

BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

DEPARTMENT OF CUSTOMER SERVICES

IN RE: [REDACTED]

[REDACTED] Myrtle Avenue, NE  
Washington, DC 20018

Account No: [REDACTED]  
Case No: 23-251684

Amount in Dispute: \$ 5,281.75

Bill Dates Involved:

8/19/2021

9/22/2021

10/21/2021

11/19/2021

12/21/2021

Before Janet W. Blassingame, Hearing Officer  
September 29, 2023 at 10:00 a.m.

The customer contested the above reference water and sewer bills. The DC Water and Sewer Authority (DC Water) investigated and determined that the charges were valid and no basis existed to adjust the account. The customer requested an administrative hearing.

This matter was scheduled for a remote hearing on September 29, 2023. Present for the hearing were: Adam Carlesco, Esquire, Office of the People's Counsel (OPC), representing [REDACTED] Jason Starks, Customer Outreach Specialist, OPC; Antaeus Hayes, [REDACTED] Water Service Manager, OPC; Geneva Parker on behalf of DC Water; and Kinberly Arrington and Kelly Fisher, DC Water, observing.

Mr. Carlesco opened by stating that in this case his client acted promptly and DC Water failed to act promptly. He stated that his client noticed high usage in August 2021 and that there was a leak at the water meter. He stated that the utility noted that the water line was lead and required removal. Mr. Carlesco asserted that it took seven (7) months for replacement of the water line which was performed on March 24, 2022. He stated that an adjustment was granted for charges incurred in January, February, and March 2022, however, the leak was noticed in August 2021. He asserted that his client wants an account adjustment dating back to August 2021 thru March 2022.

Mr. [REDACTED] testified that his home has one bathroom, one outside spigot, a kitchen, and a utility sink. He stated that he has lived in the home since June 2000 and that the water and sewer bill averages \$140.00 per billing cycle. He stated that after the utility replaced the water line, his water and sewer bill has been approximately \$125.00 per billing cycle. He added that in October 2021 his water and sewer bill was \$400.00 and in January 2022, the bill was \$376.00.

Mr. [REDACTED] testified that he notice a spike in water usage in July 2021 but thought that it

was due to the summertime and, maybe, his washing of the car. He stated that his water usage increased from 12 CCF in May 2021 to 16 CCF in July 2021 and in September 2021, his water usage rose to 30 CCF. He stated that upon receiving his bill in July 2021, he checked the toilet, faucets and basement sink and detected no leaks. He stated that he reported the leak at his property in August 2021. He explained that he received a HUNA alert from DC Water and, in response, he went outside and felt that the ground was soft in the front yard. He stated that he called DC Water and notified that utility that he had a leak and that the leak was on the house side. The customer stated that he was told to go on the lead replacement site.

Mr. [REDACTED] stated that he called Ben's Plumbing and Vito Plumbing. He stated that Ben's Plumbing cancelled the appointment and explained to him that the water line was all the way to the street and that a plumber could not do the repair. Mr. [REDACTED] stated that the water was turned off on August 21, 2021 and that he dug up the yard and a handyman started looking for the leak on August 25<sup>th</sup>. He testified that he saw a crack on the side of the water pipe and that the handyman put a clamp on the pipe. He showed pictures of the yard and the hole.

Ms. Parker interjected that DC Water was unaware of the customer doing any excavation in his yard until Mr. [REDACTED]'s testimony.

Mr. Brown stated that his September 2021 water and sewer bill went down because the clamp slowed the leak but did not stop the leak.

Mr. [REDACTED] stated that he called DC Water on August 31, 2021 advising of a leak in his yard and he was told by the utility to call DC Water Voluntary Replacement. Mr. [REDACTED] stated that he informed the DC Water customer representative that he had already made the call to lead replacement and that the department had not contacted him back.

Mr. [REDACTED] stated that after he called lead replacement, he was ultimately told that it was his responsibility. The customer stated that he called DC Water four (4) more times regarding the leak and he was informed that public replacement could take up to two (2) years for performance but that his block was already scheduled for lead pipe replacement so maybe it would take only 3 - 4 months to get out to his property.

Mr. [REDACTED] asserted that when the water line was replaced in March 2022, he experienced no further spikes in water usage. He contended that it is his belief that the leak had existed for some time. Mr. [REDACTED] stated that the pipe line replacement was performed by Capital Paving.

Mr. [REDACTED] contended that he received water and sewer bill reflecting high usage due to the leak from July 2021 to April 2022. He stated that he did not contact DC Water regarding the July bill because he thought he had been correctly charged but that he called in August 2021 regarding the bill because by then, he realized that there was a leak in the yard.

Ms. Parker clarified that the water meter was not leaking and that the leak was in the service line. She stated that the disputed amount was \$1639.64 for the period August 2021 to December 2021 and that the disputed amount did not include the customer's July 2021 charges. In response to a question by Mr. Carlesco, Ms. Parker explained that the water meter is always replaced when lead pipes are replaced.

Ms. Parker testified that this matter is controlled by 21 DCMR 407.1 and 407.2. She stated that DC Water adjusted the customer's account for the period December 28, 2021 to

was due to the summertime and, maybe, his washing of the car. He stated that his water usage increased from 12 CCF in May 2021 to 16 CCF in July 2021 and in September 2021, his water usage rose to 30 CCF. He stated that upon receiving his bill in July 2021, he checked the toilet, faucets and basement sink and detected no leaks. He stated that he reported the leak at his property in August 2021. He explained that he received a HUNA alert from DC Water and, in response, he went outside and felt that the ground was soft in the front yard. He stated that he called DC Water and notified that utility that he had a leak and that the leak was on the house side. The customer stated that he was told to go on the lead replacement site.

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Mr. [REDACTED] contended that he received water and sewer bills reflecting high usage due to the leak from July 2021 to April 2022. He stated that he did not contact DC Water regarding the July bill because he thought he had been correctly charged but that he called in August 2021 regarding the bill because by then, he realized that there was a leak in the yard.

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Ms. Parker testified that this matter is controlled by 21 DCMR 407.1 and 407.2. She stated that DC Water adjusted the customer's account for the period December 28, 2021 to

March 31, 2022 and then went back and adjusted to November 19, 2021 to expand the adjustment period to November 19, 2021 to March 31, 2022. She stated that there was continuous water usage reflected on the account and that was indicative of an underground leak.

Ms. Parker stated that the customer's dispute was untimely but DC Water investigated. She stated that the customer's service was disconnected for unpaid charges. She explained that the customer was in arrears by Three Thousand Dollars (\$3,000.00) when the August 19, 2021 bill was issued.

Ms. Parker stated that the customer was billed upon actual meter reads.

Ms. Parker stated that a customer's dispute does not relate back or apply to previous bill charges.

Ms. Parker stated that DC Water did not hear from Mr. Brown until April 22, 2022 and that he did not contact the utility upon one month after the water line had been repaired. Ms. Parker asserted that she found no record of the customer's call to DC Water until April and the utility did not have a formal dispute by the customer. She stated that the customer did call DC Water's Emergency Call Center on August 31, 2021 but that he was requesting reference to lead replacement. She stated that the customer stated that Ben's Plumbing told him to call Voluntary. Mr. [REDACTED] interjected that when he called in August 2021 to DC Water, he was calling about the leak in his yard. Ms. Parker said that there was no record in August of such a call and that she only sees the customer's request for lead replacement.

Ms. Parker asserted that the customer's account was adjusted by the utility because there was an underground leak and continuous usage was viewed on the account. She asserted that the usage stopped on November 10, 2021 and then resumed so the adjustment was after November.

Ms. Parker pointed out that, in the letter dated February 1<sup>st</sup>, it was explained that an adjustment was not warranted until after November when the water usage became continuous.

Ms. Parker asserted that something cause water usage at the property to stop and start up on November 10, 2021. She asserted that it is inconclusive what caused the water usage before continuous usage and that 21 DCMR 408.1 was applicable.

Ms. Parker stated that the customer received Four Thousand Dollars (\$4000.00) in residential assistance. She stated that the customer's utility balance as of July 20, 2021 was \$3290 and that his current balance is \$4456.83.

Ms. Parker explained that DC Water's dispute process is started when it receives a dispute from a customer. She asserted that if a customer contacts DC Water regarding a leak but does not say billing, the customer would not be referred to Customer Service.

On cross-examination, Mr. Carlesco asked Ms. Parker what is the appropriate process for a customer to regarding a problem of lead pipe line repair. Ms. Parker responded that, if a customer has a high bill, the customer should call the number on the bill and if Emergency answers but the Call Center is needed, the customer would be referred. Ms. Parker added that the Lead Free Program is a D.C. program and is not funded by DC Water.

Ms. Parker acknowledged that the underground leak issue potentially started in July 2021 but the customer did not appeal the charges until April 2022 after the leak was fixed. Ms. Parker

stated that the investigation is initiated from a bill dispute and DC Water did not receive a dispute.

Ms. Parker testified that the customer did mention that there was a leak but she asserted that a leak may not affect a customer's water bill and as such, the dispute process is not initiated.

Mr. Carlesco mentioned the theory of equitable tolling and asserted that the customer can show diligence.

Ms. Parker asserted that if the customer dug up the yard, then his actions may have damaged the pipe.

Ms. Parker pointed out that 21 DCMR 407.3 refers to three (3) comparable periods to base an adjustment.

Ms. Parker stated that water meters register in cubic feet (CF) and that 100 CF equal 1 CCF. She stated that if usage stops, something is controlling the usage and DC Water does not know what is controlling the usage to cause the leak stoppage. She stated that, in this case, the stoppage could have been caused by the clamp but she would think that the clamp stopping leakage would be steady.

Mr. [REDACTED] noted that the adjustment made to his account was for the period 12/18/21 to 3/31/22 and he noted that Ms. Parker, in her testimony, stated that the utility gave adjustment as of 11/10/21. Ms. Parker responded that the noted period was December 18, 2021 thru January. She stated that the December 21<sup>st</sup> bill period started November 19, 2021. Ms. Parker stated that she would correct the adjustment period and amount. To which, Mr. [REDACTED] stated that he has never been able to understand how the adjustment of \$2106.89 was calculated.

Ms. Parker referred to the note dated 7/14/22 regarding the calculation of the adjustment and she stated that she stands by the adjustment as given and that the utility has given the customer a fair consideration of the adjustment period since he was untimely.

Mr. Carlesco stated that his client tried diligently to respond to the underground leak and was diverted to lead replacement.

Mr. Carlesco asserted that other jurisdictions have informal dispute processes and he believes that this matter could have been resolved. He asserted that his client was sent on a run-around.

Ms. Parker responded that she has a duty regarding raised concerns and she appreciates the same.

Ms. Fisher interjected that the status of the court case which is set for hearing on October 14<sup>th</sup> for a TRO regarding disconnection is paused.

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 occupied by [REDACTED] since June 2000. (Testimony of [REDACTED])

2. The period in dispute is August 19, 2021 to December 21, 2021. (Testimony of the parties)
3. The customer noticed an uptick in his water and sewer charges on his July 2021 bill but thought the increase was due to summertime and his car washing for he checked inside of the home in the bathroom, kitchen, and basement sink and detected no leaks. (Testimony of [REDACTED])
4. The customer received a HUNA alert from DC Water and went outside of the home and felt soft ground in the front of his home. (Testimony of [REDACTED])
5. DC Water sent HUNA alerts to the customer on August 23, 2021 and August 26, 2021. (DC Water Customer Interaction Record dated August 23, 2021 and August 26, 2021)
6. The customer contacted DC Water, on August 31, 2021 upon receipt of the HUNA alerts, regarding a leak in his front yard and was diverted to lead replacement by a DC Water representative and told to call DC Water Voluntary Replacement. (Testimony of [REDACTED])
7. The customer contacted the lead pipe replacement office and was told that for a public lead pipe replacement, he may have to wait up to 2 years for service but his neighborhood block was scheduled for lead pipe replacement and he might only have to wait 3-4 months. (Testimony of [REDACTED])
8. The customer contacted Vito Plumbing Services and Bens Plumbing regarding the underground leak and Bens Plumbing informed the customer that he had lead pipes on both the DC and private side and, as such, the company could not perform the service. (Correspondence letter by Cheryl McBryde and [REDACTED] to DC Water dated April 22, 2022 in DC Water Customer Interaction Record dated April 22, 2022)
9. Upon being told of the length of time before DC Water's lead replacement office could respond to the leak in his yard and having been told by a plumber that plumbers could not perform the repair because the leak was on lead piping extending from public to private property, the customer engaged in self-help. (Testimony of [REDACTED])
10. The customer turned the water off on August 24, 2021 and dug up his front yard with the help of a handyman. The customer saw a crack in the side of the water pipe and put a clamp on the pipe on or about August 25, 2021. (Testimony of [REDACTED])
11. The customer provided photographs of his yard and hole dug by him to reveal the underground leak. (Testimony and evidence by [REDACTED])
12. According to the customer, the clamp placed on the pipe slowed the underground leak but failed to repair the leak. The customer saw a reduction in his September 2021 water and sewer bill for water usage. (Testimony of [REDACTED])
13. Upon receipt of his August 2021 water and sewer bill, the customer noticed that his water usage was increasing and by September 2021, his water usage had increased to 30 CCF from a low of 16 CCF in July 2021. (Testimony of [REDACTED])
14. DC Water determined that the customer's bill dispute was untimely but investigated his dispute and ultimately adjusted the account. (Testimony of Geneva Parker)
15. DC Water adjusted the customer's account for a significant leak at the water meter for the period 12/21/21 to 3/31/22 in the amount of \$2106.88. (Testimony of the parties; DC Water Customer Interaction Record pg. 17)
16. DC Water added an account adjustment back to 11/19/2021 bill bringing the adjustment period to 11/19/2021 to 3/31/2022. (Testimony of Geneva Parker)
17. After denying that the customer contacted DC Water regarding the leak in the front yard

- of his home. DC Water acknowledged that the customer did call the DC Water Emergency Call Center on August 31, 2021 requesting referral to the lead replacement line because Bens Plumbing told him to call the DC Water Voluntary Replacement office. (Testimony of Geneva Parker)
18. Because the customer called the Emergency Call Line and asked for lead replacement and did not say that he was disputing his bill, he was not referred to Customer Service and no bill dispute was initiated. (Testimony of Geneva Parker)
  19. The customer contacted DC Water Customer Service in April 2022 after the replacement of the lead pipe had been performed and at that time, he requested an account adjustment. (Testimony of the parties)
  20. Ms. Parker testified that there was no record of the customer calling DC Water Customer Service to dispute his bill until April 2022. (Testimony of Geneva Parker)
  21. The decision to grant an adjustment of the customer account was based upon DC Water's determination that there was an underground leak at the property because there was continuous water usage after November 10, 2021. (Testimony of Geneva Parker)
  22. DC Water saw stoppage in usage at the property up to November 10, 2021. (Testimony of Geneva Parker)
  23. DC Water acknowledged that the underground leak potentially started in July 2021. (Testimony of Geneva Parker)
  24. A water meter dial turns every 100 CCFs of water thru the meter. (Hearing Officer takes judicial notice of this fact)

#### CONCLUSIONS OF LAW

1. The burden of proof is on the customer to show, by a preponderance of evidence, that decision of DC Water is incorrect. (21 DCMR 420.7 and 420.8)
  2. Water is obligated to investigate a challenge to a bill and, as necessary, may:
    - (a) Verify the computations made in the formulation of the water and sewer charges;
    - (b) Verify the meter reading;
    - (c) If feasible, check the premises for leaking fixtures, underground invisible leaks, and house-side connection leaks;
    - (d) Check the meter for malfunction;
    - (e) Review account to ensure accurate account status; and
    - (f) Make a reasonable investigation of any facts asserted by the owner or occupant which are material to the determination of a correct bill.
- See, 21 DCMR 403.
3. 21 DCMR §407.2 states, in part, if the investigation discloses a leak, other than a meter leak, of indeterminate location in the underground service, or at some other location where the leak is not apparent from visual or other inspection, the General Manager shall determine whether the leak is on public space, on private property, on property that is under control of the occupant, or the result of infrastructure for which the owner or occupant is responsible for maintaining and repairing.

4. If, pursuant to §407.2, the leak is determined to have been caused by the Authority or is determined to be the result of infrastructure for which the Authority is responsible for maintaining and repairing, the Authority shall repair the leak and the General Manager shall adjust 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. If the leak is determined to have been caused by owner or occupant, no adjustment shall be made. (21 DCMR §407.3)
5. If, pursuant to §407.2, the leak is determined to be on private property or on property that is under the control of the owner or occupant, or the result of infrastructure for which the owner or occupant is responsible for maintaining and repairing, the owner or occupant shall repair the leak. The General Manager may, at their discretion, upon request of the owner, adjust the disputed bill and any bills issued during the investigation for a period not to exceed (30) calendar days after the issuance of the bill investigation report. 21 DCMR §407.4
6. If, pursuant to §407.2, the leak is determined to be on private property or on property that is under the control of the owner or occupant, or the result of infrastructure for which the owner or occupant is responsible for maintaining and repairing, the owner or occupant shall repair the leak. The General Manager may, at their discretion, upon request of the owner, adjust the disputed bill and any bills issued during the investigation for a period not to exceed (30) calendar days after the issuance of the bill investigation report. 21 DCMR §407.4
7. The adjusted amount, in accordance with § 407.4, shall not exceed 50% of the excess water usage over the average consumption of water at the same premises for up to three (3) previous comparable periods for which records are available. The General Manager may take the following into consideration in determining whether there should be a reduction in the bill(s):
  - (a) There has been no negligence on the part of the owner or occupant in notifying DC Water of unusual conditions indicative of a waste of water;
  - (b) The owner has repaired the leak within 10 calendar days after the bill investigation is issued to the owner or occupant;
  - (c) The owner provides evidence that repairs have been made and that those repairs were performed by a licensed District of Columbia master plumber in accordance with the rules and regulations of the District of Columbia Department of Consumer and Regulatory Affairs; and
  - (d) The request for adjustment has been made in accordance with § 402.1 (a).
8. DC Municipal Regulation 21 DCMR § 402.1 which was effective July 17, 2020 reads as follows: An owner or occupant may challenge the most recent charges assessed by WASA for water, sewer and groundwater sewer service by either:
  - (a) Paying the current charges in the bill and notifying WASA in writing, within thirty (30) calendar days after the bill date, the reason(s) why the bill is believed to be incorrect and that the bill is being paid under protest; or
  - (b) Not paying the current charges in the bill and notifying WASA in writing within thirty (30) calendar days after the bill date, the reason(s) why the bill is believed to be incorrect.



9. 21 DCMR § 402 is a claim processing rule enacted to ensure the orderly transaction of the utility's business, however, DC Water can waive the rule. (See, Gatewood v. DC WASA, 82 A.3d 41, D.C. Court of Appeals 2013)

### DECISION

The customer established a prima facie case that there was an underground leak at his property that caused excessive water loss for which he should have been entitled to an account adjustment. DC Water did adjust the customer's account based upon a finding of the existence of an underground leak, however, the customer disputes the adjustment period granted and seeks expansion of the adjustment period warranted in his matter.

DC Water asserted that the customer's bill dispute was untimely. It premised its response upon a position that, because the dispute was untimely, it gave a fair consideration to the customer, even though, it was not required to do so.

The Court in the Gatewood case recognized what it referred to as a "muddled response" to the customer's bill dispute challenged, in that the customer's challenge was untimely but DC Water accepted the challenge all through the administrative hearing process. The Court concluded that the utility's regulatory scheme does not anticipate untimely investigations and adjudications and the utility can waive its time requirements.

In this case, the utility, after determining that the customer failed to timely dispute his bill, did conduct an investigation and grant an account adjustment. As such, once the time limitation is waived, the utility has an obligation to conduct an investigation and consider the grant of an adjustment for the period of the existence of the underground leak. DC Water cannot arbitrarily set an adjustment period because it is being nice and "fair" to a customer who is untimely in making a bill dispute after the time limit is waived.

During testimony, the utility acknowledged that the underground leak "potentially" started in July 2021. A review of the water meter read records reflects that the customer probably had a leak dating back to at least May 2021 because there is a record of continuous water usage at the property with rare intermittent stoppages of one or two hours. DC Water sent the customer a HUNA alert on August 23, 2021 and, again, on August 26, 2021, prompting the customer to inspect his property and call DC Water regarding his finding of soft soil in his front yard. The customer testified that when he was told the length of time that he would have to wait before the utility could repair the leak and he was told by an independent plumber that a plumber could not repair the underground leak, he engaged in self-help and dug up his front yard, located the crack in the lead pipe and clamped the pipe. Ms. Parker, on behalf of DC Water, asserted that, until the testimony of the customer on the day of the hearing, the utility was unaware of the customer's self-help effort. As such, the utility, not having knowledge of the customer putting a clamp on the leaking pipe, did not consider what, if any effect, the customer's effort to mitigate the water loss might have had on slowing the leak or even stopping registration of water loss on the water meter.

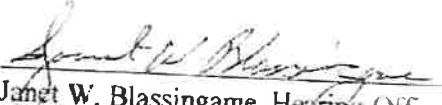
The Hearing Officer takes judicial notice that the water meter will only turn upon 100 CCF of water moving thru the meter. As such, just because the meter does not move, it does not mean that water is not moving thru the meter. The meter dial turns every 100 CCFs of water. Likewise, the Hearing Officer is convinced that the customer contacted DC Water in August 2021 regarding the underground leak and he was led to believe that his only recourse was to wait for months for repair by DC Water, hire a plumber, or, try to stem the water loss himself until the utility could repair the leak when he was told that a private plumber could not perform the repair. As such, the Hearing Officer credits the customer's testimony and finds that the utility employee who took the customer's call should have directed him, appropriately, to report the existence of the underground leak. DC Water acknowledges that the customer called its Emergency Call Center and the Hearing Officer is convinced that it should not be the burden of the customer to figure out what office within the utility's system, he must contact to report a problem after he had, in fact, contacted the utility in an effort to seek assistance. When the customer was told that his neighborhood was slated for lead pipe replacement, such information is not readily accessible to the public and the customer had to be in touch with the utility to obtain such information. The Hearing Officer believes that the utility had an obligation to investigate in August 2021 whether an underground leak existed at the customer's property and to determine who was responsible for repair. At the very least, the adjustment should relate back to August 2021 when the utility sent the HUNA alerts and the customer responded by contacting DC Water regarding his finding of soft ground.

DC Water granted an account adjustment for the period November 19, 2021 to March 31, 2022. Based upon the utility's acknowledgment that the underground leak "potentially" started in July 2021, the meters reads reflecting continuous water usage periods except for one or two hours of registration dating back to May 2021, the utility sending HUNA alerts in August 2021 and the customer's investigation of his property and contacting the utility in August 2021, it is the determination of the Hearing Officer that:

DC Water waived its time requirement for dispute of a water bill regarding this customer. DC Water had an obligation to investigate if an underground leak was present as of August 2021; and,

DC Water should have adjusted the customer's account back to when it was aware or should have been aware of the existence of the underground leak which was, at the latest, in August 2021.

Based upon the foregoing, the customer's request for further adjustment of his account for the existence of an underground leak is GRANTED and DC Water is directed to adjust the account retroactively to August 2021. As such, the period of adjustment of the customer's account due to the existence of an underground leak causing excessive water loss is and shall be August 19, 2021 to March 31, 2022.

  
Janet W. Blassingame, Hearing Officer

Date: June 25, 2024

Copy to:



Myrtle Avenue, NE  
Washington, DC 20018

Adam Carlesco, Esquire  
Office of the People's Counsel  
1133 15<sup>th</sup> Street, NW, Suite 500  
Washington, DC 20005-2710

BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

DEPARTMENT OF CUSTOMER SERVICES

IN RE: Ryan Greenfield  
3431 14<sup>th</sup> Street NW  
Apt. 3  
Washington, DC 20010

Service Address:  
[REDACTED] 17<sup>th</sup> Street, SE

Account No: [REDACTED]  
Case No: 23-332407

Amount in Dispute: \$ 612.39

Before Janet W. Blassingame, Hearing Officer  
September 8, 2023 at 10:00 a.m.

The customer contested a water and sewer bill for the period August 17, 2022 to September 19, 2022. The DC Water and Sewer Authority (DC Water) investigated and determined that the charges for the period were valid and no basis existed to adjust the account. The customer requested an administrative hearing.

This matter was scheduled for a remote hearing on September 8, 2023. Present for the hearing were: Ryan Greenfield, [REDACTED] and [REDACTED] on behalf of the customer, and LaFatima Black and Kimberly Arrington, on behalf of DC Water.

The property involved is a single-family townhouse having one and one-half (1 ½) bathrooms, a kitchen, dishwasher, washing machine, and one outside faucet. The property was purchased in year 2014 and its latest tenant moved in one year ago on August 14, 2022. The prior tenant vacated the house on July 31, 2022 and the property was vacant for one or two weeks. Pursuant to the rental agreement, the tenant is responsible for payment of the water and sewer bill. The prior tenant's account with DC Water was closed and a new account opened when the current tenant took possession. Ms. Black stated that the bill dated August 16, 2022 in the amount of \$31.47 was paid on September 12, 2022, leaving a \$0 balance.

Mr. Greenfield stated that when the tenants moved in and took over the account, the first water and sewer bill was a shock. He stated that the prior tenants were told that the water meter was not functioning and had to be replaced. He stated that meter reads had not been transmitted for five (5) years. He stated that he thought that the new tenant had been back-billed.

Mr. Greenfield stated that when tenants turn-over possession of the property, he does a usual inspection, cleans and re-paints the property. He stated that he did not see any leaks and he was not aware of any plumbing issues at the property.

Mr. Greenfield asserted that communicating with DC Water has been challenging. He stated that he, initially, thought that the bill in dispute was a billing error by the utility.

Ms. [REDACTED] stated that water usage at the property went down from 36.29 CCF to 30 CCF. She stated that one day she noticed that the toilet was slow to fill and that it was making a noise. She stated that she sent a video to the landlord who, in turn, sent her a toilet replacement part (a flapper). She stated that the part was installed by a friend and that the landlord had sent the part to her by overnight delivery. She stated that the incident involved the toilet in the main bathroom on the 2<sup>nd</sup> floor and that the incident occurred soon after the move-in, maybe a few weeks after taking occupancy. Ms. [REDACTED] stated that a plumber was not called to address the toilet and that water usage has been consistent since the first billing.

Ms. [REDACTED] stated that she established an on-line account with DC Water, but she did not receive any high usage notifications from the utility.

Ms. Black expressed apologies to the customers for their customer service experience. Mr. Greenfield asserted that he receive vastly difference explanations from customer service representatives when he telephoned DC Water regarding the bill at issue. He stated that he has spent a significant number of hours trying to figure out the dispute procedure.

Ms. Black testified that the meter reads, against which the customer was billed, were actual and transmitted by an automated system. She stated that the utility tested the water meter and the meter was determined to have 100.44% accuracy. She stated that the meter was installed at the property on August 19, 2022.

Ms. Black explained that the prior tenant contacted DC Water on August 17, 2022 regarding the bill and the tenant's call prompted the service representative to notice that there was a problem with the water meter at the property. Ms. Black stated that the register on the old meter at the property was blank. She stated that the utility was not able to back-bill the prior tenants at the property because there were no hourly meter reads to establish usage.

Ms. Black stated that Ms. [REDACTED] became an authorized party regarding the water and sewer bill and was able to discuss the account with the utility as of October 6, 2022. She explained that the tenant did not receive high water usage alerts because there was nothing to compare her usage to because this was a new account without usage history.

Ms. Black testified that continuous water usage occurred at the property from August 25, 2022 to August 31, 2022, thereafter, the water usage declined.

Ms. Black stated that DC Water determined that an underground inspection was not needed and it did not conduct an underground inspection because the water usage at the property declined. She explained that an underground leak does not decline until its repaired but, here, the usage declined without need of repair, as such, the utility could rule out the existence of an underground leak as a possible cause of excessive water consumption occurring at the property. She, further, stated that the utility's investigation of the bill dispute found no evidence on overread, faulty computation of the bill or faulty meter. As such, Ms. Black stated that it was the

conclusion of DC Water that its findings of the cause of the increased water usage were inconclusive and, pursuant to DC Municipal Regulations, the customer was not entitled to an adjustment of account.

Ms. Black explained that the automated meter read system is used by DC Water for billing its customers so the utility did not notice that no reads were being sent from the property during the tenancy of the prior tenant. She stated that, when the service representative received the call from the tenant on August 17, 2022, the service representative saw 0 consumption reported on the readings.

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 rental property owned by Ryan Greenfield and there was a tenant turn-over in August 2022 with the prior tenant moving out of the property on July 31, 2022 and the current tenant taking possession of the property on August 14, 2022. (Testimony of Ryan Greenfield)
2. The period in dispute is August 17, 2022 to September 19, 2022. (Testimony of the parties)
3. When the old tenant moved out at the end of July 2022, the utility closed the tenant's water and sewer account after the tenant received a final bill and paid the same in full leaving a zero balance.. (Testimony of LaFitma Black)
4. The property owner's lease with his tenant(s) is such that the tenant is responsible for payment of the water and sewer utility bill for water usage at the rented property. (Testimony of Ryan Greenfield)
5. The property owner made [REDACTED] an authorized party on the water and sewer account with DC Water as of October 6, 2022. (Testimony of LaFatima Black)
6. Shortly after moving into the property, Ms. [REDACTED] noticed that a toilet on the 2<sup>nd</sup> floor of the house was slow to fill with water and was making a noise. She took a video of the toilet operation and sent the video to her landlord, who, in turn, sent her a toilet flapper by overnight delivery service. (Testimony of [REDACTED])
7. Ms. [REDACTED] characterized observing the faulty toilet as pretty soon, maybe a few weeks, after her move-in to the property. (Testimony of [REDACTED])
8. Ms. [REDACTED] had a friend install the replacement flapper on the toilet which she had observed making a noise and filling slowly. (Testimony of [REDACTED])
9. There was a spike in water usage at the property from August 25, 2022 to August 31, 2022. (DC Water Meter reads; testimony of LaFatima Black)
10. There had been a meter registration problem regarding the meter at the property during the tenancy of the prior tenant and that tenant was not billed for water usage because the meter was not registering water usage. The prior tenant was not back-billed and the utility installed a new water meter at the property on August 19, 2022. (Testimony of LaFatima Black)
11. The new meter registered continuous water usage occurring at the property from its installation, however, because the water and sewer account was newly established for the

- tenancy, no usage history existed and no continuous water usage or high-water usage notification was sent to the customer. (Testimony of LaFatima Black)
12. DC Water tested the water meter and the meter was determined to have 100.44% accuracy. (Testimony of LaFatima Black)
  13. DC Water's investigation of the bill dispute found no evidence of meter malfunction, meter overread or faulty computation of the bill. (Testimony of LaFatima Black)
  14. DC Water did not conduct an underground inspection at the property because the usage declined which is an indication that an underground leak does not exist. (Testimony of LaFatima Black)

#### CONCLUSIONS OF LAW

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

See, 21 DCMR 403.

3. 21 DCMR 406.1 – The repair of leaking faucets, household fixtures, and similar leaks, and the repair of malfunctioning water-cooled air conditioning equipment, are the responsibility of the owner or occupant.
4. 21 DCMR 406.2 – If the investigation discloses leaking faucets, leaking fixtures, or similar leaks, no adjustment will be made to the bill for any portion of the excessive consumption attributable to those leaks.

#### DECISION

The customer failed to establish a prima facie case that more likely than not the bill in dispute was wrong or for some other reason, the customer should not be responsible for its payment.

While neither the tenant nor the property owner testified as to the exact date that the tenant observed that the toilet was not operating correctly and the tenant took a video which she sent to her landlord, prompting the landlord to overnight to her a replacement part for the toilet. The tenant did testify that she observed the toilet shortly after moving into the property. The


evidence established that continuous usage was occurring up to August 31, 2022, the tenant moved in on August 14, 2022 and DC Water installed the water meter on August 19, 2022. As such, it is reasonable, based upon the testimony of the tenant and the meter reads, to conclude that the usage declined when the tenant's friend changed the toilet flapper since the tenant testified that she observed the faulty toilet shortly after her move-in- maybe a few weeks, and the flapper was changed.

DC Municipal Regulations dictate that if excessive water usage is caused by a household fixture, such as, a toilet, DC Water does not adjust the customer's bill for any of the excessive water usage. (See, 21 DCMR 406.2)

More likely than not, the faulty toilet observed by the tenant was faulty prior to her move-in. The testimony established that the prior water meter was faulty resulting in the prior tenant not being charged for water usage for a substantial period. The testimony, however, further, established that DC Water changed the water meter and the new meter was registering usage at 100.44% accuracy. As such, the new tenant was billed based upon actual water usage and unfortunately, she had a faulty toilet resulting in excessive and continuous water usage until it was fixed by replacing its flapper.

The property owner testified that his lease agreement with his tenants makes the tenant responsible for payment of the water and sewer bill. DC Water's equipment was operating appropriately and the utility is not responsible for defective household fixtures in a residence. This is a contract issue between landlord and tenant regarding repair of faulty fixtures and responsibility for payment of the water and sewer bill. No testimony or evidence presented during the hearing, nullifies the utility's bill for water and sewer service provided to the property.



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

  
Janet W. Blessingame, Hearing Officer

Date: Jan. 25, 2024

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