to determine its accuracy.

In instances where a customer disputes a charge, the utility is tasked with conducting investigation. In this case, the utility failed to sufficiently investigate the cause of the high water consumption to establish that it was not caused by the water meter as opposed to something occurring within the customers' home such as a toilet or plumbing issue. The customers established that they were unaware of any leaks or plumbing issues and by the utility failing to conduct an interior inspection of the property, the utility could not refute the customers' assertions. Likewise, the customers implied that something was wrong with the water meter because they had never had high water usage and their usage had been very consistent and returned to normal with the installation of a new water meter. Because DC Water removed the water meter and failed to test the meter, the utility could not establish that the meter was functioning properly and even though a service technician read the meter, the accuracy of the meter read cannot be established to counter the customers' assertions that they did not use the water as charged.


Lastly, DC Water acknowledged that the MTU at the property failed to transmit meter

readings during the period at issue. Under the regulations, without more establishing the accuracy and functioning of the meter, the customer is to be charged based upon average previous usage at the premises. (See, 21 DCMR 308.4) As such, the determination by DC Water that the charges are valid and no basis exists for adjustment of the customer's account is REVERSED. It is hereby directed that DC Water shall adjust the customer's account for the period of November 6, 2016 to December 13, 2016 to reflect the average previous water consumption for that interval during up to three (3) previous billing cycles and charge the customer appropriately.

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

Date: Oct. 10, 2017

Copy to:


Whittier Street, NW
Washington, DC 20020

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

IN RE: [REDACTED]
[REDACTED] Eaton Woods Place
Lorton, VA 22079

Service Address:
[REDACTED] Owen Place, NE

Account No: [REDACTED]

Amount in Dispute - \$ 1,492.46

Before Janet W. Blassingame, Hearing Officer
September 6, 2017 at 1:00 p.m.

ORDER OF DEFAULT

The customer contested a water and sewer bill for the above account for the period of time July 28, 2016 to January 9, 2017. The DC Water and Sewer Authority (DC Water) investigated the water and sewer charges and determined that an adjustment to the account was not warranted. The customer appealed DC Water's decision and requested an administrative hearing.

This matter was scheduled for hearing on September 6, 2017. Eileen Wright, Senior, Customer Care Associate, DC Water, was present for hearing on behalf of DC Water.

The customer was afforded a thirty (30) minute grace period and although the hearing was delayed until 1:30 p.m., the customer failed to appear. The letter of notification that was sent to the customer advised him that "Failure to appear at your scheduled hearing may result in a default judgment being entered against you." (See, 21 DCMR 415.3) As such, based upon customer's failure to appear or to request in advance that the hearing be postponed, a default judgment is entered against the customer and the determination that the bill is valid is
AFFIRMED.

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

Date: Oct. 10, 2017

Copy to:

[REDACTED]
[REDACTED] Eaton Woods Place
Lorton, VA 22079

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

IN RE: [REDACTED]
[REDACTED] Kanawha Street, NW
Washington, DC 20015

Account No: [REDACTED]

Amount in Dispute - \$ 352.44

Before Janet W. Blassingame, Hearing Officer
September 6, 2017 at 2:00 p.m.

ORDER OF DEFAULT

The customer contested a water and sewer bill for the above account for the period of time August 3, 2016 to September 6, 2016. The DC Water and Sewer Authority (DC Water) investigated the water and sewer charges and determined that the charges were valid and an adjustment to the account was not warranted. The customer appealed DC Water's decision and requested an administrative hearing.

This matter has been scheduled and rescheduled for hearing five (5) times- January 25, 2017, March 1, 2017, May 3, 2017, July 6, 2017 and September 6, 2017. On September 6, 2017, Eileen Wright, Senior, Customer Care Associate, DC Water, was present for hearing on behalf of DC Water.

The customer was afforded a thirty (30) minute grace period and although the hearing was delayed until 2:30 p.m., the customer failed to appear. The letter of notification that was sent to the customer advised her that "Failure to appear at your scheduled hearing may result in a default judgment being entered against you." (See, 21 DCMR 415.3) As such, based upon customer's failure to appear or to request in advance that the hearing be postponed, a default judgment is entered against the customer and the determination that the bill is valid is
AFFIRMED.

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

Date: Oct. 10, 2017

Copy to:

[REDACTED]
[REDACTED] Kanawha Street, NW
Washington, DC 20015

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

IN RE: [REDACTED]
[REDACTED] 48th Place, NE
Washington, DC 20019

Account No: [REDACTED]

Amount in Dispute - \$ 1,632.52


Before Janet W. Blassingame, Hearing Officer
September 7, 2017 at 1:00 p.m.

ORDER OF DEFAULT

The customer contested the Clean Rivers Impervious Charge on his bill and wanted a hearing in order to obtain an explanation of the charges. The DC Water and Sewer Authority (DC Water) investigated the charges and sent the customer its explanation of how the charge was determined. The customer appealed DC Water's explanation and requested an administrative hearing.

This matter was scheduled for hearing on September 7, 2017. Eileen Wright, Senior, Customer Care Associate, DC Water, was present for hearing on behalf of DC Water.

The customer was afforded a thirty (30) minute grace period and although the hearing was delayed until 1:30 p.m., the customer failed to appear. The letter of notification that was sent to the customer advised him that "Failure to appear at your scheduled hearing may result in a default judgment being entered against you." (See, 21 DCMR 415.3) As such, based upon customer's failure to appear or to request in advance that the hearing be postponed, a default judgment is entered against the customer and the determination that the bill is valid is **AFFIRMED**.

By: 
Janet W. Blassingame, Hearing Officer
Date: Oct. 10, 2017

Copy to:

[REDACTED]
[REDACTED] 48th Place, NE
Washington, DC 20019

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

IN RE: [REDACTED]
[REDACTED] Legend Manor Lane
Glen Dale, MD 20769

Service Address:
[REDACTED] Pomeroy Road, SE

Account No: [REDACTED]

Amount in Dispute - \$ 37,960.71

Before Janet W. Blassingame, Hearing Officer
September 7, 2017 at 2:00 p.m.

The customer contested water and sewer bills for the above account for the period of time October 9, 2014 to August 2, 2016. The DC Water and Sewer Authority (DC Water) reviewed the account and concluded that the charges were valid and an adjustment to the account was not warranted. The customer appealed DC Water's decision and requested an administrative hearing.

This matter was scheduled for hearing on September 7, 2017. Present for the hearing were: [REDACTED] with his daughter, [REDACTED] and, Eileen Wright, Senior, Customer Care Representative, on behalf of DC Water. Ms. [REDACTED] explained that her father suffers from a medical condition which has caused him to retire and has diminished his ability to handle his affairs. Ms. [REDACTED] stated that she handles her father's affairs and would take the lead in presenting testimony and evidence to support his dispute of the charges.

The property involved was a four (4) unit apartment building converted to a group home. The property has been owned by [REDACTED] since approximately year 1985. The property has one kitchen, three (3) bathrooms, a washing machine, a dishwasher and one outside faucet.

Ms. [REDACTED] testified that starting in year 2014, tenants within the building started leaving and water usage declined. She stated that the decline in water usage was evident as of February 2014. Ms. [REDACTED] stated that in October 2014 her father requested that DC Water turn-off the water to the property because it was no longer occupied. Ms. [REDACTED] testified that the turn-off request was dated October 1, 2014. She went on to testify that her father never received a bill for water services from DC Water after October 2014 until January 2017. She stated that the last water and sewer bill was received on September 25, 2014 until her father received a water and sewer bill dated August 9, 2016 in the mail in January 2017. Ms. [REDACTED] testified that the property is and was boarded up since October 2014 and to her knowledge no water service was being provided to the property.

Ms. [REDACTED] testified that neither she nor her father authorized a turn-on of water service to the property after the request that service be turned off in October 2014 was made and she denies that her father or anyone on authority from him or her turned on the water at the property. She maintained that her father and she believed and understood that water service to the property was

turned off by the utility.

Ms. [REDACTED] stated that upon receipt of the bill dated August 9, 2016, she requested an audit of the account by DC Water. She testified that she received an Investigation Letter from DC Water dated February 16, 2017 indicating that a leak was found at the property on February 13, 2017. Ms. [REDACTED] testified that she responded to the finding on March 20, 2017 in letter in which she raised questions and concerns as to how her father is being charged for water when the property has been vacant and his water was disconnected to the property. Ms. [REDACTED] also stated that she objected to DC Water requiring her father or anyone to make repairs within 12 days of the date of a letter. Ms. [REDACTED] asserted that the repair demand was stressful to her father whom she categorized as a senior citizen living on a fixed income who just went through heart surgery.

Ms. [REDACTED] testified that there have been no repairs made at the property to stop a leak or cause any decline in water usage.

Ms. [REDACTED] stated on March 29th or 30th she received a phone call from someone at DC Water, she did not recall from whom but she was driving and could not talk on the phone when the call was received. Ms. [REDACTED] stated that the DC Water employee stated that she would call her back but no one called her back.

Ms. Wright stated that the charges are valid based upon meter readings obtained from the property. Ms. Wright explained that the customer has a MTU at the property that transmits meter reads.

Ms. Wright stated that Mr. [REDACTED] came into the DC Water office on October 1, 2014 to request water turn-off at the property. Ms. Wright testified that DC Water generated a service order on October 9, 2014 in response to the customer's request for service turn-off and that DC Water turned off service to the property on October 9, 2014.

Ms. Wright testified that there was no service to the property from October 9, 2014 to October 13, 2014 but then usage started on October 13, 2014. Ms. Wright testified that DC Water did not turn the service back on October 13th. Ms. Wright stated that water usage at the property stopped on October 14, 2014 but resumed on October 15, 2014. Ms. Wright surmised that the usage record looked as though someone was in the building. She stated that there was water usage between November 6 and November 7, 2014, that usage stopped until February 26, 2015 and then water started to run at a high rate. Ms. Wright testified that it looked like the water was turned on at the meter outside of the property and controlled inside the property and that there was water use until sometime between June and August 2016 when usage stopped.

Ms. Wright testified that DC Water will periodically run a report to see if there is usage at a property where water service has been turned off; she stated that such a report was done and this property was identified as having water usage even though service was supposed to be turned off. Ms. Wright stated that DC Water generated a service order dated August 2, 2016 which re-activated the customer's water and sewer account back to the turn-off in October 2014. Ms. Wright testified that the utility put a padlock on the water meter to shut-off water to the property.

Ms. [REDACTED] interjected that the only explanation for what occurred was that a squatter was in the property unbeknownst to her and her father. Ms. Wright continued and stated that on February 13, 2017, DC Water sent a crew to the property to conduct an audit and when the water was turned on, a leak was detected.

Ms. [REDACTED] asserted that her father knew that there was a leak at the property and the leak was the impotence for him to request that the water service be turned off. Ms. [REDACTED] stated that from the outside of the building, upon inspection, no one could see anything wrong at the property and there was no indication of a leak or of anyone inside of the property because the boarding looked untampered. She stated that no one entered the property after it was boarded up.

Ms. Wright testified that DC Water inspected the property on February 13, 2017 and that two (2) inspections were conducted at the property and it was determined that there was a busted pipe at the property. Ms. Wright stated that when the water was turned on at the water meter, water ran. Ms. Wright stated that DC Water turned the water off at the property twice and she does not know how the water got turned back on at the property, except that DC Water did not turn the water back on until it conducted the inspection on February 13, 2017 to test for leaks.

Ms. Wright testified that DC Water conducted a test of the water meter at the property and the meter was determined to have 99.78% accuracy.

Ms. Wright testified that DC Water does not have the billing and usage records for the property but in August 2016 when the account was re-activated, the customer owed \$181.13 as of October 19, 2015. Ms. Wright stated that the \$181.13 which had been owed was categorized as a bad debt but when the account was re-activated the debt was restored and the account was assessed late charges.

Ms. Wright testified that on October 10, 2014, the customer was billed \$33.86 and the bill reflected a past due amount of \$124.28 for a total amount due to DC Water of \$158.14. Ms. Wright acknowledged that DC Water did not send any bills to the customer after the bill dated October 10, 2014. Ms. Wright further acknowledged that there is no evidence of the utility sending the customer any reminder regarding late charges assessed to the water and sewer account.

Ms. [REDACTED] disputed Ms. Wright that her father had been billed in October 2014. She asserted that her father only received a bill dated August 9, 2016 in January 2017. Ms. Wright countered that the record shows that DC Water billed the customer after August 2016.

Ms. Wright testified that DC Water does not have staff monitoring inactive accounts but the property came up on the report generated showing usage occurring. Ms. Wright testified that the report was done in July 2016. Ms. [REDACTED] questioned DC Water's Quality Assurance in that it failed to detect usage occurring at the property for an extended period. Ms. Wright stated that had the customer signed up for HUNA (High Usage Notification Alert), he would have been notified when high water usage occurred at the property.

Ms. [REDACTED] acknowledged that her father should have paid the water and sewer bill

generated in September 2015 instead of saying that his tenant was responsible for payment of the bill. Mr. [REDACTED] spoke stating that he now remembers the September 2015 billing and that he received the bill.

Ms. Wright stated that if a plumber makes the repair of the busted pipe, the customer can receive an adjustment of 50% of the excess usage if the leak is on the owner's side of the water meter. Ms. [REDACTED] reiterated her objection to DC Water giving her father such a short time to get a repair done. She stated that there is no money to make such a repair and that DC Water's bill is preventing a short sale of the property because of the existence of a lien by DC Water.

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

FINDINGS OF FACT

1. The property involved is a four (4) unit apartment building converted into a group home. The property has been owned by [REDACTED] for over thirty (30) years. Mr. [REDACTED] suffered a debilitating medical condition causing him to retire and his daughter, [REDACTED], handles his financial affairs and appeared with him for the hearing and spoke on his behalf. (Testimony of [REDACTED])
2. The period in dispute is October 9, 2014 to August 2, 2016. (Testimony of the parties)
3. On October 1, 2014, Mr. [REDACTED] appeared at the DC Water office requesting the turn-off water and sewer service to the property; he made the request orally and submitted a written request dated October 1, 14. (Testimony of [REDACTED] and Eileen Wright; Plaintiff's exhibit 1)
4. At the time that the customer requested the turn-off of water service to the property, the property was vacant and boarded. (Testimony of [REDACTED])
5. DC Water terminated water service to the property on October 9, 2014 and placed the account in an inactive status. (Testimony of Eileen Wright; DC Water Letter dated April 25, 2017)
6. Neither the owner nor his daughter were aware of any water usage occurring at the property after service was cut-off by DC Water and there were no signs of water being used or of anyone being inside of the property after it was boarded up. (Testimony of [REDACTED])
7. After the property was boarded, the property owner has not entered the building and he has not authorized anyone else to enter the property. (Testimony of [REDACTED])
8. DC Water billed the customer for service reflected in a bill dated 09/25/14 for \$122.68.; said bill reflected current charges of \$58.32 and an outstanding balance of \$64.36. (DC Water Bill Summary dated 09/25/14; Plaintiff's exhibit 2)
9. DC Water generated a final bill to the customer dated October 10, 2014 for \$158.14 which the customer refused to pay citing the bill as the responsibility of his tenant. (DC Water Letter dated April 25, 2017; DC Water Telephone Log dated 9/22/15)
10. The property owner reiterated to DC Water in a phone contact 11/30/16 that he did not intend to pay the outstanding amount owed to the utility; he stated that he had requested the service to be off 2 years ago, the building was vacant then and is still vacant and that he has had a stroke. (DC Water telephone log dated 11/30/16)

11. The property owner acknowledges responsibility for payment of the final water and sewer bill and he admits that he should have paid the bill as opposed to refusing to do so on the basis that it was his tenant's responsibility. (Testimony of [REDACTED] [REDACTED])
12. DC Water contacted the customer requesting the payment of the final water bill but after sending the final water bill in October 2014, it did not send any further bills, notice of late charges or reminders of outstanding balance due to the customer until January 2017 when the customer received an extended period adjusted bill dated 08/09/16 which is the bill now being disputed. (Testimony of the parties; Bill Summary dated 08/09/16)
13. For accounting purposes, DC Water listed the balance owed by the customer on the final bill sent in September 2014 as a bad debt and charge was written off until on or about August 2016 when the utility re-activated the customer's water and sewer account. (Testimony of Eileen Wright;
14. There is an automated meter with an MTU at the property. (Testimony of Eileen Wright)
15. DC Water does not monitor inactive accounts and presented no record of water being used at the property after October 2014 but before August 2016, although Ms. Wright was able to provide detailed testimony of when water usage resumed after it was terminated by the utility and dates of water usage and dates that no usage occurred at the property after the service cut-off. (Testimony of Eileen Wright; DC Water Star report of meter reads)
16. The Account Summary available to the customer on-line reflects no water usage at the property after 10/2014 until 8/2016. (Testimony of [REDACTED] [REDACTED]; My DC Water Account Summary)
17. DC Water generated a report of properties where water usage was occurring and the water account was in inactive status; the property at issue was listed on the report; DC Water knew of water being used at the property based upon this report as of April 2016 (Testimony of Eileen Wright; DC Water contact log dated 6/08/16)
18. DC Water did not reconnect water service to the property after October 9, 2014 except to test for leaks in February 2017. (Testimony of Eileen Wright)
19. The property owner denies turning water on at the property after he requested DC Water to terminate service to the property and he denies authorizing anyone to turn on water at the property after October 2014. (Testimony of [REDACTED] [REDACTED])
20. DC Water sent a technician to investigate water usage at the property found that the water had been turned on at the water meter. (Testimony of Eileen Wright)
21. DC Water put a padlock on the water meter to prevent an unauthorized turn on of the water at the property. (DC Water contact #12017291 on 2/10/17; testimony of Eileen Wright)
22. DC Water conducted an underground leak investigation at the property and no underground leak was found. (Testimony of Eileen Wright)
23. DC Water removed and tested the water meter from the property and the meter was determined to have 99.78% accuracy. (Testimony of Eileen Wright; DC WASA Meter Test Results)
24. On August 9, 2016, DC Water charged the customer \$37,960.71 for water service dating back to October 9, 2014 up to the meter read date of August 2, 2016 (663 days) and on September 13, 2016, DC Water assessed \$3,796.07 in late charges on the customer's account and the utility has continued to assess late charges and fees to the account up to the present. (DCWASA Ledger Information Report)

25. The owner was aware of the existence of a leak in the water pipe of the property and this knowledge gave incentive to him to request that DC Water terminate service to the property. (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. All pipes and appurtenances on private property shall be maintained by and at the expense of the property owner. (21 DCMR 110.4)
3. The Department upon receipt of a written request from the owner of a property provided water and sewer services, shall terminate services when one of the following conditions exists:
 - (a) The property is vacant;
 - (b) There is an outstanding delinquent balance on the account;
 - (c) The water and sewer service has been terminated for nonpayment, and it is verified that service has been restored by the occupant or someone solicited by the occupant, without the Department's authorization; or
 - (d) The owner provides documentation that the property is occupied by parties without a legal right to be on the property and who occupy the property without the consent of the owner. (21 DCMR 426.1)
4. Once the customer establishes a prima facie case that s/he did not use and/or was not responsible for payment of the water as charged, the burden shifts to DC Water to rebut the customer's claim that s/he did not use the water as charged. (Gatewood v. DC WASA, Case No: 12-AA-368, decided DC Court of Appeals on July 3, 2013)
5. 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).
6. DC Water is granted the authority to establish, adjust, levy, collect and abate charges for services, facilities, or commodities furnished or supplied by it, pursuant to D.C. Code §34-2202.03(11)
7. Meters shall be read quarterly or at such other times as the General Manager shall determine. (21 DCMR 308.1)

DECISION

Two issues are presented by this case: What, if any, amount of money is owed by the customer to DC Water? and, Whether the customer is responsible for water usage occurring at the property after he requested the utility to terminate service and if he is responsible, what amount should he pay to the utility?

The customer, through his daughter, established a prima facie case that he did not use the

water charged to his account and, as such, should not be responsible for paying the bill. The customer's case rested upon testimony and evidence that the property was vacant and boarded when he requested DC Water to terminate service in October 2014 and that the property remains vacant and unoccupied to the present. The customer further established that he believed and understood that water service to the property had been terminated and he had no knowledge, information or belief that service had resumed at the property until he received a bill in January 2017.

DC Water presented testimony and evidence that it abided by the customer's request for termination of service to the property and service was turned off on October 9, 2014. The utility presented proof that it billed the customer for service up to the termination of service date and the customer failed and refused to pay the bill. The utility further established that it restored service to the property only to test for leaks and that act was performed in February 2017 but that someone turned the water on at the meter after the utility had terminated service to the property. DC Water, further, established that water was used or wasted at the property after its turn-off of service, that it determined the amount of water used after October 9, 2014 which was the date of turn off of service and that its equipment was functioning properly to register water used at the property.

In response to the utility's proof, the customer provided testimony that he did not enter the property after it was boarded, that he did not authorize anyone to enter or occupy the property after October 2014, that he was not aware of anyone using water at the property, he did not authorize water use at the property and he did not see any evidence of water being consumed or wasted at the property after his request that service be terminated by the utility, that he did not see evidence that the property was tampered with after its boarding and that he had no knowledge that anyone had entered the property after its boarding. The customer did acknowledge that he did not pay but should have paid the final bill for service sent to him in year 2014, but, he asserted, in addition to denying responsibility for the water used, financial hardship and medical reasons as to why he should not be held responsible for back billed charges for water used at the property after he requested termination of service.

Ms. Wright testified that DC Water does not monitor inactive water accounts and implied that because inactive accounts are not monitored, the utility did not know that water was being used at the property until the property showed up on a report generated by DC Water for the purpose of ensuring that there is no water usage at properties where service has been terminated.

DC Water presented evidence and testimony that the utility had a Star Report of meter reads from the property and it could document when water was turned on and used at the property. The evidence and testimony established that the Star Report is not available for review by customers and evidence was presented that information available to the customer on-line reflected no water being used at the property. Moreover, evidence and testimony established that after placing the account in inactive status, DC Water did not send any bills or notices to the customer or otherwise communicate with the customer even when it learned of water being used at the property until it sent the bill back dating charges for two (2) years of water service following the turn-off of service to the property.

With respect to any amount owed by the customer to DC Water, clearly, the customer is responsible for paying the final charges billed by the utility to him in October 2014. The evidence established that the customer owed the utility \$181.15 and the customer acknowledged that he is responsible for the charges and should have paid the charges. Having failed to pay the final billing from DC Water when the service was turned off, the customer rightly incurred late charges and such charges accrue until the balance is paid.

With respect to charges for the water used at the property after the customer requested termination of service to the property, the answer is not so clear. On the one hand, a property owner is responsible for water used at his property and if excessive water is used as a result of a leak on his property and the owner has the leak repaired by a licensed plumber in the District of Columbia, the utility may adjust the customer's account for the excessive usage up to 50%. (See, 21 DCMR 407.5) On the other hand, the scenario presented in the matter is eerily similar to that in the case of Gatewood v. DCWASA, *supra*., in which the property was vacant and boarded and the customer presented a prima facie case that he did not use the water charged to him by DC Water. In Gatewood, the water service was on at the property but the customer testified that there was no evidence of tampering with the boarded property, he did not see any water and no one but he and his brother had keys to the property. The Court ruled that the customer's undisputed testimony was sufficient circumstantial evidence to establish a prima facie case that he was not responsible for the disputed charges and that DC Water must rebut his case. In Gatewood the utility's potential responsibility for the water use rested upon the water meter which DC Water did not test and as such could not establish that the meter was working properly. In this case, DC Water did test the meter and did establish the accuracy of the meter. Unlike Mr. Gatewood, this customer's argument for his non-responsibility for payment of the usage is that he instructed the utility to terminate service at the property, he relied upon the utility's turn off of service, he believed that service was off at the property and he had no way of knowing that usage was occurring at the property after the service was turned off.

While the customer's daughter surmised that a squatter was the only reasonable explanation to explain how water was turned on at the property after her father instructed the utility to terminate service, the customer's position was that no one for whom he could be held responsible had used water on his property since the turn off of service.

Again, comparing this case to the Gatewood case, the Court in Gatewood declared that only DC Water had the opportunity and expertise to launch the kind of investigation required to get to the bottom of what happened to cause the situation faced by Mr. Gatewood and ultimately, the Court found that the water meter was the only basis for potential responsibility of DC Water for the water use and that the utility was the only one capable of testing the water meter. In this case, as noted, the utility tested the water meter but what it did not do was inform the customer that usage was occurring at the property. The testimony was that DC Water does not monitor properties where the water service account is inactive. DC Water sent the customer a final bill

after he instructed it to terminate water service at the property and it did not bill him for anything until almost three (3) years later when it back billed the customer for usage.

Why this case is comparable to Gatewood is that here while it does not concern the water meter function, the utility was the only entity in a position to know that usage was occurring at the property and it failed to inform the customer of the usage until it billed him for almost Forty Thousand Dollars (\$40,000.00). DC Water put into evidence its meter read report (Star) for the property and it was able to document the water which went thru its water meter by date, time and amount. The meter read report documented water usage at the property occurring up to twice daily from 10/8/2014 until 6/1/2017. The evidence established that the meter read report is only available, normally, internally to DC Water and a customer is privy to the meter report only when a charge is disputed and the utility enters the report in evidence. What is available to the customer is an on-line Account Summary and the document presented reflected no usage occurring at the property after 10/214 until 08/2016. Moreover, DC Water introduced its telephone log and in the comments one reads that, irrespective of the meter reads, the utility acknowledged internally that water was on at the property in April 2016, however, the customer received no notification from the utility until billed in January 2017 (bill dated 8/9/2016).

DC Water has authority to bill customers for water usage and it can back bill for service, however, in some cases, where a customer is caused harm through no fault of his/her doing but due to the utility's failure to perform some task, the customer is relieved from liability based upon the equitable defense of laches.

DC Water has no specific regulation regarding back-billing or limitation on its ability to back-bill a customer's account. The authority to back-bill comes only through its broad authority to charge and collect for water and sewer service. (See, D.C. Code §34-2202.03(11).

Some water authorities have addressed the issue of back-billing but DC Water has not done so and other 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 that there are no specific regulations authorizing back-billing or restricting the same, this body maintains that it is appropriate to examine bill disputes on a case-by-case basis in an effort to weigh unpredictable and/or arbitrary billing and the prompt settling of customer accounts against correcting billing deficiencies. In weighing the factors, the Hearing Officer is convinced that this dispute is appropriate for imposition of the doctrine of laches on behalf of the customer.


Laches is an equitable defense against harm caused by another's delay or failure to take

action. This customer requested that DC Water terminate service at his property and he established that he did not use any water at the property after the service was turned off. He further established he had no way of knowing the water service had been re-established at the property because the property was boarded and he never went into the property after its boarding, there was no visible evidence of tampering with the boards on the property and no visible evidence of water being used at the property from the outside. DC Water does not refute the customer's case that he did not use the water; its position is that water was used and because the customer is the property owner, he is responsible for payment. The problem for the utility is that it is the only entity in this matter that had the capability of knowing that water service had been turned on at the property after its termination. The customer was not privy to the meter read reports which the utility had and the utility provides no explanation as to what happens to meter readings from inactive accounts when the MTU consistently functions and is reporting water being used or why someone within DC Water did take note of the meter reads from the property sent by the transmitting MTU. The utility provided no proof of the customer using the water or authorizing anyone to turn the water service on without notification to the utility. Moreover, account information available to the customer on-line reflected no water usage after October 2014. The customer was, clearly, in the blind, thinking and relying upon information and knowledge that he told the utility to terminate service and that the utility did so. Only the utility had the capability to know that water was being used at the property and it failed to take action even though the information was being sent by the MTU. Even after the property appeared on the report of inactive accounts where water was being used, the utility did not notify the customer for several months and did not bill the customer for almost eight (8) months after the report (April 2016 to January 2017).

Accordingly, it is the determination of the Hearing Officer that the customer is responsible for paying the final charges billed to him in October 2014 with all accrued late charges applicable to said final bill, but, the customer is not responsible, based upon laches, for payment of any water used at the property after service was terminated on October 9, 2014 and such charges and assessed late charges are to be removed from the customer's account. In October 2014, the customer owed \$181.15 and this amount remains due and payable and subject to late charges. The customer is further responsible for all impervious area charges assessed to the water account.

By: Janet W. Blassingame
Janet W. Blassingame, Hearing Officer
Date: Oct. 10, 2017

Copy to:


Legend Manor Lane
Glenn Dale, MD 20769

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

IN RE: [REDACTED]
[REDACTED] Allison Street, NW
Washington, DC 20011

Account No: [REDACTED]

Amount in Dispute - \$ 1,259.76

Before Janet W. Blassingame, Hearing Officer
September 12, 2017 at 10:00 a.m.

The customer contested water and sewer bills for the above account for the period of time May 11, 2016 to June 10, 2016. The DC Water and Sewer Authority (DC Water) conducted an investigation of the water and sewer charges and concluded that the charges were valid and an adjustment to the account was not warranted. The customer appealed DC Water's decision and requested an administrative hearing.

This matter was scheduled for hearing on September 12, 2017. Present for the hearing were [REDACTED] and Eileen Wright, Senior, Customer Care Representative, on behalf of DC Water.

The property involved a single family residence owned and occupied by [REDACTED]. The house has two (2) bathrooms, one kitchen, radiators, a washing machine, a dishwasher and two (2) outside faucets. Ms. [REDACTED] lives alone and stated that her water and sewer bill has historically ranged between One Hundred Eighty Dollars (\$180.00) and Two Hundred Dollars (\$200.00) per billing cycle but that as of April 2017, her bills were ranging between Ninety Dollars (\$90.00) and One Hundred Dollars (\$100.00) per billing cycle and most recently, her bills have further reduced to a range of Fifty Dollars (\$50.00) to Seventy Dollars (\$70.00) per billing cycle.

Ms. [REDACTED] explained that in May 2016 she was diagnosed with Multiple Myeloma for which she has undergone radiation therapy. Ms. [REDACTED] stated that her therapy for the cancer wiped out her kidney function and that she was hospitalized in the Intensive Care Unit (ICU) between June 1, 2016 and June 10, 2016. Ms. [REDACTED] stated that she knows now that when she sustained a fall in August 2015, the fall was caused by the cancer but the cancer was not then diagnosed and instead, she was treated for a fracture and wore a back brace. Ms. [REDACTED] testified that when she was released from the hospital, she was a mess and was overcome with bills.

Ms. [REDACTED] testified that her house was vacant during her hospitalization. She also testified that she has no idea why her water and sewer bill has declined. She stated that she received a Notice of Lien in June 2016 and she called DC Water for an explanation and the service representative with whom she talked (Mr. Mack) told her that a surge in water usage had occurred in June 2016.

Ms. [REDACTED] stated that DC Water removed and replaced her water meter in either March

or April of 2017 and her water and sewer bill went down thereafter. Ms. Herron also testified that DC Water came in to her home for the purpose of inspecting for leaks and the service technician did not find any leaks.

Ms. [REDACTED] stated that as a rule she employs a plumber for general maintenance and that the plumber was in her home in October or November 2016 and serviced/cleaned the radiators, checked the toilets and shut-off the water to the outside faucets in anticipation of the winter cold.

Ms. [REDACTED] stated that she was hospitalized at Sibley Hospital and that Mr. Mack told her that the surge in water usage occurred during the period of her hospitalization

Ms. [REDACTED] testified that no one has keys to her home. She stated that she did have the house on the market for sale but took it off of the market. She stated that the house had a lock box between July 2015 and October 2015 but the lock box has been removed. Ms. [REDACTED] acknowledged that her daughter does have keys to her house; she stated that even though her daughter came from school to be with her during her hospitalization, her daughter stayed at the hospital and did not go to the house. Ms. Herron further stated that she had a fiancé who had keys to her house but that the relationship has ended and he gave up his keys before she went into the hospital.

Ms. [REDACTED] asserted that water restrictions because of her use of a catheter have caused her not to use water as she once did.

Ms. Wright testified that based upon the customer's meter readings, the volume of water used at the property started to increase in January 2016. She stated that the customer's usage had been between 3 and 7 CCF per billing cycle and then, her usage tripled in February 2016. Ms. Wright testified that Ms. Herron was billed \$71.06 in her bill dated January 17, 2016 but she was billed \$170.56 in the bill dated February 12, 2016. Ms. Wright further testified that Ms. [REDACTED] failed to pay her water and sewer bills from March 2016 to June 2016.

Ms. Wright stated that the customer received a Notice of Intent to Lien dated May 26, 2016 but before sending the notice, DC Water had attempted to contact the customer through a collections robo call on April 20, 2016. Ms. Wright explained that Ms. [REDACTED] contacted DC Water on June 13, 2016 requesting that the utility remove the lien and the [REDACTED] mer also entered into a payment plan with the utility to address the arrearage on her account. Ms. Wright stated that Ms. [REDACTED] was to pay the amount past due in six (6) installments.

Ms. Wright pointed out that during the customer's telephone call on June 20, 2017 she told the service representative, Mr. Mack, that she had family visiting. Ms. Wright also stated that Mr. Mack informed Ms. [REDACTED] that a spike in usage occurred June 7, 2016.

Ms. Wright testified that DC Water conducted an interior inspection of the house on February 24, 2017 and no leaks were found.

Ms. Wright clarified that DC Water turned the customer's service off in June 2017 but the service was restored.

Ms. Wright testified that water usage at the property started to increase between January 2016 and February 2016 and was high in May 2016. Ms. Wright pointed out that between June 3, 2016 and June 12, 2016, the customer consumed 25 CCF of water. Ms. Wright asserted that she did not know what was happening in the house and she could only testified as to what registered on the water meter.

Ms. Wright stated that DC Water did remove the water meter for testing, however, the meter was never tested. She stated that the water meter was removed on February 24, 2017 and she pointed out that water usage at the property had already declined before the water meter was removed. Ms. Wright further pointed out that all of the bills to the customer were based upon actual meter reads and she explained that a water meter is not designed to speed up and then slow down if the meter is broken. According to Ms. Wright, if the water meter is broken it will continue to register too fast but when a meter registers fluctuating water usage, the meter is doing what it is designed to do and reflecting only water flowing thru the meter. Ms. Wright concluded that in this case the water meter has operating properly and that based upon her experience in dealing with customer bill disputes, high water usage is generally the result of a running toilet. Ms. Wright surmised that the cause of Ms. [REDACTED]'s high water usage was either an internal fixture or outside faucet.

Ms. Wright stated that there was something running in the house before Ms. [REDACTED] went into the hospital and that her water usage went back to within normal range before the meter was removed. Ms. Wright stated that water usage declined in February 2017 and she pointed out that the customer's bill dated March 15, 2017 shows 1 CCF of water being used between February 10, 2017 and February 24, 2017.

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

FINDINGS OF FACT

1. The property involved is a single family residence owned and occupied by [REDACTED] (Testimony of [REDACTED])
2. The period in dispute is May 11, 2016 to June 10, 2016. (Testimony of the parties)
3. High water consumption began at the property in February 2016 and continued until February 10, 2017 with the highest surge occurring between May 11, 2016 and June 10, 2016 when the customer consumed 61 CCF of water. (DC Water Billed History and Usage History; testimony of Eileen Wright)
4. The customer was diagnosed with cancer in May 2016 but prior to the diagnosis the customer sustained a fall resulting in her wearing a back brace. The fall occurred in August 2015 and the customer believes that the fall was a symptom of the cancer and was just not diagnosed at that time. (Testimony of [REDACTED])
5. The customer was hospitalized in the ICU from June 1, 2016 to June 10, 2016. (Testimony of [REDACTED])
6. During her illness, the customer failed to pay the bills for water and sewer service and her service was turned off and the utility sent a Notice of Intent to Lien. (Testimony of the parties)

7. Upon her release from the hospital in June 2016, the customer made an effort to get a handle on her bills but was overwhelmed and a "mess" by her own description. (Testimony of [REDACTED])
8. The customer has no information or idea as to why her water usage increased or why the usage decreased except that due to use of a catheter, she had water restrictions. (Testimony of [REDACTED])
9. DC Water conducted an interior inspection of the property and no leaks were found in February 2017. (Testimony of Eileen Wright; Service report dated 2/24/2017)
10. The service technician sent to the property was instructed to pull the water meter for testing and the meter was removed, however, the water meter was not tested. (Service report dated 2/24/2017; testimony of Eileen Wright)
11. The meter was removed from the property on February 24, 2017 however water usage at the property had declined prior to removal of the water meter dropping to 1 CCF over the 14 day period before the meter was removed and having been 13 CCF between January 12, 2017 and February 10, 2017. (DC Water Billed History and Usage History; testimony of Eileen Wright)

CONCLUSIONS OF LAW

1. The burden of proof is on the customer to show, by a preponderance of evidence, that the decision of DC Water is incorrect. (21 DCMR 420.7 and 420.8)
2. Once the customer establishes a prima facie case that s/he did not use and/or was not responsible for payment of the water as charged, the burden shifts to DC Water to rebut the customer's claim that s/he did not use the water as charged. (Gatewood v. DC WASA, Case No: 12-AA-368, decided DC Court of Appeals on July 3, 2013)
3. DC Water is obligated to investigate a challenge to a bill by doing any or all of the following:
 - (a) Verify the computations made in the formulation of the water and sewer charges;
 - (b) Verify the meter reading for possible meter overread or doubtful registration;
 - (c) If feasible, check the premises for leaking fixtures, underground invisible leaks, and house-side connection leaks;
 - (d) Check the meter for malfunction;
 - (e) Check the water-cooled air conditioning system, if any, for malfunction; and
 - (f) Make a reasonable investigation of any facts asserted by the owner or occupant which are material to the determination of a correct bill. See, 21 DCMR 403
4. D.C. Municipal Regulations bar adjustment of a customer's bill when all checks and tests provide no reasonable explanation for excessive water consumption. (See 21 DCMR 408 which states: "In cases in which all checks and tests result in inconclusive findings that provide no reasonable explanation for excessive consumption, no adjustment shall be made to the bill for any portion of the excessive consumption, except as may be approved

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

DECISION

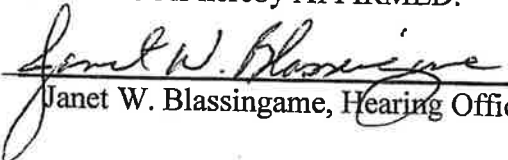
The customer in this case cannot establish a prima facie case that more likely than not the bill being disputed is incorrect or for some other reason she should not be held responsible for its payment.

The customer testified as to having gone through a terrifying and life threatening ordeal of cancer diagnosis and treatment which put her in the ICU for nine (9) days. Ms. [REDACTED] medical problems first appeared in August 2015 and her water usage started going up in February 2016 and continued going up to a high in June 2016 but remaining high until February 2017. By the customer's own description, she was a "mess" when she got out of the hospital in June 2016 and her bills were unpaid and DC Water had turned off service and was threatening a lien on her property. Ms. Wright testified that she did not know what was happening in the customer's house to cause the water usage and based upon the testimony and evidence the Hearing Officer does not believe that the customer was focused upon her house or affairs during this period of health crisis. The customer's attention was not on her water and sewer bill or water usage as evident by her failing to pay her bills or notice the increased usage which had been occurring months before the period being disputed.

By the time that the customer contacted DC Water regarding her water and sewer bill and the high water usage and the utility sent a technician out to inspect for leaks, whatever had caused the usage had stopped for no leaks were found. DC Water in conducting an investigation of a disputed bill will normally test the water meter and for reasons unarticulated in the hearing, the water meter was not tested. The Hearing Officer does not find the lack of a meter test persuasive in the customer's favor, however, because the customer did not establish a prima facie case and the utility presented evidence of actual meter reads of high water usage extending not only before the period in dispute and after the period in dispute but ending before the meter was removed. As such, the meter function was not at issue. The customer did not testify as to her having no knowledge of leaks or plumbing issues in the house during the high water usage. The customer did not have a plumber come in to inspect the property when high water usage was occurring. The Hearing Officer was persuaded that the customer was consumed with her medical issues and did not take notice of her water usage, her bills or if usage was up or down. The evidence was such that even after the customer's service was disconnected for non-payment and re-established, high water usage continued and the same was not addressed by the customer.


The Hearing Officer understands that the customer has undergone a hard experience and continues to cope with a life threatening condition; however, nothing has been presented that supports a conclusion that the disputed bill is wrong and the water, as charged, was not used or lost at the customer's residence. The utility determined that the charges are valid and no basis exists to adjust the customer's account and that determination is hereby AFFIRMED.

By:


Janet W. Blassingame, Hearing Officer

Date: Oct. 10, 2017

Copy to:

 Allison Street, NW
Washington, DC 20011

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

IN RE: [REDACTED]
[REDACTED] T Street, NW, Apt. [REDACTED]
Washington, DC 20009

Service Address:
[REDACTED] 6th Street, NE

Account No: [REDACTED]

Amount in Dispute - \$ 2,857.45

Before Janet W. Blassingame, Hearing Officer
September 12, 2017 at 11:00 a.m.

The customer contested water and sewer bills for the above account for the period of time February 28, 2017 to June 8, 2017. The DC Water and Sewer Authority (DC Water) conducted an investigation of the water and sewer charges and concluded that the charges were valid and an adjustment to the account was not warranted. The customer appealed DC Water's decision and requested an administrative hearing.

This matter was scheduled for hearing on September 12, 2017. Present for the hearing were [REDACTED] and Eileen Wright, Senior, Customer Care Representative, on behalf of DC Water.

The property involved is a two (2) unit building owned by [REDACTED] Ms. [REDACTED]'s sister occupied one unit and the customer rented the other unit to students. Each unit has one and one-half (1 ½) bathrooms and a kitchen. One unit has a washing machine. Three (3) people are in each unit and Ms. [REDACTED] stated that the water and sewer bill historically averaged Three Hundred Dollars (\$300.00) per billing cycle. Ms. [REDACTED] stated that she has owned the building since year 2003.

Ms. [REDACTED] testified that there has been no recent plumbing work performed at the building. She stated that she had a plumber check the building in June 2017 and no leaks were found. She stated that she paid Eight Hundred Dollars (\$800.00) in August 2017 and her current water and sewer bill is Five Hundred Dollars (\$500.00). The customer stated that her current balance is \$2,413.29.

Ms. [REDACTED] stated that she was told that 1000 gallons of water had been running every day at the building but now only 100 gallons are being consumed each day.

Ms. [REDACTED] stated that she was out of the country from October 15, 2016 until March 21, 2017 and that while she was gone, water service to the building was disconnected. She stated that she paid \$1,000.00 in March and again in April and \$800.00 after that. Ms. Wright interjected that the customer's ledger shows \$1200.00 in July and February 2017 and \$800.00 in August 2017. Ms. [REDACTED] stated that her daughter paid \$1236.76 in February 2017.

Ms. [REDACTED] stated that she is going home again in October of this year and wants to set up a payment arrangement.

Ms. Wright stated that the charges are valid and that there is no reason to adjust the customer's account. Ms. Wright stated that after the Hearing Officer renders a Decision regarding the customer's dispute, she would be more than happy to make a payment arrangement with the customer. Ms. Wright stated that the payment plan policy is to required one-third of the balance from the customer and the remainder is paid in installments.

Ms. [REDACTED] declared that she wanted to withdraw her dispute; she preferred to set up an payment plan immediately and did not want to wait for a decision on her dispute because she was going out of the country in October 2017 and would not return until January 2018 and there is no one to stand in her shoes in her absence. The customer then discussed a plan with Ms. Wright who informed the customer that she must pay \$803.00 and the monthly payment along with the current charges for service each billing cycle.

Accordingly, this matter is hereby deemed moot based upon the customer's withdrawal of her dispute. The determination by DC Water that the charges are valid is hereby AFFIRMED.

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

Date: Oct. 10, 2017

Copy to:

[REDACTED]
[REDACTED] T Street, NW
Apt. 307
Washington, DC 20009

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

IN RE: [REDACTED]
[REDACTED] Sligo Mill Rd. NE
Washington, DC 20011

Account No: [REDACTED]

Amount in Dispute - \$ 811.11

Before Janet W. Blassingame, Hearing Officer
September 12, 2017 at 1:00 p.m.

The customer contested water and sewer bills for the above account for the period of time November 10, 2015 to November 22, 2017. The DC Water and Sewer Authority (DC Water) conducted an investigation of the water and sewer charges and concluded that the charges were valid and an adjustment to the account was not warranted. The customer appealed DC Water's decision and requested an administrative hearing.

This matter was scheduled for hearing on September 12, 2017. Present for the hearing were [REDACTED] and Eileen Wright, Senior, Customer Care Representative, on behalf of DC Water.

The property involved is a single family residence owned and occupied by [REDACTED]. Ms. [REDACTED] stated that she purchased the house brand-new in December 2013. She stated that her cousin, initially, occupied the property but when her cousin moved in March 2016, Ms. [REDACTED] moved into the house. The house has three and one-half (3 ½) bathrooms, one kitchen, a washing machine, a dishwasher, and two (2) outside faucets. The water and sewer bill had been approximately Eighty Dollars (\$80.00) per billing cycle.

Ms. [REDACTED] testified that she did not know that her water usage had been estimated by DC Water; she was focused on paying the bill on time and in the amount charged.

Ms. [REDACTED] stated that she retired in year 2010. She also stated that she faithfully paid her water and sewer bill until she received the bill in dispute stating that she owed Eight Hundred Ten Dollars (\$810.00). Ms. [REDACTED] testified that when she got the bill, she assumed that the bill had been sent in error to her by DC Water. She stated that when she called DC Water about the bill, she was told that she had not been billed for actual water use and that since she purchased the house, she has never received a correct bill. She stated that she was told that she had only been billed for Clean River and Stormwater fees. Ms. [REDACTED] stated that she looked at the amount due on each bill and assumed the bill was correct. She stated that the service representative told her that she was responsible for the bill and that the utility could have but did not charged her for water for the entire period that she had been in house.

Ms. [REDACTED] stated that none of her neighbors had a problem with their billing. She stated that there are five (5) houses on her block.

Ms. [REDACTED] testified that from October 2015 to September 2016, she was charged \$87.29 for water and sewer service each month; that from October 2014 to September 2015, she was charged \$73.80 for water and sewer service each month; and, from June 2014 to October 2014, she was charged \$55.18 for water and sewer service each month. Ms. Wright interjected that Ms. [REDACTED] had been only charged for fees since November 2016.

Ms. [REDACTED] stated that she is on a fixed income and should not be penalized for an error that she did not make. She stated that she assumed that the bills sent to her were correct.

Ms. Wright asked the customer whether her settlement company advised her to set up an account with DC Water. Ms. [REDACTED] responded that she did not remember specifically regarding the water account but she did set up accounts with PEPCO and Washington Gas.

Ms. Wright testified that DC Water considers the charges to be valid. She stated that according to the DC Recorder of Deeds, Ms. [REDACTED] purchased her home on December 30, 2013. Ms. Wright testified that the property's builder did not follow through with the process to establish water and sewer service and that the builder should have contacted DC Water to come out to the property and set the water meter but the builder did not do so. Ms. Wright stated that the impervious team did a fly-over of the property and set up an account for the impervious charge as of April 30, 2014. Ms. Wright stated that a DC Water investigator came out to the property on October 17, 2016 and found a straight connection.

Ms. Wright stated that DC Water elected to bill the customer for one year of water and sewer service as opposed to three (3) years of service. Ms. Wright asserted that if DC Water did not bill the customer for actual water used, the utility would have to pass cost of her water use to all customers.

Ms. Wright stated that DC Water estimated that the customer used 43 CCF of water over the total eleven (11) month period of November 10, 2015 to November 22, 2016 as reflected in the Bill Summary dated November 28, 2016. Ms. Wright stated that the customer used 3 CCF of water between October 17 2016 and November 22, 2016 based upon her meter readings. Ms. Wright stated that the water meter was set at the property on October 17, 2016. Ms. Wright asserted that based upon her review of the dispute, she determined that the estimated water usage was too high so, as of yesterday- September 11, 2017, she further adjusted the customer's account by 9 CCF which resulted in a deduction in charge of \$82.44.

Ms. [REDACTED] testified that she called DC Water on July 1, 2014 for an explanation of her water and sewer charges and that she called DC Water on November 10, 2016 about her bill. Ms. Wright admitted that when Ms. [REDACTED] inquired regarding the charges in 2014, the customer care representative should have caught the billing error but the representative did not follow-up to correct the customer's billing.

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

FINDINGS OF FACT

1. The property involved is a single family residence owned and occupied by [REDACTED] (Testimony of [REDACTED])
2. The period in dispute is November 10, 2015 to November 22, 2016. (Testimony of the parties)
3. The customer purchased her property on December 30, 2013 and from date of purchase until November 2016 was not charged for water and sewer usage. (Testimony of Eileen Wright)
4. The builder of the house failed to contact DC Water of the property's completion and to set a water meter, instead, the builder did a straight connection of the water pipe. (Testimony of Eileen Wright)
5. The customer was unaware of the configuration of her water system and assumed that the water and sewer bill received by her was proper and correct. (Testimony of Carolyn Brew)
6. Ms. [REDACTED] paid her water and sewer bills, as charged and received, in a timely manner and in the amount charged. (Testimony of [REDACTED])
7. On April 30, 2014, DC Water's impervious team conducted a fly-over of the customer's property and set an account for charging the property owner for the impervious area. (Testimony of Eileen Wright)
8. On July 1, 2014, the customer telephoned DC Water for her balance due and an explanation of the charges on her water and sewer bill. (Testimony of [REDACTED]; DC Water telephone contact record)
9. The customer service representative with whom the customer spoke for an explanation of the billing charges failed and/or neglected to follow-up and correct the customer's billing charges even though the customer was being charged only for stormwater and Clean River IAC fees. (Testimony of Eileen Wright; DC Water telephone contact record)
10. DC Water back billed the customer for water and sewer usage as well as other fees associated with water use on November 28, 2016 for the period November 10, 2015 to October 17, 2016 based upon an estimate of 43 CCF of water. (Testimony of Eileen Wright; Bill Summary dated November 28, 2016)
11. The customer used and was billed for 3 CCF of water for the period October 17, 2016 to November 22, 2016 based upon an actual meter read. (Testimony of Eileen Wright; Bill Summary dated November 28, 2016)
12. DC Water placed a water meter at the property on October 17, 2016 after a DC Water investigator went to the property and found the straight connection. (Testimony of Eileen Wright)
13. Based upon the customer's actual water usage between October 17, 2016 and November 22, 2016, Ms. Wright determined that the customer's water usage had been over estimated for the period of November 10, 2015 to October 17, 2016 and that a further adjustment of 9 CCF of water was appropriated. (Testimony of Eileen Wright)
14. As of September 11, 2017, DC Water adjusted the customer's account by deducting the cost of 9 CCF of water. (Testimony of Eileen Wright)

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

DECISION

DC Water has authority to charge for its services and is not precluded from back billing a customer. (See, D.C. Code §34-2202.03(11)). However, in some cases, where a customer is caused harm through no fault of his/her doing but due to the utility's failure to perform some task, the customer is relieved from liability based upon the equitable defense of laches. Laches is an equitable defense against harm caused by another's delay or failure to take action. As such, the question presented is whether DC Water's back billing of the customer is appropriate, reasonable and fair or should DC Water have known or investigated its billing of the customer prior to November 2016.

The evidence and testimony established that the customer did not have a water meter to register her water usage because the builder of her house failed to contact DC Water to set the water meter. The evidence and testimony further established that the customer enjoyed a straight connection of her water, implied to have been done by the builder, whereby she was not charged for water usage until November 2016 after DC Water sent an investigator to the property who found the straight connection and set a water meter. DC Water asserts its right to charge the customer for water used and it contends that it is only back billing for one year of water use when, in fact, it could bill for three (3) years of water use. The customer contends that she did not cause the situation regarding her water service and she had no knowledge of the straight connection or that she was not being billed for water usage. The customer argues that she faithfully and timely paid her water and sewer bill as charged and that to back bill her creates a financial hardship and is unfair.

Some water authorities have addressed the issue of back-billing but DC Water has not done so and other 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 that there are no specific regulations authorizing back-billing or restricting the same, this body maintains that it is appropriate to examine bill disputes on a case-by-case basis in an effort to weigh unpredictable and/or arbitrary billing and the prompt settling of customer accounts against correcting billing deficiencies. In weighing the factors, the Hearing Officer is convinced that this dispute is appropriate for imposition of the doctrine of laches on behalf of the customer.

The reason that laches is appropriate in this case is that the customer called DC Water on July 1, 2014 for her account balance and an explanation of the charges on her bill. Ms. Wright conceded that the service representative failed to follow-up the customer's call and correct the customer's billing. As a result of her contact with the utility in 2014, the customer was lead to believe that her bill was correct even though the utility, through its service representative, knew or should have known, even if it did not know before the call, that the customer was occupying the property and using water and was not being billed for water usage. The customer testified that she paid her bill as charged each billing cycle and believed the charges to be correct and because she is retired and on a fixed income, the extended bill received creates a financial hardship. As noted above, the defense of laches is appropriate when an innocent party is harmed through no fault of her doing because the other party failed to take action within a reasonable time.

Clearly, the builder was at fault but DC Water had an opportunity to correct the billing error in 2014. The customer has clean hands in that she neither set the straight connection nor had knowledge of its existence and she paid the bills sent to her by DC Water after verifying with the utility that the billing was correct.

DC Water set the water meter in October 2016 and since has billed the customer based upon actual water usage. If the utility had followed up upon the customer's call in July 2014, it would have avoided sending two (2) years of bills to the customer which did not include water usage.

Based upon the foregoing, it is the determination of the Hearing Officer that the customer is and should be protected by the equitable defense of laches against the bill dated November 28, 2016 including the adjustment instituted on September 11, 2017 for the period November 10, 2015 to October 17, 2016. The customer's payments received for bills sent to her for the period November 10, 2015 to October 17, 2016 shall be credited and she will not be subject to any back billing for water usage for the period of November 10, 2015 to October 17, 2016. Going forward from October 17, 2016, the customer shall be billed for water usage and associated fees for water service and the customer shall pay that portion of the Bill Summary dated November 28, 2016 relating to the period October 17, 2016 to November 22, 2016 for 3 CCF of water used. DC Water is hereby directed to adjust the customer's account accordingly.

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

Date: Oct. 10, 2017

Copy to:

Ms. [REDACTED]
[REDACTED] Sligo Mill Road, NE
Washington, DC 20011

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

IN RE: [REDACTED]

[REDACTED] Newport Pl. NW
Washington, DC 20037

Account No: [REDACTED]

Amount in Dispute - \$ 98.79

Before Janet W. Blassingame, Hearing Officer
September 19, 2017 at 10:00 a.m.

ORDER OF DEFAULT

The customer contested a water and sewer bill for the above account for the period of time April 27, 2017 to May 30, 2017. The DC Water and Sewer Authority (DC Water) investigated the water and sewer charges and determined that the charges were valid and an adjustment to the account was not warranted. The customer appealed DC Water's decision and requested an administrative hearing.

This matter has been scheduled hearing on September 19, 2017. On September 19, 2017, Eileen Wright, Senior, Customer Care Associate, DC Water, was present for hearing on behalf of DC Water.

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 her that "Failure to appear at your scheduled hearing may result in a default judgment being entered against you." (See, 21 DCMR 415.3) As such, based upon customer's failure to appear or to request in advance that the hearing be postponed, a default judgment is entered against the customer and the determination that the bill is valid is AFFIRMED.

By: Janet W. Blassingame

Janet W. Blassingame, Hearing Officer

Date: Oct. 10, 2017

Copy to:

[REDACTED]
[REDACTED] Newport Place, NW
Washington, DC 20037

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

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

Account No: [REDACTED]

Amounts and Periods in Dispute:

1/3/2017 to 2/1/2017 = \$ 265.57
2/1/2017 to 3/2/2017 = 140.47
3/2/2017 to 4/3/2017 = 109.21
4/2/2017 to 5/1/2017 = 177.95
\$ 479.63

Before Janet W. Blassingame, Hearing Officer
September 19, 2017 at 11:00 a.m.

ORDER OF DEFAULT

The customer contested a water and sewer bill for the above account for the periods of time January 3, 2017 thru May 1, 2017. The DC Water and Sewer Authority (DC Water) investigated the water and sewer charges and determined that an adjustment to the account was not warranted. The customer appealed DC Water's decision and requested an administrative hearing.

This matter has been scheduled hearing on September 19, 2017. On September 19, 2017, Eileen Wright, Senior, Customer Care Associate, DC Water, was present for hearing on behalf of DC Water.

The customer was afforded a thirty (30) minute grace period and although the hearing was delayed until 11:30 a.m., the customer failed to appear. The letter of notification that was sent to the customer advised her that "Failure to appear at your scheduled hearing may result in a default judgment being entered against you." (See, 21 DCMR 415.3) As such, based upon customer's failure to appear or to request in advance that the hearing be postponed, a default judgment is entered against the customer and the determination that the bill is valid is **AFFIRMED.**

By: Janet W. Blassingame
Janet W. Blassingame, Hearing Officer
Date: Oct. 10, 2017

Copy to:

[REDACTED]
[REDACTED] L Street, NE
Washington, DC 20002

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

IN RE: [REDACTED] and [REDACTED]
[REDACTED] Eads Street, NE
Washington, DC 20019

Account No: [REDACTED]

Amount in Dispute - \$ 302.16

Before Janet W. Blassingame, Hearing Officer
September 19, 2017 at 1:00 p.m.

The customer contested water and sewer bills for the above account for the period of time March 17, 2017 to May 12, 2017. The DC Water and Sewer Authority (DC Water) investigated the water and sewer charges and determined that the charges were valid and an adjustment to the account was not warranted. The customer appealed DC Water's decision and requested an administrative hearing.

This matter was scheduled for hearing on September 19, 2017. Present for the hearing were [REDACTED] and Eileen Wright, Senior, Customer Care Representative, on behalf of DC Water.

The property involved is a semi-detached single family residence owned and occupied by [REDACTED] and [REDACTED]. The house has two (2) bathrooms, a washing machine, a dishwasher, one kitchen, a utility sink, and one outside faucet. Ms. [REDACTED] stated that her water and sewer bill generally ranged between Seventy Dollar (\$70.00) and Eighty Dollars (\$80.00) per billing cycle.

Ms. [REDACTED] stated that she travelled to South Africa for two (2) weeks from March 3, 2017 to March 18, 2017. She testified that the water to the house was turned off at the main water valve while she and her husband were out of the country. Ms. [REDACTED] stated that she went to a convention on March 23, 2017 and was away for three (3) days. She stated that the house was empty while they were away for the convention, but, they did not turn off the water to the house for that short trip.

Ms. [REDACTED] testified that she was shocked when she got the water and sewer bill at issue. She stated that she had never received such a high bill for water service. She stated that she telephoned DC Water in response to the bill.

Ms. [REDACTED] testified that she neither heard nor observed running water in her house during the period at issue. She stated that she only washes clothes once per week. She stated that she did not see any running water outside of the house and she does not water flowers or grass. She concluded that she did not know of anything wrong within her house to cause the bill as received.

Ms. [REDACTED] stated that DC Water sent a technician to her home to check the water meter

and technician replaced the water meter. Ms. [REDACTED] stated that DC Water did not conduct an interior inspection of her home for leaks.

Ms. [REDACTED] added that she does not run her dishwasher and did not hear any water running. She stated that she checked the commodes and she regularly changes the flappers in the toilets.

Ms. [REDACTED] testified that since her water meter has been changed, there has been muddy water in her toilet commode. She stated that she has not noticed a change in water color from the kitchen sink for cooking but her bathtub water is discolored.

Ms. Wright interjected that, in looking at the usage/meter read log, she sees no water usage occurring between May 28, 2017 and May 30, 2017. Ms. [REDACTED] stated that she and her husband were home during those days and they used water so she has not explanation as to why water usage is not shown. Ms. [REDACTED] stated that they were away during the first week in August 2017 from August 5th to August 11th and Ms. Wright stated that she sees water usage during the period that the customers were away in August. Ms. Wright stated that the customer's bill went down after May and that her July 2017 bill was \$104.00.

Ms. Wright testified that the MTU at the property worked intermittently causing DC Water to sometimes estimate the customer's water usage. Ms. Wright stated that the MTU stopped transmitting meter reads in August 2016. She explained that October 2016 to March 17, 2017, DC Water sent a technician to read the customer's water meter. Ms. Wright testified that sometime between March 17th and April 19th, water usage at the property began to increase. Ms. Wright testified that DC Water obtained a meter read from the property on April 19, 2017 of 764 but elected to estimate the customer's water usage pending verification of the meter read. Ms. Wright testified that in order to verify a meter reading, the utility must have available manpower to send a technician to the property and in this case, it waited until the next billing cycle to send a technician to read the meter. She stated that a technician was sent to the property on May 12, 2017 and obtained a meter read of 777.

Ms. Wright further testified that Ms. [REDACTED] spoke with a DC Water representative on May 23, 2017 and requested a reading of her water meter. Ms. Wright stated that a technician was sent to the property to read the water meter on May 24, 2017 and the meter read was 779.

Ms. Wright stated that on May 26, 2017, a service technician changed the customer's water meter as part of the Citywide project in which DC Water is changing all customers' water meter. Ms. Wright testified that by the time that Ms. [REDACTED] initiated her bill dispute, the water meter taken from her property had been disposed of. Ms. Wright stated that the customer has had a new water meter since May 26, 2017.

Ms. Wright concluded by stating that DC Water did not conduct an interior inspection of the customer's property because there was no point in doing so after the meter reading was verified and showed a decline in water usage at the property.

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

Hearing Officer makes the following:

FINDINGS OF FACT

1. The property involved is a single family residence owned and occupied by [REDACTED] and her husband, [REDACTED] (Testimony of [REDACTED])
2. The period in dispute is March 17, 2017 to May 12, 2017. (Testimony of the parties)
3. The MTU at the property had a history of irregular transmission which resulted in the utility having to estimate the customer's water usage during some billing cycles. (Testimony of Eileen Wright)
4. The MTU at the property stopped transmitting meter reads from the property as of August 2016. (Testimony of Eileen Wright)
5. DC Water sent a technician to the property to obtain a meter read for billing cycles occurring October 2016 up to March 17, 2017. (Testimony of Eileen Wright)
6. DC Water obtained a meter read from the property on April 19, 2017 and determined that water usage at the property had significantly increased between March 17, 2017 and April 19, 2017 but, instead of notifying the customer of the usage increase, the utility determined that it should verify the meter read so instead of billing the customer based upon the meter read obtained, it estimated the customer's water usage for the April 2017 billing cycle based the customer's historical water usage. (Testimony of Eileen Wright)
7. The customer's meter read 746 on March 17, 2017 and meter read 764 on April 19, 2017 which was 18 CCF of water having been used as opposed to 5 CCF of usage during the prior billing cycle. (Testimony of Eileen Wright; DC Water Billed History/Usage History Log)
8. DC Water sent a technician on May 12, 2017 to obtain a meter read from the property to verify the prior month's meter read and the meter read was 777. (Testimony of Eileen Wright)
9. The customer contacted DC Water on May 23, 2017 requesting a meter read. (Testimony of Eileen Wright)
10. Based upon the request of Mrs. [REDACTED], DC Water sent a technician to the property to read the water meter on May 24, 2017 and the meter read was 779. (Testimony of Eileen Wright)
11. DC Water changed the water meter at the property on May 26, 2017; the meter change was based upon the utility's citywide project to change all resident's water meters. (Testimony of Eileen Wright)
12. DC Water's meter read record indicates no water usage occurring at the property during a period that the customer testified that she and her husband were in residence- May 28 - 30, 2017, and, the meter read record indicates water being used at the property during a period that the customer testified that she and her husband were out of town- August 5 - 11, 2017. (Testimony of [REDACTED] and Eileen Wright; DC Water meter read log)
13. The customer was unaware of any plumbing issues at the property during the period in dispute and she neither saw nor heard water running within or outside of the property. The customer also checked her toilets for defects and found nothing wrong. (Testimony of [REDACTED])
14. DC Water did not test the water meter for its accuracy. (Testimony of Eileen Wright)
15. DC Water did not conduct an interior inspection of the property for leaks or plumbing

defects that could have caused increased water usage to have occurred. (Testimony of Eileen Wright)

16. Water usage at the property has registered within historical usage levels since installation of the new water meter and only 2 CCF of water registered on the old water meter between May 12, 2017 and May 26, 2017 when the meter change occurred. (Testimony of Eileen Wright; DC Water Billed History/Usage History Log; DC Water meter read record)

CONCLUSIONS OF LAW

1. The burden of proof is on the customer to show, by a preponderance of evidence, that the decision of DC Water is incorrect. (21 DCMR 420.7 and 420.8)
2. Once the customer establishes a prima facie case that s/he did not use and/or was not responsible for payment of the water as charged, the burden shifts to DC Water to rebut the customer's claim that s/he did not use the water as charged. (Gatewood v. DC WASA, Case No: 12-AA-368, decided DC Court of Appeals on July 3, 2013)
3. 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)
4. 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.
5. If the investigation of the bill challenge reveals doubtful meter registration or possible meter malfunction, the Department shall remove the meter and test it. (21 DCMR 405.2)
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)

DECISION

The customer in this matter was able to establish a prima facie case that more likely than


not the bill that she disputed was incorrect. Her case was based upon her inspection of the property and lack of any knowledge or information of any leaks or plumbing defects existing in or about the property.

After the customer establishes a prima facie case, the burden of proof shifts to the utility to rebut the customer and show that, in fact, the bill should be judged correct. Pursuant to the regulations and case law, the utility can rebut the customer's case by presenting evidence of its investigation which generally involves the testing of the water meter and inspection of the premises as well as investigating any other thing which the customer may have alleged to have caused the high water usage. (See, 21 DCMR 403) In this case, DC Water verified the meter read but did not conduct an interior inspection of the property for leaks and, even though DC Water removed and replaced the water meter, the utility did not test the water meter to determine its accuracy. Additionally, the utility's one month delay in verifying the meter read caused the customer to incur 13 CCF of water usage registering on the water meter when, if the utility had alerted the customer of the April 19th meter read, the customer could have possibly mitigated the loss of water by finding and repairing the cause of the usage and/or in the alternative, the utility could have conducted an interior inspection of the premises and found the cause of the increased water usage instead of simply allowing the usage to continue unchecked and uninvestigated; and, second, the utility failed to test the water meter to establish that the water meter was functioning within accurate range. Lastly, because DC Water removed the water meter and failed to test the meter, the utility cannot establish that the meter was functioning properly and, even though a service technician read the meter a month later and determined that usage had declined, the accuracy of the meter read cannot be established to counter the customer's assertions that she did not use the water as charged. As such, because of its lack of investigation, the utility cannot establish that the high water consumption was not caused by a faulty water meter as opposed to something occurring within the customer's home, such as a toilet or plumbing issue for which she is responsible.

DC Water acknowledged that the MTU at the property failed to transmit meter readings during the period at issue. Under the regulations, without more establishing the accuracy and functioning of the meter, the customer is to be charged based upon average previous usage at the premises. (See, 21 DCMR 308.4) As such, the determination by DC Water that the charges are valid and no basis exists for adjustment of the customer's account is REVERSED. It is hereby directed that DC Water shall adjust the customer's account for the period of March 17, 2017 to May 12, 2017 to reflect the average previous water consumption for that interval during up to three (3) previous billing cycles and charge the customer appropriately.

By: Janet W. Blassingame
Janet W. Blassingame, Hearing Officer
Date: Oct. 31, 2017

Copy to:


Eads Street, NE
Washington, DC 20019

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

IN RE: [REDACTED]
[REDACTED] Sheridan Street, NW
Washington, DC 20011

Account No: [REDACTED]

Amount in Dispute - \$ 500.84

Before Janet W. Blassingame, Hearing Officer
September 20, 2017 at 10:00 a.m.

The customer contested water and sewer bills for the above account for the period of time January 17, 2017 to April 12, 2017. The DC Water and Sewer Authority (DC Water) investigated the water and sewer charges and determined that an adjustment to the account was not warranted. The customer appealed DC Water's decision and requested an administrative hearing.

This matter was scheduled for hearing on September 20, 2017. Present for the hearing were [REDACTED] and Eileen Wright, Senior, Customer Care Representative, on behalf of DC Water.

The property involved is a single family home occupied by [REDACTED] for the past thirty-three (33) years. A total of two (2) people occupy the house. The house has five (5) bathrooms, one kitchen, radiators, a washing machine and one outside faucet. Ms. [REDACTED] stated that her water and sewer bill averages Ninety Dollars (\$90.00) per billing cycle with the same a little higher during the summer months.

Ms. [REDACTED] testified that it is her practice to simply pay her bill on the first of each month. She stated that when she opened the bill in dispute however, she was surprised and called DC Water about the charge. She stated that a customer service representative told her that a service technician would be sent to the house on April 28, 2017. Ms. [REDACTED] further stated that she knew of no leaks and that she does not and has not had to jingle the toilet handle to stop the water from running in the toilet. She went on to state that she has a toilet repair kit to immediately address any problems with her toilets. She stated that her basement toilet is turned off.

Ms. [REDACTED] testified that when the service technician inspected her house, no leaks were found but she learned that her water meter was replaced. Ms. [REDACTED] testified that the water meter had been replaced on April 27, 2017 the day before the service technician was at the property to address her dispute of the bill.

Ms. [REDACTED] questioned why she could not get access to the water meter removed from her property. Ms. Wright responded that water meters are not available for testing by customers but if something had been wrong with the water meter, technician would have noted the problem and there was no notation of anything being wrong with the water meter when it was removed.

Ms. Wright stated that malfunctioning water meters may run fast but will continue to run fast and not slow down or a malfunctioning water meter will completely stop registering water usage. In contrast however, the water meter at the customer's house, showed high registration of water usage and then slowed down which is indicative of the meter functioning properly. Ms. Wright stated that between April 12th and 27th, the meter registered only 4 CCF of water having been used at the premises.

Ms. Wright testified that DC Water estimated the customer's water usage for two (2) billing cycles and that when the water meter was read the actual read revealed that usage had been higher than estimated. Ms. Wright stated that the MTU at the property stopped transmitting meter reads as of August 2016. She asserted that DC Water sent a technician to the property for five (5) consecutive billing periods to obtain a meter read and that the utility only estimated the customer's water usage for two (2) billing cycles after the MTU stopped transmitting. Ms. Wright testified that the bill dated April 19, 2017 reflected an adjustment of the charges for the extended period of eighty-five (85) days from January 17, 2017 to April 12, 2017. Ms. Wright also testified that the MTU has no bearing upon meter function.

Ms. [REDACTED] asserted that it is too much of a coincidence that high usage occurred at the exact time that DC Water was estimating water usage at her house. The customer pointed out that DC Water had never before estimated her water usage and she had never before had high water usage occurring at her home.

Ms. Wright stated that she cannot see when water usage went up or when usage came down and she does not know what caused the high water usage. She stated that she only knows that between April 12th and April 27th, usage declined to 4 CCF.

Ms. Wright acknowledged that DC Water obtained a meter read from the property on March 17, 2017 when the meter dial was 1229. Ms. Wright testified that DC Water opted to estimate the customer's water usage for the March billing cycle as opposed to using the meter read of March 17, 2017. She stated that the customer has used 51 CCF of water between January 17, 2017 and March 17, 2017 which averaged to .864 CCF per day and that from March 17, 2017 to April 12, 2017, the customer used 7 CCF which averaged to .269 CCF per day and a significant decline in usage.

Ms. [REDACTED] stated that the problem is that she only got an estimate during the period in dispute.

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

FINDINGS OF FACT

1. The property involved is a single family dwelling occupied by [REDACTED]. (Testimony of [REDACTED])
2. The period in dispute is January 17, 2017 to April 12, 2017. (Testimony of the parties)
3. The MTU at the property stopped transmitting meter reads in August 2016. (Testimony

of Eileen Wright)

4. DC Water sent a service technician to obtain a meter read from the property for five (5) consecutive billing cycles but then estimated the customer's water usage for two (2) billing cycles within the disputed period. (Testimony of Eileen Wright; DC Water Billing History/Usage History log)
5. DC Water obtained a meter read from the property on March 17, 2017 which reflected that the meter dial was at 1229, however, DC Water elected to estimate the customer's water usage at 7 CCF for the period from February 15, 2017 to March 16, 2017. (Testimony of Eileen Wright; DC Water Billing History/Usage History log)
6. Sometime after January 17, 2017 and before March 17, 2017, the water meter registered 51 CCF of water having been used at the property, in that the meter read 1178 on January 17, 2017 and 1229 on March 17, 2017. (Testimony of Eileen Wright)
7. Because the MTU was not transmitting meter reads, DC Water cannot determine when high water usage started or declined between January 17, 2017 and March 17, 2017. (Testimony of Eileen Wright)
8. The customer was not aware of any plumbing problems within or about her property during the period in dispute. (Testimony of [REDACTED])
9. DC Water sent a service technician to inspect the property for interior leaks and no leaks were found as of April 28, 2017. (Testimony of the parties)
10. The highest recorded water usage for the customer between October 2013 to present, excluding the water usage in dispute, was 18 CCF occurring between September 15, 2015 and October 15, 2015; throughout year 2016, the customer's recorded water usage ranged between 5 CCF and 9 CCF per billing cycle with the majority of billing cycles reflecting either 6 CCF or 7 CCF of water having been used. (DC Water Billing History/Usage History log)
11. The water meter at the property was changed April 27, 2017 but was not tested. (Testimony of the parties; DC Water Billing History/Usage History log)
12. The customer's water usage returned to within normal historical range after the April 19, 2017 billing. (Testimony of the parties; DC Water Billing History/Usage History log)
13. The customer was not advised that high water usage had occurred at her home until she received the bill dated April 19, 2017 covering 85 days of water usage. (Testimony of [REDACTED])
14. At the point that DC Water obtained a meter read in March 2017, the utility became aware of high water usage having occurred at the property and it knew that it had underestimated the customer's water usage for billing purposes. (Testimony of Eileen Wright)

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. Once the customer establishes a prima facie case that s/he did not use and/or was not responsible for payment of the water as charged, the burden shifts to DC Water to rebut

the customer's claim that s/he did not use the water as charged. (Gatewood v. DC WASA, Case No: 12-AA-368, decided DC Court of Appeals on July3, 2013)

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. 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.

6. If the investigation of the bill challenge reveals doubtful meter registration or possible meter malfunction, the Department shall remove the meter and test 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)

DECISION

The customer in this matter was able to establish a prima facie case that more likely than not the bill that she disputed was incorrect. The customer's case was based upon her testimony of having no knowledge of any plumbing defect in her home, the interior inspection by DC Water not revealing any leaks, and the historical record of her water usage. DC Water, in its rebuttal, verified the registration on the water meter and its record of meter reading, as well as, the short period of estimating the customer's water usage. but lacked evidence of the accuracy of the water meter and any causation of the high water usage.

Under the regulations, when a MTU fails to transmit, DC Water can estimate a customer's water usage and such estimates are based upon the customer's past water usage history. (See, 21 DCMR 308.4) The regulations further instruct that DC Water is to read a customer's water meter on a quarterly basis. (See, 21 DCMR 308.1 and 309.1) When a customer disputes a bill, the regulations dictate that the utility conduct an investigation to ensure that its equipment is functioning properly and what possibly caused the high water usage to verify that the usage, as billed, is valid. (See, 21 DCMR 403)

In this case, DC Water was within its authority to estimate the customer's water usage and it did not exceed the perimeters set for how long it could go without obtaining an actual meter read. DC Water's investigation of the customer's challenge, however, was not sufficient. The utility failed to establish that its water meter was operating adequately. The utility failed to give the customer notice of the high water usage to allow the customer to mitigate loss and it did not inspect the premises until after the water usage had returned to within normal range, even though it knew of the high water usage occurring when it was occurring, so the utility has no knowledge or information as to the cause of the high water registration.


The facts established that DC Water had a read from the water meter in March 2017 and elected to estimate the customer's water usage instead of billing the customer based upon her actual usage. As such, in March 2017, the utility knew, even though the customer was unaware, that high water usage had occurred at the property. The utility did not advise the customer of the high water consumption and it did not take steps to investigate the cause of the high water usage or verify the meter read. In not taken any action with the information of the March meter read, the utility denied the customer opportunity to investigate what was going on in her house, possibly mitigate her loss, and/or challenge the accuracy of the meter read. By the time that the customer challenged her bill, the utility had removed and replaced the water meter, without testing the meter to establish its accuracy. DC Water argues that it verified that high water usage occurred by verifying the meter read of March 17, 2017 by taking another meter read in April. The utility actually took two (2) meter readings in April 2017, one on April 12, 2017 for billing and the second on April 27, 2017 when the meter was changed. The utility asserts that because usage declined between April 12th and 27th, such a decline verifies that the water meter was operating appropriately.

The Hearing Officer is not persuaded that DC Water rebuts the customer's prima facie case with the evidence presented by the utility. The weight of the evidence favors the customer. No leaks were known or found in the house. The meter was not tested, so its accuracy was not established. Once the customer asserted a challenge to the bill, the utility should have tested the water meter to establish its accuracy. (See, Gatewood supra.) Testimony and evidence of a decline in water usage on an untested water meter does not overcome the lack of a meter test when coupled with the absence of leaks or any other basis chargeable to the customer for the alleged high water consumption. Moreover the historical usage both past and present of the customer gives further support to the customer's position that she did not use the water as billed.

Based upon the foregoing, it is the determination of the Hearing Officer that DC Water has failed to rebut the customer's prima facie case and as such the determination by DC Water that the charge is are valid and no basis exists for adjustment of the customer's account is hereby REVERSED. It is hereby directed that DC Water shall adjust the customer's account for the period of January 17, 2017 to April 12, 2017 to reflect the average previous water consumption for that interval during up to three (3) previous billing cycles and charge the customer appropriately.

By: Janet W. Blassingame
Janet W. Blassingame, Hearing Officer
Date: Oct 31, 2017

Copy to:

 Sheridan Street, NW
Washington, DC 20011

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

IN RE: [REDACTED]
[REDACTED] U Street NW
Washington, DC 20001

Account No: [REDACTED]

Amount in Dispute - \$ 535.98

Before Janet W. Blassingame, Hearing Officer
September 20, 2017 at 11:00 a.m.

ORDER OF DEFAULT

The customer contested a water and sewer bill for the above account for the period of time February 8, 2017 to March 9, 2017. The DC Water and Sewer Authority (DC Water) investigated the water and sewer charges and determined that the charges were valid and an adjustment to the account was not warranted. The customer appealed DC Water's decision and requested an administrative hearing.

This matter has been scheduled hearing on September 20, 2017. On September 20, 2017, Eileen Wright, Senior, Customer Care Associate, DC Water, was present for hearing on behalf of DC Water.

The customer was afforded a thirty (30) minute grace period and although the hearing was delayed until 11:30 a.m., the customer failed to appear. The letter of notification that was sent to the customer advised her that "Failure to appear at your scheduled hearing may result in a default judgment being entered against you." (See, 21 DCMR 415.3) As such, based upon customer's failure to appear or to request in advance that the hearing be postponed, a default judgment is entered against the customer and the determination that the bill is valid is **AFFIRMED**.

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

Date: Oct. 10, 2017

Copy to:

Ms. [REDACTED]
[REDACTED] U Street, NW
Washington, DC 20009

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

IN RE: [REDACTED]
[REDACTED] 5th Street, NE
Washington, DC 20002

Account No: [REDACTED]

Amount in Dispute - \$ 397.74

Before Janet W. Blassingame, Hearing Officer
September 20, 2017 at 2:00 p.m.

ORDER OF DEFAULT

The customer contested a water and sewer bill for the above account for the period of time December 19, 2016 to January 30, 2017. The DC Water and Sewer Authority (DC Water) investigated the water and sewer charges and determined that an adjustment to the account was not warranted. The customer appealed DC Water's decision and requested an administrative hearing.

This matter has been scheduled hearing on September 20, 2017. On September 20, 2017, Eileen Wright, Senior, Customer Care Associate, DC Water, was present for hearing on behalf of DC Water.

The customer was afforded a thirty (30) minute grace period and although the hearing was delayed until 2:30 p.m., the customer failed to appear. The letter of notification that was sent to the customer advised her that "Failure to appear at your scheduled hearing may result in a default judgment being entered against you." (See, 21 DCMR 415.3) As such, based upon customer's failure to appear or to request in advance that the hearing be postponed, a default judgment is entered against the customer and the determination that the bill is valid is AFFIRMED.

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

Date: Oct 10, 2017

Copy to:

[REDACTED]
[REDACTED] 5th Street, NE
Washington, DC 20002

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

IN RE: [REDACTED]
[REDACTED] 11th Place, NE
Washington, DC 20002

Account No: [REDACTED]

Amount in Dispute - \$ 1,692.03

Before Janet W. Blassingame, Hearing Officer
September 26, 2017 at 10:00 a.m.

The customer contested water and sewer bills for the above account for the period of time October 11, 2016 to January 9, 2017. The DC Water and Sewer Authority (DC Water) investigated the water and sewer charges and determined that an adjustment to the account was not warranted. The customer appealed DC Water's decision and requested an administrative hearing.

This matter was scheduled for hearing on September 26, 2017. Present for the hearing were [REDACTED] [REDACTED] accompanied by her healthcare aide, [REDACTED], and Eileen Wright, Senior, Customer Care Representative, on behalf of DC Water.

The property involved is a single family home owned and occupied by [REDACTED] [REDACTED] for at least the past seventeen (17) years. The house has three (3) bathrooms, one kitchen, a washing machine, a utility sink, and two (2) outside faucets. Ms. [REDACTED] states that she lives alone and has a healthcare aide five (5) days per week for eight (8) hours per day. She stated that her water and sewer bill is generally under One Hundred Dollars (\$100.00) per billing cycle and that her bill has never exceeded Two Hundred Dollars (\$200.00).

Ms. [REDACTED] testified that there was a past due balance on her water and sewer account for which she sought assistance. She testified that she contacted DC Water to ensure that the arrearage had been paid and during the call, a customer service representative advised her that she would be receiving a high bill. Ms. [REDACTED] stated that she was shocked by the information from the utility but she did receive a high bill within a couple of days after the telephone call. Ms. [REDACTED] stated that she again telephoned DC Water and asked for an explanation of the bill and was told that her bill had been estimated. Ms. [REDACTED] stated that the customer service representative told her that a technician would be sent to her house to conduct an audit. The customer testified that she was told that the device under the meter was not working and that the item was replaced.

Ms. [REDACTED] testified that she did not realize that her water usage had been estimated.

Ms. [REDACTED] explained that she had been unable to meet all of her financial obligations due to her health and that she had gotten behind in the payment of her water and sewer bills. She stated that she was able to pay Four Hundred Dollars (\$400.00) on her account with assistance and that she paid the balance due which covered more than a couple of billing cycles. Ms.

█████ stated that her income is insufficient to cover everything.

The customer stated that she cannot remember the charge on her February 2017 water and sewer bill.

Ms. █████ testified that she has been told that her neighbor also had a high water bill for the same period of time and she understands that a service technician came to perform an audit for the neighbor, as well.

Ms. █████ stated that she did not see any leakage and that she has no leaks in her house. She stated that the service technician found nothing wrong.

Ms. █████ asserted that if the MTU had been working or changed in a timely fashion, the utility would not have had to estimate her water usage for months. She further asserted that if the MTU had been working, the high water usage could have been detected.

Ms. Wright stated that DC Water considers the charges valid based upon the customer's meter readings. Ms. Wright stated that DC Water estimated the customer's water usage for two (2) months and then obtained an actual read of the water meter for the third month billing. Ms. Wright stated that she does not know when the high water usage occurred because the customer's MTU has not worked/transmitted since year 2015.

Ms. Wright testified that DC Water removed and tested the water meter and the meter was determined to have 98.68% accuracy. She explained that according to standards set by the American Water Works Association, acceptable water meter accuracy ranges from 95% to 102%.

Ms. Wright testified that the customer has had a spike in usage registered on her water meter since the meter was changed as reflected in the May/June 2017 billing for 15 CCF. Ms. Wright stated that the interior audit of the customer's house took place on February 24, 2017.

Ms. Wright testified that 181 CCF of water registered on the customer's water meter between October 11, 2016 and January 9, 2017; she stated that DC Water can estimate a customer's water usage pursuant to applicable Municipal Regulations and she introduced a copy of the regulations found at 21 DCMR 308. She further asserted that a water meter does not break and then fix itself.

Ms. Wright stated that the customer had been in arrears on her account since year 2016. She stated that an agency paid on Ms. █████'s behalf Three Hundred Dollars (\$300.00) and that the customer paid Sixty Dollars (\$60.00) on her account in February 2017 to eliminate the arrearage. Ms. Wright explained that because of the CAP program assistance, the customer did not get a high bill in year 2016 and that unless the customer read her Bill Summary she would not know that her water usage was high. Ms. Wright pointed out that the normal CAP credit is 4 CCF per billing cycle and customer's April 2016 bill was for the estimated period June 4, 2015 to April 6, 2016 but because of adjusted credits applied to the account, the customer's charge was only \$36.74 even though the bill reflected that the customer had used 44 CCF of water.

Ms. Wright testified that on the customer's new meter, reads reflect that a spike occurred between May 9th and 10th consuming 2 CCF and then usage stopped. She testified that on May 13th there was a small spike in usage and another small spike lasting one hour on May 25th. She stated that she sees a spike in the customer's usage also between May 26th and 28th during which 8 CCF of water was used. Ms. Wright elaborated the spikes in usage tell the utility that something is causing the increased usage. Ms. Wright stated that increased usage/spikes are generally caused by a toilet.

Ms. [REDACTED] countered that she knows that she did not use the amount of water charged. She reiterated that she knew of no leaks. She also stated that she has no means by which to pay the bill. She stated that during the period in issue, she could not get out of bed and her health is now worse. She stated that she only receives \$741.00 per month and that her food stamp allotment has been cut. Ms. [REDACTED] asserted that she only has \$20.00 to her name and that she has to figure out how she will be able to eat until the end of the month.

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

FINDINGS OF FACT

1. The property involved is a single family residence owned and occupied by [REDACTED] [REDACTED]. (Testimony of [REDACTED] [REDACTED])
2. The period in dispute is October 11, 2016 to January 9, 2017. (Testimony of the parties)
3. There was a significant increase in water usage registered on the customer's water meter between October 11, 2016 and January 9, 2017. (Testimony of Eileen Wright)
4. The customer was unaware of increased water usage occurring at her house and she had no knowledge of any leaks or plumbing issues. (Testimony of [REDACTED] [REDACTED])
5. The MTU device at the property stopped transmitting meter reads in year 2015. (Testimony of Eileen Wright)
6. With respect to the period at issue, DC Water estimated the customer's water usage for two (2) billing cycles- October 11, 2016 to November 9, 2016 and November 9, 2016 to December 8, 2016. (Testimony of Eileen Wright; DC Water Billed History/Usage History log)
7. DC Water obtained an actual read of the water meter at the property on January 9, 2017 which prompted it to determine that high water usage had occurred and it had under estimated the customer's water consumption for the prior two (2) billing cycles. (Testimony of Eileen Wright; DC Water Billed History/Usage History log)
8. DC Water conducted an interior inspection of the customer's home and no leaks were found. (Testimony of the parties)
9. DC Water removed and tested the water meter and the meter was determined to have 98.68% accuracy. (Testimony of Eileen Wright)
10. Spikes in water usage have registered on the water meter at the property following the change of meters. (Testimony of Eileen Wright)
11. The customer was sent an adjusted bill in April 2016 which reflected that high water usage had occurred at the property during an extended period of estimating the customer's water usage by the utility, however, the charge was nominal due to CAP

credits and adjustments and unless the customer read the bill which reflected the high water usage of 44 CCF, the charge bore no correlation to the actual amount of water used during the billing period. (Testimony of Eileen Wright; Bill Summary dated 04/12/16)

12. The customer has a limited income and health issues which affect her ability to meet her living expenses. (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. 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. 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.

6. D.C. Municipal Regulations bar adjustment of a customer's bill when all checks and tests provide no reasonable explanation for excessive water consumption. (See 21 DCMR 408 which states: "In cases in which all checks and tests result in inconclusive findings that provide no reasonable explanation for excessive consumption, no adjustment shall be made to the bill for any portion of the excessive consumption, except as may be approved by the General Manager, based upon a demonstration by the owner or occupant that such an adjustment will further a significant public interest.")
7. Equitable laches comes into play when two prerequisites are met- the defendant must have been prejudiced by the plaintiff's delay and the delay must have been unreasonable.

(See, King v. Kitchen Magic, 391 A.2d 1184, 1187-88 (D.C. 1978); Fannie B. Martin v. William Carter, 400 A.2d 326 (D.C. 1979).

DECISION

In this case, the customer cannot establish a case that more likely than not the disputed water bill is wrong or that for some other reason she should not be responsible for payment of the bill.

The customer asserted that had DC Water replaced the faulty MTU device at her property, the high water usage could have been detected. She also asserted that due to her poor health and limited financial ability, the bill in dispute creates a financial hardship upon her and she lacks the ability to pay the bill. Such arguments are based upon an equitable defense of laches that because someone failed to do an act or did an act causing harm, through no fault of the injured party that party was harmed and the injured party should be protected and/or shielded from the injury. In this instance the injury is the high water bill now being challenged and the customer argument that she would not have received such a bill if the MTU at the property had been working.

In some cases where a customer is caused harm through no fault of his/her doing but due to the utility's failure to perform some task, the customer is relieved from liability based upon the equitable defense of laches. Based upon the facts presented, the question is whether the customer should be afforded the protection of laches.

DC Water has no specific regulation regarding back-billing or limitation on its ability to back-bill a customer's account. The authority to back-bill comes only through its broad authority to charge and collect for water and sewer service. (See, D.C. Code §34-2202.03(11).

Some water authorities have addressed the issue of back-billing but DC Water has not done so and other 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, DC Water back billed the customer when it determined that excessive water usage had occurred over a period of the two (2) billing cycles during which the customer's water usage had been estimated because the MTU at the property was not working.

In that there are no specific regulations authorizing back-billing or restricting the same, this body maintains that it is appropriate to examine bill disputes on a case-by-case basis in an effort to weigh unpredictable and/or arbitrary billing and the prompt settling of customer accounts against correcting billing deficiencies. In weighing the factors, the Hearing Officer is


convinced that this dispute is not appropriate for imposition of the doctrine of laches on behalf of the customer.

As stated, laches is an equitable defense against harm caused by another's delay or failure to take action. In this case, DC Water estimated the customer's water usage for two (2) billing cycles and then obtained a meter read. D.C. Municipal Regulations dictate that a meter is to be read quarterly and when a property has a MTU that fails to transmit, the utility is to estimate the customer's usage if it does not read the meter. (See, 21 DCMR 308.1, 308.4 and 309.1) Based upon the applicable regulations, the utility has done nothing wrong or unreasonable in estimating the customer's water usage. Moreover, after the customer challenged the adjusted bill, the utility conducted tests to investigate the cause of the high water usage. DC Water conducted an interior audit of the house for leaks and tested the water meter. No leaks were found but the water meter was determined to be operating within acceptable perimeters of accuracy. Just as the regulations allow the utility to estimate a customer's water usage for billing purposes, the regulations dictate that DC Water cannot adjust a customer's account when the cause of high water usage cannot be determined after tests are conducted and the cause is not identified, such as in this case where the meter is functioning and no leak is found. (See, 21 DCMR 408)

Accordingly, DC Water's determination that the charges are valid and no adjustment of the customer's bill is warranted is hereby AFFIRMED.

By: *Jane W. Blassingame*
Jane W. Blassingame, Hearing Officer
Date: Oct. 31, 2017

Copy to:


11th Place NE
Washington, DC 20002

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

IN RE: [REDACTED]
[REDACTED] 27th St. SE
Washington, DC 20020

Account No: [REDACTED]

Amount in Dispute - \$ 1,663.78


Before Janet W. Blassingame, Hearing Officer
September 26, 2017 at 11:00 a.m.

ORDER OF DEFAULT

The customer contested a water and sewer bill for the above account for the period of time December 17, 2015 to December 16, 2016. The DC Water and Sewer Authority (DC Water) investigated the water and sewer charges and determined that an adjustment to the account was not warranted. The customer appealed DC Water's decision and requested an administrative hearing.

This matter was scheduled for hearing on September 26, 2017. Eileen Wright, Senior, Customer Care Associate, DC Water, was present for hearing on behalf of DC Water.

The customer was afforded a thirty (30) minute grace period and although the hearing was delayed until 11:30 a.m., the customer failed to appear. The letter of notification that was sent to the customer advised her that "Failure to appear at your scheduled hearing may result in a default judgment being entered against you." (See, 21 DCMR 415.3) As such, based upon customer's failure to appear or to request in advance that the hearing be postponed, a default judgment is entered against the customer and the determination that the bill is valid is **AFFIRMED**.

By: 
Janet W. Blassingame, Hearing Officer
Date: Oct. 10, 2017

Copy to:

Ms. [REDACTED]
[REDACTED] 27th Street, SE
Washington, DC 20020

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

IN RE: [REDACTED] Bladensburg Rd. NE
c/o [REDACTED]
[REDACTED] Kinnicutt Drive
Woodbridge, VA 22192

Service Address:

[REDACTED] Bladensburg Rd. NE

Account No: [REDACTED]

Periods and Amounts in Dispute:

2/22/2017 to 3/13/2017	\$ 2032.31
3/13/2017 to 4/16/2017	745.26
4/16/2017 to 5/9/2017	321.41
5/19/2017 to 6/15/2017	577.52
6/15/2017 to 7/18/2017	302.16

Before Janet W. Blassingame, Hearing Officer
September 26, 2017 at 1:00 p.m.

The customer contested water and sewer bills for the above account for the period of time February 22, 2017 to July 18, 2017. The DC Water and Sewer Authority (DC Water) investigated the water and sewer charges and determined that the charges were valid and an adjustment to the account was not warranted. The customer appealed DC Water's decision and requested an administrative hearing.

This matter was scheduled for hearing on September 26, 2017. Present for the hearing were: [REDACTED] with [REDACTED], his co-worker; and, Eileen Wright, Senior, Customer Care Representative, on behalf of DC Water.

The property involved is a two (2) story commercial building housing an auto repair shop on the ground level. The property is situated between a residence and a church. The property has two (2) bathrooms on each floor, however, Mr. [REDACTED] stated that the second floor of the building is not used, the water is turned off and the door to that floor is locked. Mr. [REDACTED] stated that five (5) employees work in the shop which is open Monday through Saturday from 9:00 a.m. to 6:00 p.m. Mr. [REDACTED] stated that he purchased the property in October 2014 and moved his business to the location in November 2016. He stated that prior to November 2016, the building was vacant.

According to Mr. [REDACTED], he has experienced a problem regarding water service at the building since its purchase. He stated that despite inspection by a plumber, no leaks have been found.

Mr. [REDACTED] testified that water service to the building was disconnected on June 2, 2016 with reconnection February 22, 2017 after the bill was paid. The customer testified that the first bill received after the service was reconnected was dated 3/20/2017.

Ms. Wright explained that the customer's first billing after reconnection of service was made up primarily of back billed charges going back to June 2, 2016 for Clean River and Storm water fees. She stated that the billing was as follows:

\$1,468.06	Clean River
176.25	Storm Water
388.00	all other charges including water, sewer, turn-on, Pilot, Right-of-Way, and replacement

Ms. Wright stated that the customer paid \$677.44 on March 28, 2017, \$225.82 on May 1, 2017 and \$207.21 on September 20, 2017.

Mr. [REDACTED] stated that he was told that usage was occurring on Sundays when the shop is closed.

Ms. Wright stated that the customer's water meter was changed on May 9, 2017 due to DC Water's project to change all water meters in the District of Columbia. She stated that after the meter change, the customer used 37 CCF between May 9, 2017 and June 15, 2017.

Mr. [REDACTED] testified that he had a plumber inspect the premises twice and both times, the plumber found no leaks. He stated that the first inspection took place on April 24, 2017 and second inspection took place in June 2017, however, he does not have the plumber's report and cannot recall the specific date of the second inspection.

Ms. Wright asserted that high water usage was occurring at the building from February 2017 until June or July 2017. She stated that the old meter was in place from May 3, 2016 until April 29, 2017 and that the water service was turned off from June 2, 2016 until February 27, 2017. Ms. Wright testified that spikes are seen in the customer's water usage on both the old meter and new meter. On the old meter, spikes registered February 24, 2017 to February 27, 2017; February 28, 2017 to March 5, 2017 and March 7, 2017 to March 11, 2017. On the new meter, Ms. Wright testified that spikes registered on March 18, 2017 to March 19, 2017 (6 CCF); May 21, 2017 to May 22, 2017; June 7, 2017 to June 8, 2017 (5 CCF); May 23, 2017 to May 24, 2017 (3 CCF); June 10, 2017 (2 CCF); and June 11, 2017 to June 12, 2017.

Mr. [REDACTED] interjected that no one is in the shop at night or on Sundays and some of the spike periods are when no one is in the building. Mr. [REDACTED] asserted that he has ADT security and one must use a code in order to get into the building. Mr. Malik added that the door to the building is locked and the ADT security system is on when the shop is closed. He also stated that there is no outside faucet.

Ms. Wright stated that the pattern of high water usage stopped between June 20, 2017 and July 18, 2017 because only 1 CCF registered on the water meter during that period. Mr. Malik stated that the property next door to the shop was being renovated and was undergoing construction for two (2) to three (3) months prior to June 2017.

The parties agreed that the customer will submit for consideration the plumber's report memorializing the second inspection of the premises and Mr. [REDACTED] would submit the ATD log of

entries and exists at the building.

Post-hearing, the customer emailed the second plumber's report to Ms. Wright. Ms. Wright provided the report to the Hearing Officer and the report was accepted as part of the record. The report was dated 6/7/17 and the plumber stated that he found no leaks after checking all pipes and faucets and that the toilets tanks were determined to be OK. The customer did not submit the ADT log.

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

FINDINGS OF FACT

1. The property involved is a commercial building from which an auto repair shop is operated on the first floor; the second floor of the building is unoccupied. (Testimony of [REDACTED])
2. There are five (5) consecutive periods of dispute starting February 22, 2017 and ending July 18, 2017. (Testimony of the parties)
3. The building was unoccupied from date of purchase- October 2014 until November 2016, however, water service was turned off to the building from June 2, 2016 until February 22, 2017. (Testimony of the parties)
4. The first bill, after service was restored to the building, reflected back billed fee charges for impervious area (Clean River) and stormwater for the period that service was turned off, as well as, the fee for restoring service to the property; the bill was dated March 20, 2017 and of the \$2,032.31 charge reflected on the Bill Summary, the water service and sewer service charges totaled \$306.90. (Testimony of Eileen Wright; Bill Summary dated 03/20/17).
5. High water usage occurred at the property upon restoration of service and 31 CCF of water registered on the water meter between 02/22/17 and 3/13/17. (Bill Summary dated 03/20/17)
6. High water usage registered on the water meter between 03/13/17 and 4/16/17 – 53 CCF. (Bill Summary dated 04/19/17)
7. DC Water changed the water meter at the property on April 9, 2017. (Testimony of Eileen Wright; DC Water Billed History/Usage History log)
8. After the water meter was changed, there were continuing spikes in water usage occurring at the property. (Testimony of Eileen Wright)
9. Over the course of the periods in dispute, there have been two (2) different water meters at the property and high water usage registered on both water meters. (Testimony of Eileen Wright; DC Water Billed History/Usage History log)
10. The customer had a plumber inspect the property on two (2) occasions and the plumber found no leaks. (Testimony of [REDACTED]; plumber's invoices by Roto Rooter dated 4/24/17 and 6/7/17)
11. DC Water did not conduct a test on either water meter situated at the property during the periods in dispute. (Testimony of Eileen Wright)
12. On May 9, 2017, DC Water sent a technician to verify the metering readings used to bill the account. (DC Water Investigation Letter dated July 10, 2017)

13. DC Water ruled out the presence of an underground leak as a possible cause of high water usage at the property because usage declined and underground leaks do not repair themselves and the usage remains high until repairs are made. . (DC Water Investigation Letter dated July 10, 2017)

CONCLUSIONS OF LAW

1. The burden of proof is on the customer to show, by a preponderance of evidence, that the decision of DC Water is incorrect. (21 DCMR 420.7 and 420.8)
2. Once the customer establishes a prima facie case that s/he did not use and/or was not responsible for payment of the water as charged, the burden shifts to DC Water to rebut the customer's claim that s/he did not use the water as charged. (Gatewood v. DC WASA, Case No: 12-AA-368, decided DC Court of Appeals on July3, 2013)
3. As necessary to investigate a challenge to a bill, DC Water may do 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. If the investigation of the bill challenge reveals doubtful meter registration or possible meter malfunction, the Department shall remove the meter and test it. (21 DCMR 405.2)
5. If the results of the tests under §405.2 verify doubtful registration or meter malfunction, the bill shall be adjusted to equal the average consumption of water at the same premises for up to three (3) previous comparable periods for which records are available. (21 DCMR 405.3)
6. 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 has able to establish a prima facie case that more likely than not certain of the bills in dispute were incorrect based upon the submission of two (2) plumber's report reflecting that no leaks were found after inspection of the building. DC Water, in its rebuttal of the customer's case, established that, with respect to the Bill Summary dated 03/20/17 for the period February 22, 2017 to March 13, 2017, the total charge was comprised in great part by back billed fees and that the fees amounted to \$1644.31 plus a \$50.00 turn on fee for restoration of water service. The customer presented no evidence or testimony challenging the fees associated with the billing and, as such, only the water service and sewer service charge were at issue. Regarding its billing of the customer for water and sewer service for all of the periods in dispute, the utility established that the customer had been billed based upon actual meter reads and that the meter reads had been verified as correct. DC Water further established that although it did not test the water meters at the property, it did not doubt the meter registration because the same had been verified. Moreover, the utility presented its billed and usage history of the customer and established that spikes in usage registered not only on one water meter at the property but, after the water meter was changed, spikes in usage registered, as well, on the second water meter placed at the property. Lastly, DC Water was able to rule out the existence of an underground leak as a possible cause of high water usage occurring at the property based upon the fact that usage at the property spiked and declined and declines in usage caused by underground leaks do not occur until and unless repairs are performed and no repairs were performed in this instance.

DC Water is responsible for investigating the correctness of any bill disputed by a customer and the arsenal of ways to conduct its investigation are numerous and vary upon each situation. A very effective thing to do in any investigation is to test the water meter. In this case, the utility tested neither water meter situated at the property during the periods in dispute. The first water meter was changed based upon the city-wide project to change all water meters of DC Water customers and the meter was disposed of prior to the start of the investigation. With respect to the second water meter installed at the property as of April 9, 2017, the utility asserted that it verified the meter readings but did not test the meter because it did not doubt the meter registration or function of the meter. The Hearing Officer considered the lack of meter tests in the investigation of the customer's dispute and in weighing the lack of the tests against the fact that both meters registered high water usage, that high water usage registered at the property thru out the customer's ownership and even after the service was disconnected, high water usage resumed, the Hearing Officer concluded that something is amiss at this property despite the findings of the plumber of no leaks. Based upon the evidence and testimony, it was established by DC Water that the high water usage was not caused by an underground leak and the readings were actual without any indication of anything being wrong with two (2) separate water meters. Had the high water usage been an isolated event the function of the water meter and its testing would have weighed more, however, because the high usage span over the course of the

ownership of the property, the utility's position that the usage had to be caused by something within the building is a probable explanation and when considered with the other facts established by the utility, the weight of the evidence and testimony favors DC Water and its determination that the charges are valid and no basis exists to adjust the customer's account.

Moreover, 21 DCMR 408 dictates that 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. Here, the function of the water meters was not at issue and the cause of the usage could not be determined even after both DC Water and the customer's plumber investigated, so, the findings after investigation are inconclusive. As such, DC Water's determination that the charges are valid and no basis exists to adjust the customer's account is hereby AFFIRMED.

By: Janet W. Blassingame
Janet W. Blassingame, Hearing Officer
Date: Nov. 13, 2017

Copy to:

Mr. [REDACTED]
[REDACTED]
[REDACTED] Kinnicutt Drive
Woodbridge, VA 22191

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

IN RE: [REDACTED]
[REDACTED] Decatur Street, NW
Washington, DC 20011

Account No: [REDACTED]

Amount in Dispute - \$ 1,777.33

Before Janet W. Blassingame, Hearing Officer
September 27, 2017 at 10:00 a.m.

The customer contested water and sewer bills for the above account for the period of time December 20, 2016 to March 20, 2017. The DC Water and Sewer Authority (DC Water) investigated the water and sewer charges and determined that the charges were valid and an adjustment to the account was not warranted. The customer appealed DC Water's decision and requested an administrative hearing.

This matter was scheduled for hearing on September 27, 2017. Present for the hearing were [REDACTED] and Eileen Wright, Senior, Customer Care Representative, on behalf of DC Water.

The property involved is a three (3) story townhome purchased by [REDACTED] in year 2007. Mr. [REDACTED] stated that he completely renovated the property and moved in in year 2008. The property has one kitchen, three and one-half (3 ½) bathrooms, radiators, a washing machine, a dishwasher, and one outside faucet. Mr. [REDACTED] stated that two (2) people live in the home and that his water and sewer bill averages mid-Forty Dollars (\$40.00) per billing cycle.

Mr. [REDACTED] testified that when he received the bill now being challenged, he thought that the bill was a mistake and he called DC Water. He stated that he was told that the bill covered December 2016 to March 2017 and was based upon an actual meter read and prior to the billing, his bills had been a guess/estimate of usage. The customer stated that DC Water scheduled an inspection of his home and when the service technician did the inspection, he did dye tests on the toilets but found no leaks. Mr. [REDACTED] also stated that the service technician noted that no recent plumbing work was evident.

Mr. [REDACTED] testified that his current water and sewer bill charges have been in the Seventy Dollar (\$70.00) range.

Mr. [REDACTED] testified that the adjusted bill did not make any sense to him as a three (3) month adjustment. The customer stated that he did not have any running toilets, that he does not have to jingle the toilet handles to stop the toilet from running, that nothing unusual occurred in or about his house and that his outside faucet is turned off from inside the basement of the house. Mr. [REDACTED] also stated that he works at home and was home during the period in issue. He stated that he believes that he did not have a leak to cause the high usage registration and he believes that his bill should remain as usual.

Ms. Wright asked the customer regarding his toilet on the third floor of the house and Mr. [REDACTED] responded that the toilet is generally turned off but for the inspection, he turned the water on to the toilet.

Ms. Wright stated that DC Water considers the charges in dispute to be valid based upon meter readings. She stated that the property has an automated meter with a MTU but that the MTU stopped transmitting in September 2016.

Ms. Wright testified that the customer's water usage had been consistently 1CCF or 2 CCF. She clarified for the customer that 1 CCF was equivalent to 748 gallons of water.

Ms. Wright testified that in November 2016, the utility received a high usage read of 665 and the utility wanted to verify that the reading was accurate so the meter was read on December 20, 2016 and the read was 513. She testified that the utility obtained another meter read from the property on February 22, 2017 and the read was 678. She stated that the utility elected to estimate the customer's water usage instead of billing based upon the February meter read. Ms. Wright stated that DC Water sent a technician to the property to obtain another meter read on March 20, 2017 and the meter read was 683. Ms. Wright stated that the meter read of 513 in December 2016 was determined to have been an error.

Ms. Wright testified that DC Water adjusted the customer's account and sent the customer an adjusted bill reflecting the meter read of 513 to 683; the bill was dated March 23, 2017. Ms. Wright stated that had DC Water billed the customer based upon the November 2016 read of 665 to the February 2017 read of 683, the customer's water usage would have been 18 CCF.

Ms. Wright testified that had the customer been billed based upon meter reads in December, 2016, he would have been billed for 155 CCF based upon a meter read of 510 on September 20, 2016 to a meter read of 665 on November 22, 2016. Ms. Wright acknowledged that if the customer had been billed based upon meter readings in December 2016, the customer would have been on notice that something was occurring at the property causing high water usage.

Ms. Wright testified that DC Water did not perform a meter test. She stated that the meter was removed and replaced at the property on March 30, 2017.

Mr. [REDACTED] interjected that he had been told by the technician who came to his property that it was DC Water's practice and protocol to test the water meter. Ms. Wright stated that she did not know why the meter was changed. She stated that the technician had been directed per the service order to check for leaks and new parts at the property. Ms. Wright stated that the meter that was changed had been installed at the property in year 2001 and was sixteen (16) years old.

Ms. Wright acknowledged that the customer's account reflects a 5% late charge of \$177.73 as well as some 1% late charges amounting to \$196.73; Ms. Wright stated that she would remove the inappropriate late charges as of the day of the hearing. Ms. Wright clarified

that the account also reflected a charge of \$1.78 and that the charge was appropriate and would not be removed.

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

FINDINGS OF FACT

1. The property involved is a single family residence owned and occupied by [REDACTED] [REDACTED]. (Testimony of [REDACTED] [REDACTED])
2. The period in dispute is December 20, 2016 to March 20, 2017. (Testimony of the parties)
3. The MTU at the property stopped transmitting meter reads in September 2016. (Testimony of Eileen Wright)
4. DC Water estimated the customer's water usage for billing purposes in October and November 2016 and in January and February 2017. (Testimony of Eileen Wright; DC Water Billed History/Usage History log)
5. DC Water had actual meter reads from the property in November 2016 and February 2017 but elected to estimate the customer's water usage for those months. (Testimony of Eileen Wright; DC Water Billed History/Usage History log)
6. The meter read in November 2016 was 665; the meter read in December 2016 was 513; the meter read February 2017 was 678; and, the meter read in March 2017 was 684. (Testimony of Eileen Wright)
7. DC Water used the meter reads obtained in December 2016 and March 2017 as basis for adjustment of the customer's account and billing. (Testimony of Eileen Wright; DC Water Billed History/Usage History log)
8. Either the November 2016 of 665 or the December 2016 read of 513 was in error; Ms. Wright stated that the December 2016 read was in error. (Testimony of Eileen Wright)
9. DC Water inspected the customer's property for leaks and no leaks were found. (Testimony of the parties)
10. DC Water removed the customer's water meter but did not test the meter. (Testimony of Eileen Wright)
11. It is unknown why the technician removed and replaced the water meter from the property because his directions, per the service order, were limited to check the property for leaks repaired and replaced parts. (Testimony of Eileen Wright; DC Water Service Order dated 2017-03-30)
12. The water meter removed from the property was 16 years old. (Testimony of Eileen Wright)
13. The customer's account was incorrectly charged for late fees amounting to \$374.46 which were to be removed, per declaration of Ms. Wright, on the day of the hearing of this matter. (Testimony of Eileen Wright)
14. The customer was not aware of any leaks or plumbing defects in or about his property, did not hear his toilets running and had turned off the water to one of the bathroom toilets. (Testimony of [REDACTED])
15. The customer's water usage had been consistent at 1 or 2 CCF per billing period except for and prior to the period in dispute. (Testimony of [REDACTED]; DC Water Billed

History/Usage History log)

16. After the water meter change that occurred March 30, 2017, the customer's water usage has increased and currently is ranging between 3 CCF and 5 CCF per billing cycle. (DC Water Billed History/Usage History log)

CONCLUSIONS OF LAW

1. The burden of proof is on the customer to show, by a preponderance of evidence, that the decision of DC Water is incorrect. (21 DCMR 420.7 and 420.8)
2. Once the customer establishes a prima facie case that s/he did not use and/or was not responsible for payment of the water as charged, the burden shifts to DC Water to rebut the customer's claim that s/he did not use the water as charged. (Gatewood v. DC WASA, Case No: 12-AA-368, decided DC Court of Appeals on July3, 2013)
3. As necessary to investigate a challenge to a bill, DC Water may do 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. If the investigation of the bill challenge reveals doubtful meter registration or possible meter malfunction, the Department shall remove the meter and test it. (21 DCMR 405.2)
5. If the results of the tests under §405.2 verify doubtful registration or meter malfunction, the bill shall be adjusted to equal the average consumption of water at the same premises for up to three (3) previous comparable periods for which records are available. (21 DCMR 405.3)
6. D.C. Municipal Regulations bar adjustment of a customer's bill when all checks and tests provide no reasonable explanation for excessive water consumption. (See 21 DCMR 408 which states: "In cases in which all checks and tests result in inconclusive findings that provide no reasonable explanation for excessive consumption, no adjustment shall be made to the bill for any portion of the excessive consumption, except as may be approved by the General Manager, based upon a demonstration by the owner or occupant that such an adjustment will further a significant public interest.")

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

DECISION

In this case, the customer established a prima facie case that more likely than not the disputed water bill is wrong or that for some other reason he should not be responsible for payment of the bill. The basis of the customer's case was that he did not know of any leaks or plumbing defects in the home as well as DC Water's inspection of the premises which failed to detect any leaks and/or plumbing defects, evidence of repairs or new parts. The customer also cited his historical record of water usage.

Once a customer establishes a prima facie case, the burden shifts to DC Water to rebut the customer and establish that the charges are valid. (Gatewood, supra.) Here, the utility conducted an interior inspection of the premises and no leaks were detected. The utility also removed but did not test the water meter at the premises and as such it lacked information and could not establish that the water meter was functioning appropriately and within established perimeters for meter accuracy. The evidence and testimony further established a faulty meter read (December 2016 at 513) which the utility elected to use as the starting read for adjustment of the customer's account and back billing the customer for actual water use. During the hearing, Ms. Wright stated that the December meter read had to be faulty. The evidence and testimony also was that despite having the contradicting meter reads, i.e. the November 2016 meter read at 665, the utility elected to estimate the customer's water usage setting the usage at a much lower volume than the actual read that it had and then the utility used the meter read of the subsequent month. At the point that DC Water obtained the December meter read, it should have tested the water meter for accuracy. Moreover, the utility, based upon the November meter read, had information and knowledge that high water usage was likely occurring at the property and no such notice was given to the property owner to allow him to investigate and possibly mitigate loss of water and prevent a high charge for water usage. According to testimony and evidence presented, the customer's last actual meter read before November 2016 was obtained by the utility in September 2016 and the meter read was 510. Instead of informing the customer at the time of obtaining the November 2016 read of 665, the utility allowed four (4) billing cycles to occur, to include billing based upon the faulty December 2016 meter read of 513 and ultimately back billed the customer for 170 CCF of water usage. Because the utility did not test the water meter and it admits that a faulty meter read was obtained, a rebuttal of the customer's case is impossible.

Pursuant to the Municipal Regulations, when there is a faulty meter read, the utility is to test the water meter. (See, 21 DCMR 405.2) Pursuant to the Municipal Regulations, the utility is to adjust the customer's the bill to equal the average consumption of water at the same premises for up to three (3) previous comparable periods for which records are available. (See, 21 DCMR 405.3)

Alternatively, the facts of this case also support the defense of laches by the customer.

DC Water has no specific regulation regarding back-billing or limitation on its ability to back-bill a customer's account. The authority to back-bill comes only through its broad authority to charge and collect for water and sewer service. (See, D.C. Code §34-2202.03(11). But because the customer was harmed through no fault of his doing but due to the utility not informing of the high meter readings obtained in November 2016, a persuasive argument can be made that the customer should be relieved from liability for the increased usage.

Thus, the utility cannot show that the meter was functioning properly and adequately within accuracy standards and the utility did not inform the customer of the possibility of high water usage occurring at the property as early as sometime between October and November 2016.

Accordingly, DC Water cannot rebut the customer's case and, even if it could, equity would shield the customer from liability. As such, DC Water's determination that the charges are valid and no adjustment of the customer's bill is warranted is hereby REVERSED. DC Water is directed to adjust the customer's account to equal the average consumption of water at the same premises for up to three (3) previous comparable periods for which records are available for the period December 20, 2016 to March 20, 2017.

By: Janet W. Blassingame
Janet W. Blassingame, Hearing Officer
Date: Oct. 31, 2017

Copy to:

Mr. [REDACTED]
[REDACTED] Decatur Street, NW
Washington, DC 20011

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

IN [REDACTED]
[REDACTED] New Hampshire Avenue, NW
Washington, DC 20011

Account No: [REDACTED]

Amount in Dispute - \$ 306.76

Before Janet W. Blassingame, Hearing Officer
September 27, 2017 at 11:00 a.m.

The customer contested water and sewer bills for the above account for the period of time May 10, 2017 to June 12, 2017. The DC Water and Sewer Authority (DC Water) investigated the water and sewer charges and determined that the charges were valid and an adjustment to the account was not warranted. The customer appealed DC Water's decision and requested an administrative hearing.

This matter was scheduled for hearing on September 27, 2017. Present for the hearing were [REDACTED] on behalf of [REDACTED] and Eileen Wright, Senior, Customer Care Representative, on behalf of DC Water.

The property involved is a single family residence owned by [REDACTED] and [REDACTED]. Ms. [REDACTED] testified that [REDACTED] is age 102 years old and is bedridden. The property has one and one-half (1 ½) bathrooms, one kitchen, radiators, two (2) outside faucets, and a utility sink. Ms. [REDACTED] stated that they have lived in the home since April 1956 and in recent years the water and sewer bill has ranged between Sixty-Seven Dollars (\$67.00) and Eighty-seven Dollars (\$87.00) per billing cycle.

Ms. [REDACTED] complained that the water meter was changed during the period in dispute. She testified that DC Water was working in front of the property next door and in between the properties.

Ms. Wright stated that DC Water considers the charges valid based upon meter readings from the property. She stated that the bill at issue is dated June 14, 2017.

Ms. Wright testified that the customers' water meter was changed on May 16, 2017 based upon the utility's on-going project to change all water meters within the District of Columbia. Prior to the meter change, Ms. Wright stated that the customer's water usage had been estimated for the period March 8, 2017 to May 10, 2017. Ms. Wright testified that DC Water did not adjust its estimate of the customers' water usage, that the utility did not back bill the customer and the customer did not incur any additional charges for service when an actual meter read was obtained. Ms. Wright testified that had the utility adjusted the customers' account through back

billing for actual water used during the estimated period of usage, the customer would have been billed for 30 CCF of water as opposed to 22 CCF as charged.

Ms. Wright testified that she cannot determine when high water usage occurred at the property because she lacked meter readings. Ms. Wright testified that the MTU at the property stopped transmitting meter reads after September 2016.

Ms. [REDACTED] interjected that the actual meter reads from the property were consistently lower.

Ms. Wright testified that the actual meter read obtained by DC Water on April 13, 2017 was high at 719 but the utility elected not to bill the customer based upon the actual meter read but to estimate the customer's water usage. Ms. Wright stated that the estimate usage was a meter read of 706 which resulted in the customer being billed for 13 CCF of water less than what registered on the water meter.

Ms. Wright testified that the customer's meter read was 735 on May 10, 2017 but that the usage was estimated. She testified that DC Water obtained a meter read on May 16, 2017 and the meter read 736 and the customer was billed based upon the meter read of 736.

Ms. Wright testified that DC Water conducted an audit of the property for leaks on July 21, 2017 and no leaks were found. Ms. Wright testified that DC Water did not test the customer's water meter. She explained that DC Water's off-site billing contractor is to generate a service order to verify a high usage meter read and in this case, no service order was generated in April when the meter read was 714. Ms. Wright further testified that the off-site billing contractor makes the decisions if and when a customer's usage should be estimated.

Ms. [REDACTED] commented that her water and sewer usage seems to have gone haywire just one time. Ms. Wright responded that high usage was billed for six (6) days from May 10, 2017 to May 16, 2017 and occurred between March and April.

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

FINDINGS OF FACT

1. The property involved is a single family home owned and occupied by [REDACTED] and [REDACTED]. (Testimony of [REDACTED])
2. The period in dispute is May 10, 2017 to June 12, 2017. (Testimony of the parties)
3. The MTU at the property stopped transmitting meter reads after September 2016. (Testimony of Eileen Wright)
4. High water usage registered on the water meter sometime in March or April 2017, however, DC Water elected to estimate the customer's water usage. (Testimony of Eileen Wright)
5. DC Water conducted an interior inspection of the house on July 21, 2017 and no leaks were found. (Testimony of Eileen Wright)

6. DC Water removed and changed the water meter at the property on May 16, 2017; the water meter was not tested. (Testimony of Eileen Wright)
7. DC Water estimated the customers' water usage from March 8, 2017 until May 10, 2016 and then charged the customers for six (6) days of water usage from May 10, 2017 to May 16, 2017 which reflected 22 CCF of water having been used during that period. (DC Water Billed History/Usage History log)
8. DC Water combined the 22 CCF of water billed from May 10, 2017 to May 16, 2017 with its billing of 4 CCF of water for the period May 16, 2017 to June 12, 2017 and the charges are reflected in the Bill Summary dated June 14, 2017. (DC Water Billed History/Usage History log)
9. DC Water did not adjust the customers' account to correct its estimated billing but simply billed going forward from last estimate to meter read with respect to its billing for 22 CCF of usage between May 10, 2017 and May 16, 2017. (Testimony of Eileen Wright; (DC Water Billed History/Usage History log)
10. DC Water obtained a meter read on April 13, 2017 and deemed that the read reflected high water usage; the meter read was 719, however, the utility estimated the customer's usage and billed as though the meter read was 706. As such, the customer's water meter reflected 13 CCF more of water having been used at the property than for which the customer was actually billed by the utility. (Testimony of Eileen Wright)
11. The utility obtained a meter read from the property on May 10, 2017 of 735 but estimated the customers' water usage and meter read at 714 for its billing dated May 12, 2017. (Testimony of Eileen Wright; (DC Water Billed History/Usage History log)
12. The customer denies using the water as charged and refers to her pattern of historical usage and believes the meter went haywire for one time. (Testimony of [REDACTED] [REDACTED] [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. Once the customer establishes a prima facie case that s/he did not use and/or was not responsible for payment of the water as charged, the burden shifts to DC Water to rebut the customer's claim that s/he did not use the water as charged. (Gatewood v. DC WASA, Case No: 12-AA-368, decided DC Court of Appeals on July3, 2013)
3. 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)
4. As necessary to investigate a challenge to a bill, DC Water may do 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.

- 5. If the investigation of the bill challenge reveals doubtful meter registration or possible meter malfunction, the Department shall remove the meter and test it. (21 DCMR 405.2)
- 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. 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.")
- 8. Equitable laches comes into play when two prerequisites are met- the defendant must have been prejudiced by the plaintiff's delay and the delay must have been unreasonable. (See, King v. Kitchen Magic, 391 A.2d 1184, 1187-88 (D.C. 1978); Fannie B. Martin v. William Carter, 400 A.2d 326 (D.C. 1979).

DECISION

In this case the evidence and testimony revealed that high water usage registered on the customers' water meter and even though the utility had meter reads reflecting the occurrence of high water usage at the property, the utility elected to estimate the customers' usage for billing purposes. The evidence and testimony, further, revealed that DC Water seeks to payment for the usage which occurred during the period that usage was estimated by billing the customers forward without adjusting the account. As such, the customers' billing looks as though they had a significant increase in water usage over a six (6) day period when, in fact, the usage did not occur during the billing period. The very fact that the utility failed to bill the customer for usage during the correct billing period supports and makes the customers' case that the disputed bill is wrong by not reflecting actual and true usage during the disputed billed period.

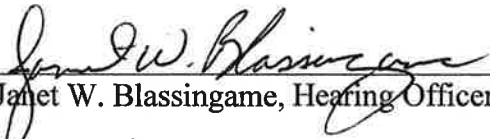
Ms. Wright testified that by billing the customer forward as was done, as opposed to adjusting the account, the customer paid the same amount for service.

DC Water is authorized to estimate a customer's water usage in instances that the MTU device fails to transmit readings from the water meter. (See, 21 DCMR 308.4) Likewise, DC Water can adjust and correct a customer's billing and account if and when it determines that it has computed usage in error. DC Water has no specific regulation regarding back-billing or limitation on its ability to back-bill a customer's account. The authority to back-bill comes only through its broad authority to charge and collect for water and sewer service. (See, D.C. Code §34-2202.03(11)). The problem here is that the utility is not back billing the customer or correcting the customer's billing, but, instead, has billed forward the increased usage so that the bill now being disputed does not reflect actual water used during the billing period.

Having challenged the bill, the customer is entitled and regulations dictate that the utility investigate the contested charges. The regulations outline various things that the utility is or may do to investigate the challenge to include to verify the computations and meter readings, check for leaks, and check for meter malfunction. (See, 21DCMR403.2) DC Water conducted an interior inspection of the house and no leaks were found. DC Water did not test the water meter. Once a customer establishes a prima facie case that s/he did not use the water as charged, the utility must rebut the customer's case. (See, Gatewood, supra.) The court in Gatewood established that DC Water was to test the water meter to determine meter function and accuracy. Without the meter test and its results, it is virtually impossible for the utility to rebut a customer's prima facie case. So, here, there is a bill which is incorrect and the utility cannot prove that the water as charged, even if the bill is modified to show an adjustment of the account and its billing, registered on a water meter that was functioning and was accurate.

A twist to this matter is that DC Water had meter reads and knew that high water usage was occurring at the property but elected not to use the meter reads and instead estimated the customer's water usage. Based upon such facts, the Hearing Officer generally will consider whether laches is an appropriate defense by the customer against the charges. In this case, however, laches is not reached because the utility cannot overcome the lack of the meter test.

Based upon the foregoing, the determination by DC Water that the charges are valid and no basis for adjustment of the customer's account is warranted is hereby REVERSED. DC Water is hereby direct to adjust the customer's account/bill for the period May 10, 2017 to May 16, 2017 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)

By: 
Janet W. Blassingame, Hearing Officer
Date: Oct. 31, 2017

Copy to:

Ms

c/o

[REDACTED]
[REDACTED]
[REDACTED] New Hampshire Avenue, NW
Washington, DC 20011

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

IN RE: [REDACTED]
P.O. Box [REDACTED]
Garrett Park, MD 20896

Service Address:
4414 Harrison Street, NW

Account No: [REDACTED]

Amount in Dispute - \$ 2,127.52

Before Janet W. Blassingame, Hearing Officer
September 27, 2017 at 1:00 p.m.

The customer contested water and sewer bills for the above account for the period of time April 1, 2017 to June 12, 2017. The DC Water and Sewer Authority (DC Water) investigated the water and sewer charges and determined that an adjustment to the account was not warranted. The customer appealed DC Water's decision and requested an administrative hearing.

This matter was scheduled for hearing on September 27, 2017. Present for the hearing were [REDACTED] and Eileen Wright, Senior, Customer Care Representative, on behalf of DC Water. Mr. [REDACTED] stated that he was a tenant at the property during the period in dispute and pursuant to the terms of his lease, he was financially responsible for payment of the water and sewer bill. Mr. [REDACTED] stated that he no longer resides at the property but remains responsible for payment of any amount determined due and payable for the water service.

The property involved is a semi-detached house owned by [REDACTED] and which is/was rented to students attending a local university. The property has two (2) bathrooms, one kitchen, a dishwasher, a washing machine, and one outside faucet. During the period in dispute, five (5) people occupied the house with Mr. [REDACTED] being one of the occupants. Mr. [REDACTED] stated that he lived in the house from August 2016 until July 2017 and that the water and sewer bill ranged between One Hundred Twenty Dollars (\$120.00) and One Hundred Fifty Dollars (\$150.00) per billing cycle.

Mr. [REDACTED] testified that when he first saw the bill, he thought that the bill reflected a clerical error but when he called DC Water regarding the bill, he was told that the bill was based upon an actual meter read. Mr. [REDACTED] testified that he did not see any leaks or standing water in or about the house. He stated that he did not call a plumber to investigate if anything was wrong to cause the bill because he did not feel that a call to a plumber was needed. He stated that he knew that the toilet was fixed.

Mr. [REDACTED] testified that before he received the bill, a toilet in the house kept filling due to the flush valve which caused him to think that the toilet was running. He stated that he notice the toilet issue on June 4, 2017 and that the toilet was fixed on June 6, 2017.

Mr. [REDACTED] testified that he did some math using a gallon drum and that within a 24 hours period, the toilet would have loss 640 gallons of water and that within a month, the toilet would have loss 19,200 gallons of water. Mr. [REDACTED] asserted that based upon his calculations, it is impossible for the toilet to have loss the amount of water charged in the disputed bill. Mr. [REDACTED] asserted that a loss equivalent to the amount charged would take eight (8) months to accomplish.

Mr. [REDACTED] stated that he has an article about MTU devices causing unnaturally high meter reads; Mr. [REDACTED] submitted the article titled "DC Water Replacing All Residential Meters After Billing Mishaps Outdated transmission equipment caused inaccurate readings" written by Susan Hogan and Meredith Royster. Mr. [REDACTED] stated that the water meter at the property had not been replaced per the utility's city-wide meter replacement project. He further pointed out the usage history of the property reflected much lower usage than was being charged.

Ms. Wright pointed out that a plumber had been at the property and that the customer had provided a copy of a plumber's invoice dated 6/12/2017 reflecting that a flush valve had been installed in the basement bathroom.

Ms. Wright asserted that the charges are valid based upon meter readings from the property which indicated that between April 1, 2017 and June 12, 2017 high water usage registered on the water meter.

Ms. Wright testified that the MTU at the property stopped transmitting meter reads after November 2016. She testified that DC Water estimated the customer's water usage for billing in May 2017. She stated that a technician read the water meter on May 5, 2017 and the meter was at 1545 which meant that 80 CCF of water had been used and which is high for the customer. Ms. Wright testified that DC Water opted to estimate the customer's usage for May in order to verify the meter read. Ms. Wright stated that DC Water verified the meter read on June 12, 2017 when, at that time, the meter read was 1676. Having verified the meter read, Ms. Wright stated that DC Water billed the customer on actual water usage.

Ms. Wright testified that DC Water removed and tested the water meter and the meter was determined to have 95.76% accuracy which is within acceptable meter accuracy pursuant to standards set by the American Water Works Association. Ms. Wright stated that the range for acceptable meter accuracy is 95% to 102%.

Ms. Wright testified that she does not know the cause of the high water usage but that an underground leak is ruled out because the customer's water usage was not high when the meter was removed.

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 semi-detached residence rented to college students. (Testimony of [REDACTED])
2. The period in dispute is April 1, 2017 to June 12, 2017. (Testimony of the parties)
3. The MTU at the property stopped transmitting meter reads after November 2016. (Testimony of Eileen Wright)
4. DC Water obtained meter reads from the property by sending a technician to read the meter and it did so it for each billing cycle after the MTU stopped transmitting. (DC Water Billed History/Usage History log; Testimony of Eileen Wright)
5. DC Water estimated the customer's water usage in May 2017 even though it had a meter read from the property. The utility elected to estimate the usage because the read which was obtained on May 5, 2017 indicated that high water usage had occurred at the property and the utility wanted to verify the correctness of the meter read before it billed the customer for high water usage. (Testimony of Eileen Wright)
6. DC Water obtained a meter read from the property on June 12, 2017 which verified the May read and the utility sent the customer an adjusted bill from actual read in April 2017 to actual read in June 2017. (Testimony of Eileen Wright; Bill Summary dated 06/14/17)
7. Mr. [REDACTED] spoke with a customer service representative on 6/16/2017 and told that representative that one had to jingle the handle of the basement toilet to stop the toilet from running and that he would get a plumber to check for leaks. (DC Water telephone contact log dated 6/16/2017)
8. That a plumber's invoice was submitted to DC Water in support of the customer's Petition for Hearing and the invoice reflected that new flush valve was installed in the basement bathroom of the property. [REDACTED], LLC invoice dated 6/12/2017)
9. DC Water removed and tested the water meter from the property and the meter was determined to have 95.76% accuracy. (Testimony of Eileen Wright; DC WASA Meter Test Results)
10. DC Water ruled out the existence of an underground leak as causing high water usage at the property because usage declined by the time that the meter was removed for testing. (Testimony of Eileen Wright)

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. 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. 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)

DECISION

The customer in this case cannot meet the burden of proof and show that more likely than not the bill being disputed is wrong or that for some other reason the customer should not be held responsible for its payment. The customer presented an article describing DC Water's project to replace all water meters throughout the District of Columbia due to problems with the MTU device which is to transmit meter reads. The customer also conducted his own experiment and performed math calculations to determine how much water might be lost over a period of time by a defective toilet. Prior to the hearing, the customer spoke with a customer service representative and stated that there was a defective toilet at the property. With the Petition for Administrative Hearing, the customer submitted a plumber's invoice showing that a repair had been performed on the basement toilet at the property during the period in dispute.

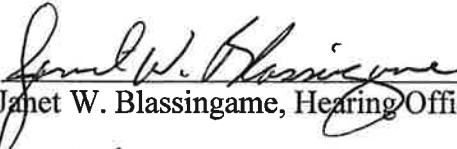
DC Water conducted a meter test and the meter was determined to be functioning adequately and the utility ruled out the existence of an underground leak as a possible cause of high water usage occurring at the property. Moreover, even though the MTU was not functioning that the property during the period in dispute, DC Water sent a technician to obtain a meter read during each billing period and the utility explained why it elected to estimate the customer's usage for one billing cycle even though it had a meter read.

The Hearing Officer considers the article regarding the meter replacement project not relevant to this matter in that the utility had actual meter reads from the property as obtained by a service technician sent to read the meter for billing purposes and, as such, the disputed charge was not based upon the MTU. With respect to the customer's experiment and math calculations, little probative value to given to his findings because he provides no credentials qualifying him in either mathematics or water loss measurement and the experiment was not in a control setting. The customer's admission of the existence of a defective toilet and the plumber's invoice reflecting repair of the toilet is given weight as evidence of the probable cause of increased water usage at the property. Likewise, the meter test results and the ruling out of the existence of an underground leak further support the correctness of the usage as charged.

Pursuant to the applicable law of the District of Columbia and the City's Municipal Regulations, DC Water is authorized to both adjust a customer's bill/account to capture payment for water not previously charged and to estimate a customer's water usage when the MTU fails to transmit a meter read. (See, D.C. Code §34-2202.03(11) and 21 DCMR 308.4) The regulations further dictate that DC Water is to read a customer's water meter at least on a quarterly basis. (See, 21 DCMR 308.1 and 309.1) In this case, the utility sent a technician to read the water meter




at the property each billing cycle and only estimated the customer's usage for one billing cycle in order to verify that the usage was correct. As such, the evidence and testimony show that the utility acted properly in its billing of the customer, as well as, that its meter was functioning properly and no other cause was found to possibly cause the increased water usage except for the faulty toilet identified by the customer and repaired by the plumber. It is also significant that the usage declined as testified to by Ms. Wright, that no high water usage was occurring at the property by the time that the meter was removed for testing and that decline in usage occurred after the toilet repair was performed. The last factor going against the customer's challenge of the bill is that the Municipal Regulations bar DC Water from adjusting a customer's bill for excessive water use when the water used was the result of the existence of a faulty interior fixture, such as a toilet. (See, 21 DCMR 406)

Accordingly, it is concluded that the weight of the evidence supports the determination by DC Water that the charges are valid and no adjustment to the account is warranted and, as such, the determination is hereby AFFIRMED.

By: 
Janet W. Blassingame, Hearing Officer
Date: Oct. 31, 2017

Copies to:

Mr. 
P.O. Box 
Garrett Park, MD 20896

Mr. 
 Wisconsin Avenue, NW
Apt. 
Washington, DC 20016

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

IN RE: [REDACTED]

Attn: [REDACTED]

[REDACTED] Manchester Lane, NW
Washington, DC 20011

Account No: [REDACTED]

Amount in Dispute - \$ 4,634.36

Before Janet W. Blassingame, Hearing Officer
September 27, 2017 at 2:00 p.m.

The customer contested water and sewer bills for the above account for the period of time September 19, 2016 to December 15, 2016. The DC Water and Sewer Authority (DC Water) investigated the water and sewer charges and determined that the charges were valid and an adjustment to the account was not warranted. The customer appealed DC Water's decision and requested an administrative hearing.

This matter was scheduled for hearing on September 27, 2017. Present for the hearing were: [REDACTED], Administrator for [REDACTED]; [REDACTED], [REDACTED]; and, Eileen Wright, Senior, Customer Care Representative, on behalf of DC Water.

The property involved is the parsonage of [REDACTED], a small church of approximately 250 members. Although identified as a house for the pastor, no one resides in the parsonage and it is used as an office, classroom, and gathering space for church business and activities. Mr. [REDACTED] stated that he has an office in the house and works there Monday and Thursday from 8:00 a.m. to 12 Noon each week. He also stated that children's classes are held at the property on Saturdays and Sundays. The property has one and one-half (1 ½) bathrooms, one kitchen, a washing machine and one outside faucet. Mr. [REDACTED] stated that the water and sewer bill has constantly been in the range of Three Hundred Sixty Dollars (\$360.00) to Four Hundred Twenty-five Dollars (\$425.00) per billing cycle.

Ms. Wright interjected that the IAC (Impervious Area Charge), alone, is Three Hundred Dollars (\$300.00) per billing cycle. Ms. Wright stated that water use at the property is extremely low except for in December 2016 which is the period of the bill being disputed.

Mr. [REDACTED] testified that there has been nothing out of the ordinary occurring at the property. He noted that a plumber inspected the property and no leaks were found. He further stated that he has not heard water running within the house and that no special events have been held at the property.

Ms. Wright testified that a high volume of water was used or lost at the property between September 19, 2016 and December 15, 2016. She stated that the customer's October and

November water usage was estimated and that DC Water read the water meter at the property on December 15, 2016 and found that it had underestimated water usage at the property. Ms. Wright testified that on January 12, 2017, Mr. [REDACTED] spoke with a DC Water customer service representative who suggested to him to get a plumber to inspect the property and to submit the plumber's report.

Ms. Wright testified that DC Water removed and tested the water meter and the meter was determined to have 100.78% accuracy. She stated that DC Water sent a service technician to the property on April 4, 2017 to verify the property serviced by the water meter- church vs. parsonage, and the technician reported that meter number 16112778 serviced the parsonage located on Manchester Lane.

Mr. [REDACTED] interjected that based upon historical usage, the bill is not in line with usage at the property.

Ms. Wright noted that when the meter was removed for testing on February 10, 2017, the meter read was 839. Ms. Wright stated that the MTU stopped transmitting from the property in year 2014. Ms. Wright stated that the meter was read on September 19, 2016 and that sometime thereafter a high volume of water registered on the water meter and that the registration occurred before December 15, 2016. She pointed out that the plumber inspected the property on January 16, 2017 and found no leaks but the inspection took place after the high usage had stopped.

Mr. [REDACTED] stated that there were no events at the property between December 2016 and January 2017.

Ms. Wright stated that she knows that an underground leak did not cause the high water usage because usage declined, but, she does not know what caused the high water usage.

Mr. [REDACTED] stated that the water and sewer bill for the property had never been so high since the property was purchased in year 1981.

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

FINDINGS OF FACT

1. The property involved is the parsonage of the [REDACTED]. (Testimony of [REDACTED])
2. The period in dispute is September 19, 2016 to December 15, 2017. (Testimony of the parties)
3. The property is used for office and classroom space and special events but no one resides in the home. (Testimony of [REDACTED])
4. The MTU at the property stopped transmitting in year 2014. (Testimony of Eileen Wright; DC Water Billed History and Usage History log)

5. DC Water estimated the water usage at the property for two (2) billing cycles- October 2016 and November 2016 and then obtained an actual meter read from the property. (Testimony of Eileen Wright; DC Water Billed History and Usage History log)
6. Based upon the meter read obtained in December 2016, high water usage occurred at the property sometime between September 19, 2016 and December 15, 2016. (Testimony of Eileen Wright)
7. Except during the period in dispute, there is no record of high usage occurring at the property. (Testimony of [REDACTED]; DC Water Billed History and Usage History log)
8. Except during the period in dispute, water usage at the property has been constantly low but the customer incurs significant fees, such as IAC and Pilot charged to the account in addition to charges for water and sewer. (Testimony of Eileen Wright; Bill Summary dated 12/20/16)
9. DC Water suggested that the customer obtain a plumber to inspect the property and the plumber hired found no leaks. (Testimony of the parties; Plumbing Force One invoice dated 1/16/17)
10. DC Water removed and tested the water meter and the meter was determined to have 100.78% accuracy. (Testimony of Eileen Wright; DC WASA Meter Test Results)
11. DC Water ruled out the existence of an underground leak as a possible cause of the high water usage at the property because usage declined and an underground requires repair before usage will decline. (Testimony of Eileen Wright; DC Water Investigation Letter dated February 2, 2017)

CONCLUSIONS OF LAW

1. The burden of proof is on the customer to show, by a preponderance of evidence, that the decision of DC Water is incorrect. (21 DCMR 420.7 and 420.8)
2. 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 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 case cannot establish that more likely than not the disputed bill is incorrect or for some other reason, it should not be held responsible for payment of the bill. Here, the basis of the customer's dispute is that no one lives in the parsonage and the property is used sparingly for office, classroom space and special events. The customer purported that no special events had been held at the property during the period in dispute and that there were no known leaks or sounds of running water, as well as, any record of high water usage ever occurring at the property. The customer further submitted a plumber's report indicating that no leaks were found at the property upon inspection. On DC Water's part, the testimony and evidence established that the water meter at the property was functioning properly and its accuracy was within acceptable range for a water meter. DC Water ruled out the existence of an underground leak as a possible cause of the high water usage. The utility relied upon the accuracy of its meter reads and it verified that the meter read being used for billing applied to the property. DC Water relied upon the findings of the customer's plumber that no leaks were found to assert that whatever caused the high water usage had stopped and was not the result of any equipment error or defect. DC Water also pointed out that it only estimated the customer for two (2) billing cycles and that estimates are authorized when it lacks a meter read. Lastly, the utility pointed out that a significant portion of the customer's bill is due to fees.

While the disputed bill is very high, the evidence and testimony showed no fault by the utility which caused harm to the customer. As noted, the utility is authorized to estimate a customer's usage when a MTU fails to transmit meter reads from a property (See, 21 DCMR 308.4), the estimation of the customer's water usage did not extend to an unreasonable length of time or beyond the proscribed period before the meter was to be read (See, 21 DCMR 308.1 and 309.1) and the tests and checks performed by the utility in its investigation of the charges did not reveal a cause of the high water usage but it did show that the high usage stopped which is indicative of it not having been caused by faulty equipment or an underground leak.

Pursuant to 21 DCMR 408, DC Water is barred from making any adjustment of a customer's bill when all checks and tests provide no reasonable explanation for excessive water consumption. Accordingly, the determination by DC Water that the charges are valid and no basis exists to adjust the customer's account is hereby AFFIRMED.

By: _____
Janet W. Blassingame, Hearing Officer

Date: _____

Copy to:

[REDACTED]
Attn: [REDACTED]

[REDACTED] Manchester Lane, NW
Washington, DC 20011