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CIRCUIT COURT OF  
COOK COUNTY, ILLINOIS  
CHANCERY DIVISION  
CLERK DOROTHY BROWN

No. 41106

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

TAMBURO,  
on behalf of plaintiff and the class  
members described herein,

Plaintiff,

vs.

COMMONWEALTH EDISON COMPANY  
and NORTHERN ILLINOIS GAS COMPANY,  
d/b/a NICOR GAS COMPANY,

Defendants.

**COMPLAINT – CLASS ACTION**

**INTRODUCTION**

1. Plaintiff John Tamburo brings this action to secure redress against illegal and oppressive conduct by defendants in connection with medical payment arrangements.

**PARTIES**

2. Plaintiff John Tamburo is a resident of Will County, Illinois.

3. Defendant Commonwealth Edison Company (“Com Ed”) is an Illinois corporation that is the electrical utility in northern Illinois. It has over 3.7 million customers. Com Ed has offices at 440 S. LaSalle St., Chicago, IL 60605. Its registered agent and office is Corporation Creations Network, Inc., 350 S. Northwest Highway, Park Ridge, IL 60068.

4. Defendant Northern Illinois Gas Company d/b/a Nicor Gas Company (“Nicor”) is an Illinois corporation that is the natural gas utility in suburban Cook County and other portions of Northern Illinois. It has 2 million customers. Its registered agent and office is Illinois

Corporation Service Co., 801 Adlai Stevenson Drive, Springfield, IL 62703. It has numerous offices and facilities in Cook County, including at 615 Eastern Avenue, Bellwood, IL 60104; 1665 Birchwood Avenue, Des Plaines, IL 60018; 19199 Glenwood Road, Glenwood, IL 60507; and 1011 Wiley Road, Schaumburg, IL 60173.

### **FACTS**

5. Plaintiff suffered health problems and, in September 2016, qualified for a medical payment arrangement for his past due utility bills owed to Com Ed and Nicor.

6. Medical payment arrangements are required by Illinois Commerce Commission regulations, 83 Ill.Admin.Code 280.160, which provide:

#### **Section 280.160 Medical Certification**

a) Intent: The purpose of this Section is to temporarily prohibit disconnection of utility service to a residential customer for at least 60 days in cases of certified medical necessity; and to provide an opportunity for the customer to retire past due amounts by periodic installments under an automatic medical payment arrangement commencing after 30 days.

b) Certifying Parties: Certification may be made by either a licensed physician or a local board of health.

c) Method of Certification:

1) Initial certification by phone call is allowed.

2) Written (may be mailed, faxed or delivered electronically) certification must be provided within 7 days after an initial certification by phone call.

d) Certificate Content:

1) Name and contact information for the certifying party;

2) Service address and name of patient;

3) A statement that the patient resides at the premises in question; and

- 4) A statement that the disconnection of utility service will aggravate an existing medical emergency or create a medical emergency for the patient.
- e) Certificate Timing:
- 1) Certificate presentation prior to disconnection entitles a customer to receive a medical payment arrangement term, as described under subsection (i)(1).
  - 2) The certificate may be presented up to 14 days after disconnection, with utility discretion as to whether it shall accept a certificate more than 14 days after disconnection have passed. Certification presented after disconnection entitles a customer to receive a medical payment arrangement term, as described under subsection (i)(2).
- f) Restoration:
- 1) When a valid medical certification is provided to the utility up to 14 days after disconnection, service shall be restored within one day after the provision of certification.
  - 2) The utility shall not treat the disconnected customer as an applicant for service for purposes of restoration under a medical certificate.
- g) Duration of Certificate: The certificate shall protect the account from disconnection for 60 days after the date of certification. If the customer was disconnected prior to certification, the 60 day period shall not begin until the utility restores the customer's service.
- h) Data Collection and Maintenance: The utility shall collect the following data on a monthly basis and maintain the data for two years following its collection. The utility shall make the data available to Commission Staff within 30 days after a request from Staff:
- 1) The total number medical certificates requested and, in instances in which a utility declines to issue a medical certificate, the reason for denial;
  - 2) The total number of medical certificates issued by the utility;
  - 3) The duration, including start and end dates, of the medical certification period (whether the end date is based on payment by the customer or expiration of the 60-day period).

i) Medical Payment Arrangement:

1) If valid medical certification is received prior to disconnection, the first bill statement that will be due after 30 days after the certification date shall indicate:

- A) An amount to pay that is equal to 1/12th of the total amount owing for utility services by the customer;
- B) The remaining balance owing for utility services;
- C) That the customer is on a medical payment arrangement; and
- D) 11 remaining installments of equal amounts to be paid on future bills.

2) If valid medical certification is received after disconnection, the first bill statement that will be due after 30 days after the certification date shall indicate:

- A) An amount to pay that is equal to 1/4th of the total amount owing for utility services by the customer;
- B) The remaining balance owing for utility services;
- C) That the customer is on a medical payment arrangement; and
- D) Nine remaining installments of equal amounts to be paid on future bills.

3) Valid medical certification shall entitle a customer to an MPA, regardless of the success or failure of previous payment plans of any sort.

j) New Certification of Previously Certified Accounts: Accounts that received a prior valid medical certificate shall be eligible for new certification any time after either:

- 1) The total account balance has been brought current; or
- 2) 12 months from the beginning date of the prior certification has passed.

7. The requirement that the first bill after certification include "An amount to pay that is equal to 1/12th of the total amount owing for utility services by the customer" and show

"11 remaining installments of equal amounts to be paid on future bills" precludes addition of interest or late charges, as interest or late charges would not permit the first installment to be equal to 1/12 of the total with the 11 remaining installments to be of equal amounts.

8. The requirement that the first bill after disconnection be for "1/4th of the total amount owing for utility services by the customer" and that there be "Nine remaining installments of equal amounts to be paid on future bills" would not allow for the addition of interest or late charges.

9. Com Ed added 1.5% per month interest to the amounts due under plaintiff's medical payment arrangement. (Exhibits A and B.) The amount of the bill subject to the arrangement was \$811.63. However, Com Ed required payment of \$74.41 per month for 12 months, a total of \$892.92.

10. On October 7, 2016, plaintiff called Com Ed and inquired about the discrepancy.

11. During the October 7, 2016 telephone call, a representative of Com Ed told Plaintiff that additional \$74.41 was due to the addition of finance charges.

12. On information and belief, it is Com Ed's standard practice to add finance charges to amounts due under medical payment arrangements.

13. Nicor added late charges to the amounts due under plaintiff's medical payment arrangement. (Exhibits C-D.) The amount of the bill subject to the arrangement was \$583.71. The basic monthly payment under the arrangement was \$52.27 per month for 11 months. However, Nicor added a late charge to each monthly payment under the arrangement. (Exhibits C-D) As a result, the monthly payments under the arrangement varied from \$60.91 downward.

14. On information and belief, it is Nicor's standard practice to add late charges

to amounts due under medical payment arrangements.

15. Neither Com Ed nor Nicor complied with the requirements of 83 Ill.Admin.Code 280.160

16. Plaintiff paid the unauthorized amounts.

17. Plaintiff was forced to pay, as electricity and gas service is a necessity.

18. The amounts quoted by defendants (Exhibits A-D) were in excess of the amounts authorized by 83 Ill.Admin.Code 280.160.

19. Plaintiff was damaged as a result, in that he suffered loss of money as well as stress and hardship from increased difficulty in meeting his plan.

#### **COUNT I – PUBLIC UTILITY ACT**

20. Plaintiff incorporates paragraphs 1-19.

21. 220 ILCS 5/5-201 provides:

5/5-201. Civil damages

§ 5-201. In case any public utility shall do, cause to be done or permit to be done any act, matter or thing prohibited, forbidden or declared to be unlawful, or shall omit to do any act, matter or thing required to be done either by any provisions of this Act or any rule, regulation, order or decision of the Commission, issued under authority of this Act, the public utility shall be liable to the persons or corporations affected thereby for all loss, damages or injury caused thereby or resulting therefrom, and if the court shall find that the act or omission was wilful, the court may in addition to the actual damages, award damages for the sake of example and by the way of punishment. An action to recover for such loss, damage or injury may be brought in the circuit court by any person or corporation.

In every case of a recovery of damages by any person or corporation under the provisions of this Section, the plaintiff shall be entitled to a reasonable attorney's fee to be fixed by the court, which fee shall be taxed and collected as part of the costs in the case.

### CLASS ALLEGATIONS

22. Plaintiff brings this action on behalf of two classes.

23. The Com Ed class consists of all persons who entered into or made payments on medical payment arrangements with Com Ed on or after a date five years prior to the filing of this action.

24. The Nicor class consists of all persons who entered into or made payments on medical payment arrangements with Nicor on or after a date five years prior to the filing of this action.

25. On information and belief, based on the size of defendants, each class is so numerous that joinder of all members is impracticable.

26. There are questions of fact and law common to the class members, which common questions predominate over questions peculiar to individual class members.

27. The predominant common questions are:

- a. Whether defendants are entitled to imposed the charges added to the amount of the bill.
- b. Whether doing so is actionable under the Public Utility Act.

28. Plaintiff will fairly and adequately represent the class members. Plaintiff has the same claims as the class members and has retained counsel experienced in consumer litigation and class actions.

29. A class action is an appropriate means for the fair and efficient adjudication of this matter. Individual actions are economically infeasible, since the class members are by definition persons who have difficulty paying their utility bills for medical hardship reasons.

There is no reason to burden the courts with multiple actions presenting the same questions of fact and law.

WHEREFORE, the Court should enter judgment in favor of plaintiff and the class members and against defendants for:

- i. Compensatory damages;
- ii. Punitive damages;
- iii. Attorney's fees, litigation expenses and costs of suit;
- iv. Such other or further relief as is proper.

#### **COUNT II – CONSUMER FRAUD ACT**

30. Plaintiff incorporates paragraphs 1-19.

31. Defendants engaged in unfair acts and practices, in violation of 815 ILCS 505/2, by imposing unauthorized and illegal charges.

32. Defendants' conduct violates public policy in that it violates 83 Ill.Admin.Code 280.160.

33. Defendants' conduct is oppressive in that plaintiff had no choice but to accept and pay the fees imposed by Defendants or risk losing heat and electricity for his home

34. Defendants' conduct causes substantial injury to consumers as it forces them to devote scarce resources to paying interest and late charges when they are already having to deal with health problems and pay medical bills, as well as keep up with their electric and heating bills.

#### **CLASS ALLEGATIONS**

35. Plaintiff brings this action on behalf of two classes.



36. The Com Ed class consists of all persons who entered into or made payments on medical payment arrangements with Com Ed on or after a date three years prior to the filing of this action.

37. The Nicor class consists of all persons who entered into or made payments on medical payment arrangements with Nicor on or after a date three years prior to the filing of this action.

38. On information and belief, based on the size of defendants, each class is so numerous that joinder of all members is impracticable.

39. There are questions of fact and law common to the class members, which common questions predominate over questions peculiar to individual class members.

40. The predominant common questions are:

- a. Whether defendants are entitled to imposed the charges added to the amount of the bill.
- b. Whether doing so is actionable under the Consumer Fraud Act.

41. Plaintiff will fairly and adequately represent the class members. Plaintiff has the same claims as the class members and has retained counsel experienced in consumer litigation and class actions.

42. A class action is an appropriate means for the fair and efficient adjudication of this matter. Individual actions are economically infeasible, since the class members are by definition persons who have difficulty paying their utility bills for medical hardship reasons. There is no reason to burden the courts with multiple actions presenting the same questions of fact and law.

WHEREFORE, the Court should enter judgment in favor of plaintiff and the class members and against defendants for:

- i. Compensatory damages;
- ii. Punitive damages;
- iii. Injunctive relief;
- iv. Attorney's fees, litigation expenses and costs of suit;
- v. Such other or further relief as is proper.

### **COUNT III – RESTITUTION**

43. Plaintiff incorporates paragraphs 1-19.

44. Defendants obtained money by means contrary to equity and good conscience, such that they should be required to disgorge it to prevent unjust enrichment.

### **CLASS ALLEGATIONS**

45. Plaintiff brings this action on behalf of two classes.

46. The Com Ed class consists of all persons who entered into or made payments on medical payment arrangements with Com Ed on or after a date five years prior to the filing of this action.

47. The Nicor class consists of all persons who entered into or made payments on medical payment arrangements with Nicor on or after a date five years prior to the filing of this action.

48. On information and belief, based on the size of defendants, each class is so numerous that joinder of all members is impracticable.

49. There are questions of fact and law common to the class members, which

common questions predominate over questions peculiar to individual class members.

50. The predominant common questions are:

- a. Whether defendants are entitled to imposed the charges added to the amount of the bill.
- b. Whether doing so results in unjust enrichment.

51. Plaintiff will fairly and adequately represent the class members. Plaintiff has the same claims as the class members and has retained counsel experienced in consumer litigation and class actions.

52. A class action is an appropriate means for the fair and efficient adjudication of this matter. Individual actions are economically infeasible, since the class members are by definition persons who have difficulty paying their utility bills for medical hardship reasons. There is no reason to burden the courts with multiple actions presenting the same questions of fact and law.

WHEREFORE, the Court should enter judgment in favor of plaintiff and the class members and against defendants for:

- i. Compensatory damages;
- ii. Punitive damages;
- iii. Injunctive relief;
- iv. Attorney's fees, litigation expenses and costs of suit;
- v. Such other or further relief as is proper.

  
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**NOTICE OF LIEN AND ASSIGNMENT**

Please be advised that we claim a lien upon any recovery herein for 1/3 or such amount as a court awards. All rights relating to attorney's fees have been assigned to counsel.



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