

**STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES**

Before the Director of Insurance and Financial Services

Alfred Lampkins and Deborah Lampkins,

Petitioners

v

**Case No. 19-1042-EI
Docket No. 19-010822**

IDS Property Casualty Insurance Company,

Respondent

For the Petitioner:

Alfred Lampkins and Deborah Lampkins
[REDACTED]
[REDACTED]

For the Respondent:

Tiffany Griot
IDS Property Casualty Insurance Company
3500 Packerland Drive
DePere, WI 54115

Issued and entered
this 11th day of November 2019
by Randall S. Gregg
Senior Deputy Director

FINAL DECISION

I. BACKGROUND

Alfred and Deborah Lampkins (Petitioners) filed a request for hearing with the Department of Insurance and Financial Services (DIFS) on April 26, 2019¹ following a Review and Determination by the Director's Designee on April 17, 2019 (Review and Determination) based on an underlying complaint against IDS Property Casualty Insurance Company (Respondent). The question raised in Petitioners' underlying complaint was whether Respondent acted in accordance with the Insurance Code, MCL

¹ The Proposal for Decision, dated August 22, 2019, referred to this request for hearing date as May 2, 2019, which is in error.

500.100, *et seq.* (Code), when Respondent increased Petitioners' premium for their homeowners' insurance policy for the February 1, 2019 through February 1, 2020 policy period.

A hearing was held on June 17, 2019. The Petitioners were not represented by counsel at the hearing. On August 22, 2019, Administrative Law Judge Lauren G. VanSteel (Judge VanSteel) issued a Proposal for Decision (PFD). Judge VanSteel recommended that the Director issue a Final Decision consistent with the Findings of Fact and Conclusions of Law as outlined in the PFD.

II. EXCEPTIONS

On September 10, 2019, Petitioners submitted Exceptions to the PFD. Respondent did not submit Exceptions.

In their Exceptions to the PFD, Petitioners argue that the PFD is in error on several grounds, summarized as follows: 1) Judge VanSteel failed to consider Section 2153(e) in the PFD; 2) Petitioners' failure to shop around for other insurance is irrelevant; 3) Judge VanSteel failed to include reference in the PFD to the premiums for 2017-2018 to compare against the 2019-2020 premiums; 4) the statewide increase of 15% effective January 28, 2018 is irrelevant to the 2019-2020 premium in question; and 5) the Equifax credit report should not have been utilized to determine Petitioners' 2019-2020 rate.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Findings of Fact and Conclusions of Law in the August 22, 2019, Proposal for Decision are adopted and made part of this Final Decision, modified as follows:

1. Under Findings of Fact, paragraph 11, the word "likely" should be omitted from the first sentence, and the sentence shall now read: "Prior to the new insurance coverage period, Petitioner Alfred Lampkins' insurance score changed from [REDACTED] to [REDACTED] as reported to Respondent by Equifax."
2. Paragraph 11 under Findings of Fact should include reference to the date of the credit report relied upon in determining the rate in question, and therefore, the second sentence of paragraph 11 shall

now read: "A credit report dated December 28, 2018, resulted in a change in Petitioners' financial responsibility score and a premium increase of 19.8%."

3. Under Conclusions of Law, all references to "Section 2513" should be stricken and replaced with "Section 2153," related to an insurer's use of credit information or insurance scores in determining rates.

With the above modifications, the PFD's Findings of Fact and Conclusions of Law are adopted, made part of this Final Decision, and the Conclusions of Law restated, as follows:

1. Respondent has presented *prima facie* evidence concerning its determination of Petitioners' homeowners' insurance premium.
2. Section 2153 of the Code allows an insurance company to use credit information and an insurance score in determining premium installment payment options and availability, if it does so by using a consistent methodology for all insureds. MCL 500.2153.
3. Petitioners have not shown by a preponderance of the evidence that Respondent acted contrary to the Insurance Code by considering Petitioners' credit scores as reported by an independent company, Equifax, in developing an insurance score for the purposes of determining Petitioners' homeowners' insurance rates.
4. Petitioners have not shown that the conclusions in the Director's Designee's Review and Determination issued on April 17, 2019, were in error as regards to Respondent's filing and use of rates in compliance with Section 2106 and Section 2119(1) of the Code.

The record evidence does not show that Respondent incorrectly determined Petitioners' homeowners' insurance premium for the February 1, 2019 to February 1, 2020 policy period under the provisions of the Insurance Code.

IV. ORDER

Therefore, it is ORDERED that:

1. The PFD, with corrections as noted herein, is adopted and made part of this Final Decision.
2. The Review and Determination issued by DIFS on April 17, 2019, is affirmed.

A handwritten signature in black ink, appearing to read 'R. S. Gregg', is written over a horizontal line.

Randall S. Gregg
Senior Deputy Director

**STATE OF MICHIGAN
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES**

IN THE MATTER OF:

Docket No.: 19-010822

**Alfred Lampkins and Deborah Lampkins,
Petitioners**

Case No.: 19-010822

v

**Agency: Department of
Insurance and
Financial Services**

**IDS Property Casualty Insurance Company,
Respondent**

Case Type: DIFS-Insurance

Filing Type: Appeal

_____/

Issued and entered
this 21st day of August 2019
by: Lauren G. VanSteel
Administrative Law Judge

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

This contested case proceeding under the Insurance Code of 1956, 1956 PA 218, as amended, MCL 500.100 *et seq.* (hereafter "Insurance Code"), commenced in the Michigan Office of Administrative Hearings and Rules (MOAHR) with the issuance of a Notice of Hearing, dated May 15, 2019, scheduling a hearing for June 17, 2019. The Notice of Hearing was issued based on an Order Referring Complaint for Hearing and Order to Respond, issued on May 10, 2019, by the Special Deputy Director of DIFS, Randall S. Gregg.

The matter concerns an appeal and request for hearing submitted by Alfred and Deborah Lampkins, Petitioners, under Section 2113(5) of the Insurance Code, MCL 500.2113(5), concerning a complaint against IDS Property Casualty Insurance Company, Respondent, filed with the Department of Insurance and Financial Services ("DIFS") on May 2, 2019, following as Review and Determination by the Director's Designee on April 17, 2019.

The gravamen of Petitioners' underlying complaint, received by DIFS on January 14, 2019, is whether Respondent acted in accordance with the Insurance Code in its recent increase of premium for Petitioners' homeowners' insurance policy. On January 29, 2019, Respondent filed an answer to the complaint

On April 17, 2019, the Director's Designee issued a Review and Determination. On May 2, 2019, Petitioners filed a request for hearing with DIFS. On May 10, 2019, the Special Deputy Director for DIFS issued an Order Referring Complaint for Hearing and Order to Respond. On May 13, 2019, DIFS filed a request for hearing with MOAHR. On May 15, 2019, MOAHR issued a Notice of Hearing, scheduling the contested case hearing for June 17, 2019. On June 7, 2019, Respondent filed an Answer to the appeal filed by Petitioners.

On June 17, 2019, the contested case hearing was held as scheduled. Petitioners appeared on their own behalf. Howard Klausmeier, Attorney at Law, appeared on behalf of Respondent. Deborah Lampkins testified on behalf of both Petitioners. The following exhibit was offered by Petitioners and admitted into evidence:

1. Petitioners' Exhibit No. 1 is a copy of a letter from Petitioners to DIFS, dated December 28, 2018, with attachments.

Respondent did not present any witnesses, but offered by the following exhibits that were admitted into evidence:

1. Respondent's Exhibit A is a copy of a letter from Angela Sylvester, Compliance Complaint Analyst, to DIFS, dated January 25, 2019, with attachments.
2. Respondent's Exhibit B is a copy of a letter to DIFS from Angela Sylvester, Compliance Complaint Analyst, dated February 22, 2019, and letter from Sandra Wynn, Supervisor Policyholder Services to Deborah Lampkins, dated February 22, 2019, with attachments.
3. Respondent's Exhibit C is a copy of a letter to DIFS from Angela Sylvester, Compliance Complaint Analyst, dated March 19, 2019, with attachments.

The evidentiary record was closed at the conclusion of the hearing.

ISSUES AND APPLICABLE LAW

The issue presented in this matter, as set forth on the Notice of Hearing, is whether Petitioners were charged an incorrect premium for homeowners' insurance for the February 1, 2019 – February 1, 2020 policy period. The Insurance Code provides in pertinent part as follows:

Sec. 2458 Each rating organization and insurer that makes its own rates, within a reasonable time after receiving written request for the information and on payment of a reasonable charge, shall furnish to an insured affected by a rate made by the rating organization or insurer, or to the insured's authorized representative, all pertinent information as to the rate. Pertinent information under this section does not include information that is a trade secret as determined by the director under section 2108(5) or 2406(6). Each rating organization and insurer that makes its own rates shall provide within this state reasonable means for a person aggrieved by the application of its rating system to be heard, in person or by his or her authorized representative, on his or her written request to review the manner in which the rating system has been applied in connection with the insurance afforded to him or her. If the rating organization or insurer fails to grant or reject the request within 30 days after it is made, the applicant may proceed in the same manner as if his or her application had been rejected. A party affected by the action of the rating organization or insurer on the request may appeal, within 30 days after written notice of the action, to the director, who, after a hearing held on not less than 10 days' written notice to the appellant and to the rating organization or insurer, may affirm or reverse the action. A person who requests a hearing before the director under this section may be represented at the hearing by an attorney. A person, other than an individual, that requests a hearing before the director under this section may also be represented by an officer or employee of that person. An individual who requests a hearing before the director under this section may also be represented by a relative of the individual. MCL 500.2458. (Emphasis supplied).

Sec. 212. (3) The commissioner may designate 1 or more persons to conduct hearings provided for under this code, hearings required by Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws, and hearings which the commissioner considers necessary and appropriate for fact-finding or information gathering before making decisions, policies, and determinations allowable or required by law in the course of carrying out the duties of the commissioner. Before a person may conduct hearings, the person shall

subscribe the constitutional oath of office and file the oath with the commissioner. Limitations imposed by the commissioner upon the authority of a deputy or a person designated by the commissioner to conduct hearings shall not be binding upon or limit the rights of the parties heard. MCL 500.212(3).

Sec. 2113. (1) A person who has reason to believe that an insurer has improperly denied him or her automobile insurance or home insurance or has charged an incorrect premium for that insurance shall be entitled to a private informal managerial-level conference with the insurer and to a review before the commissioner, if the conference fails to resolve the dispute.

(2) An insurer shall establish reasonable internal procedures to provide a person with a private informal managerial-level conference regarding the matters described in subsection (1). These procedures shall include all of the following:

- (a) A method of providing the person, upon request and payment of a reasonable copying charge, with information pertinent to the denial of insurance or to the premium charged.
- (b) A method for resolving the dispute promptly and informally, while protecting the interests of both the person and the insurer.

(3) If the insurer fails to provide a conference and proposed resolution within 30 days after a request by a person, or if the person disagrees with the proposed resolution of the insurer after completion of the conference, the person shall be entitled to a determination of the matter by the commissioner.

(4) The commissioner shall by rule establish a procedure for determination under this section, which shall be reasonably calculated to resolve these matters informally and as rapidly as possible, while protecting the interests of both the person and the insurer.

(5) If either the insurer or the person disagrees with a determination of the commissioner under this section, the

commissioner, if requested to do so by either party, shall proceed to hear the matter as a contested case under Act No. 306 of the Public Acts of 1969, as amended. MCL 500.2113.

Sec. 2153. An insurer shall not use credit information or an insurance score as any part of a decision to deny, cancel, or nonrenew a personal insurance policy under chapters 21, 24, and 26. However, credit information and an insurance score may be used to determine premium installment payment options and availability. An insurer shall not apply credit information or a credit-based insurance score that is otherwise permitted under this act unless all of the following are met:

(a) The insurer or its producer discloses, either on the insurance application or at the time the application is taken, that it may obtain credit information in connection with the application. This disclosure shall be either written or provided to an applicant in the same medium as the application for insurance. An insurer may use the following disclosure statement:

"In connection with this application for insurance, we may review your credit report or obtain or use a credit-based insurance score based on the information contained in that credit report. We may use a third party in connection with the development of your insurance score."

(b) The insurer or a third party on behalf of the insurer does not use income, gender, address, zip code, ethnic group, religion, marital status, or nationality of the insured or insurance applicant in calculating an insurance score.

(c) The insurer does not take an adverse action against a consumer because he or she does not have a credit card account. However, an insurer may take an adverse action against that insured if it is based on any other applicable factor that is independent of the fact that the consumer does not have a credit card account.

(d) The insurer or a third party on behalf of the insurer does not consider an absence of credit information or an inability

to calculate an insurance score in the rating of personal insurance unless any resulting rate differential is filed with and not disapproved by the office of financial and insurance regulation. The office of financial and insurance regulation shall not disapprove a filing under this subdivision if it meets 1 of the following:

(i) Is reasonably justified by differences in losses, expenses, or both.

(ii) Provides the insured or insurance applicant with a discount that is not less, on average, than the average credit based discount received by the insurer's insureds in this state.

(e) The insurer or a third party on the insurer's behalf uses a credit report issued within 90 days before the date an insurance score based on that credit report is first applied to the insured.

(f) Upon the insured's request or with the insured's permission the insured's producer's request at annual renewal, or upon the insured's request during the course of the policy, an insurer or a third party on the insurer's behalf shall obtain a new credit report or insurance score and re-rate the insured. An insurer or a third party on the insurer's behalf is not required to obtain a new credit report or recalculate the insurance score more frequently than once in a 12-month period. An insurer or a third party on the insurer's behalf may order a credit report upon any renewal if the insurer does so using a consistent methodology with all its insureds.

(g) For insurance scores calculated or recalculated on or after the effective date of the amendatory act that added this section, the insurer or a third party on the insurer's behalf does not use the following as a negative factor in any insurance score or in reviewing credit information:

(i) Credit inquiries not initiated by the consumer or requested by the consumer for his or her own credit information.

(ii) Credit inquiries relating to insurance coverage, if so identified on an insured's or insurance applicant's credit report.

(iii) Multiple lender inquiries, if coded by the consumer reporting agency on the credit report as being from the home mortgage industry and made within 30 days of one another, unless only 1 inquiry is considered.

(iv) Multiple lender inquiries, if coded by the consumer reporting agency on the credit report as being from the automobile lending industry and made within 30 days of one another, unless only 1 inquiry is considered.

(v) Collection accounts with a medical industry code, if so identified on the consumer's credit report. MCL 500.2513. (Emphasis supplied).

FINDINGS OF FACT

Based on the entire record in this matter, including the testimony and admitted exhibits, the following findings of fact are established:

1. Alfred and Deborah Lampkins, Petitioners, have resided at [REDACTED] in [REDACTED], [REDACTED] for 11 years. Petitioners initially had homeowners' insurance coverage for their residence through the American Automobile Association (AAA), per the credible testimony of Ms. Lampkins.
2. In 2016, Petitioners obtained homeowners' insurance coverage through Respondent, IDS Property Casualty Insurance Company (also known as "Ameriprise Auto & Home Insurance") in connection with their Costco membership, per the credible testimony of Ms. Lampkins.
3. In 2016, the premium on the homeowners' insurance policy for Petitioners was \$798.67 for a dwelling coverage and replacement cost of \$324,000. [Resp. Exh. A].
4. In December 2018, Respondent issued a homeowners' insurance policy to Petitioners for the policy term February 1, 2019 to February 1, 2020, with a total premium increase to \$1,056.11.
5. Petitioner Ms. Lampkins acknowledged in her hearing testimony that after being notified of the premium increase she did not then shop around for other insurance and decided to stay with Respondent's homeowners' insurance.

6. Ms. Lampkins contacted Respondent and talked to different representatives, but thought she was being given “pat” answers. She acknowledged that she was given the same information about the premium by Respondent’s representatives as she had been given by Respondent in writing.
7. For the policy term of February 1, 2019 to February 1, 2020, there was an increase dwelling coverage and replacement cost of \$343,000, causing a premium increase of 3.1%. A higher rating factor is used as the dwelling coverage increases, as set forth in Respondent’s annual filing. [Pet. Exh. 1; Resp. Exh. A & C].
8. Effective January 28, 2018, Respondent filed a statewide rate increase of +15%. Effective January 27, 2019, Respondent filed a statewide rate increase of +9.4%. Depending upon specific policy characteristics, the rate change had a maximum impact of +38.55% and a minimum impact of 0%. [Resp. Exh. A].
9. Petitioners have not filed a homeowners’ insurance claim with Respondent. The only homeowners’ claim they ever made was with AAA several years ago, per the credible testimony of Ms. Lampkins.
10. Respondent uses insurance scores in determining annual premiums, and annually notifies its policyholders of that fact. Respondent explained in its annual filing how a credit-based financial responsibility score affects a homeowners’ insurance premium. The insurance score used by Respondent was developed to statistically predict the likelihood that a consumer will file an insurance claim. [Resp. Exh. C].
11. Prior to the new insurance coverage period, Petitioner Alfred Lampkins’ insurance score likely changed from ■■■ to ■■■, as reported to Respondent by Equifax. A credit report by Equifax included information that an auto finance payment was 30 days overdue. This resulted in a change in the credit-based “financial responsibility score” and a premium increase of 19.8%. [Pet. Exh. 1; Resp. Exh. B].
12. Ms. Lampkins disputed in her hearing testimony that there had been a 30-day late auto finance payment, but she acknowledged that she (or Mr. Lampkins) had co-signed on an auto loan with her son in 2011. She testified that she did not think that auto payments on that loan going back to 2011 could have affected their insurance score eight years later in 2019.

13. In a letter from Petitioners to Respondent, dated February 17, 2019, Petitioners acknowledged that in [REDACTED] they had become aware of a delinquency on the co-signed auto loan and repossession, which was then settled for \$ [REDACTED] in [REDACTED]. [Resp. Exh. B].
14. Ms. Lampkins acknowledged in her hearing testimony that she had opened a credit account with Costco about five years ago. The record evidence is not clear that this particular credit account negatively affected Petitioners' credit or insurance score. The information from Equifax only stated that there was an insufficient amount of time since the most recent bank issued credit card was established, not which credit account was at issue.
15. Ms. Lampkins disputed information apparently reported to Respondent by Equifax that "the oldest credit account on your credit report has only been open for a short period of time." [Resp. Exh. B]. Ms. Lampkins credibly testified that she has a 20-year credit card account. It is not known what Equifax based its statement on, or whether it was referring to Mr. Lampkins rather than Ms. Lampkins.
16. Ms. Lampkins acknowledged in her hearing testimony that she had asked Equifax for the information it had sent to Respondent, but she saw nothing on the credit report to contest. She did not pursue any correction with Equifax. It is more likely than not that the Equifax report to Respondent included information about a late auto loan, which negatively affected Petitioners' "financial responsibility" insurance score as determined by Respondent. [Resp. Exh. A-C].

CONCLUSIONS OF LAW

The principles that govern judicial proceedings also apply to administrative hearings. 8 *Callaghan's Michigan Pleadings and Practice* (2nd ed), §60.48. Petitioners have the burden of proof to show by a preponderance of the evidence that Respondent charged an incorrect insurance premium or otherwise did not act in accordance with the Insurance Code. As the Michigan Supreme Court has stated, "[p]roof by a preponderance of the evidence requires that the fact finder believe that the evidence supporting the existence of the contested fact outweighs the evidence supporting its nonexistence." *Blue Cross and Blue Shield of Michigan v Milliken*, 422 Mich 1; 367 NW2d 1 (1985). See also, *Martucci v Detroit Commissioner of Police*, 322 Mich 270; 33 NW2d 789 (1948).

Based on the above findings of fact, it is concluded that Petitioners have not met their burden of proof. Respondent has presented *prima facie* evidence concerning its determination of Petitioners' homeowners insurance premium at times pertinent, that it has provided Petitioners with relevant information concerning its insurance rates, and that it has charged insurance rates to Petitioners in conformity with the Insurance Code and its approved filings with the Department of Insurance and Financial Services. The record evidence as a whole does not show that Respondent has acted contrary to any of the Insurance Code provisions cited above.

Specifically, Section 2513 of the Insurance Code allows an insurance company to use credit information and an insurance score in determining premium installment payment options and availability, if it does so by using a consistent methodology for all its insureds. MCL 500.2513. Petitioners have not shown by a preponderance of the evidence that Respondent acted contrary to the Insurance Code by considering Petitioners' credit scores as reported by an independent company, Equifax, in developing an insurance score for purposes of determining Petitioners' homeowner insurance rates.

In addition, the record evidence does not support a conclusion that Petitioners' credit scores were treated inconsistently by Respondent relative to its other insureds. Rather, the record evidence shows that it is more likely than not that Petitioners have a factual dispute with certain information reported to Respondent by Equifax pertaining to Mr. or Ms. Lampkins' credit history, which they had not pursued with Equifax at time of hearing here.

Further, Petitioners have not shown that the conclusions in the Director's Designee's Review and Determination issued on April 17, 2019, were in error as regards Respondent's filing and use of rates in compliance with Section 2106 and 2119(1) of the Insurance Code. Petitioners' proofs at hearing rather focused on alleged incorrect credit history information.

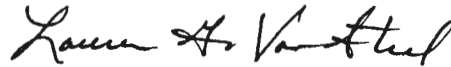
Therefore, based on the above findings of fact it is concluded that the record evidence in this matter does not show that Respondent incorrectly determined Petitioners' homeowners' insurance premium for the February 1, 2019 to February 1, 2020 policy term under the provisions of the Insurance Code.

PROPOSED DECISION

The undersigned Administrative Law Judge proposes that the Director adopt the above findings of fact and conclusions of law, affirm the Review and Determination issued by the Director's Designee on April 17, 2019, and dismiss Petitioners' appeal.

EXCEPTIONS

Any Exceptions to this Proposal for Decision should be filed in writing with the Office of Financial and Insurance Services, Division of Insurance, Attn: Michele Estrada, P.O. Box 30220, Lansing, Michigan 48909, within twenty-one (21) days of issuance of this Proposal for Decision. An opposing party may file a response within fourteen (14) days after exceptions are filed.



Lauren G. VanSteel

Administrative Law Judge