STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

Before the Director of the Department of Insurance and Financial Services

Thomas J. Bolduc,

Petitioner,

v

Case No. 18-1031-EI
Docket No. 18-019529

Auto-Owners Insurance Company,

Respondent.
______________________________/

For the Petitioner:

Thomas J. Bolduc

For the Respondent:

Lori McAllister (P39501)
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______________________________/

Issued and entered
this 28th day of June 2019
by Anita G. Fox
Director

FINAL DECISION

I. BACKGROUND

This matter stems from Mr. Thomas Bolduc's (Petitioner) appeal of a Review and Determination, dated July 20, 2018. Petitioner appealed the outcome of the Review and Determination in Auto-Owners Insurance Company's (Respondent) favor, finding that Respondent accurately rated Petitioner's

homeowner's policy with the use of insurance scoring. Petitioner requested a hearing pursuant to Section 2113(5) of the Insurance Code, MCL 500.2113(5), which occurred on January 15, 2019.

On May 9, 2019, Administrative Law Judge Thomas A. Halick issued a Proposal for Decision (PFD), in which he concluded that Respondent did not violate the Insurance Code (Code) and that Petitioner's appeal should be dismissed. The specific findings of fact and legal conclusions set forth in the PFD are further discussed below in Section III.

II. EXCEPTIONS

On May 26, 2019, Petitioner filed Exceptions to the PFD. On June 10, 2019, Respondent filed its Answer to Petitioner's Exceptions.

In his Exceptions to the PFD, Petitioner contends that Respondent failed to provide him with requested information regarding the use of reason code 0258 related to insurance scoring. Petitioner further contends that the difference in his homeowner's insurance premium between 2017 and 2018 was greater than the $0.50 increase referenced in the PFD. Finally, Petitioner disputes the conclusion that there is a statistically significant correlation between opening and immediately closing credit card accounts and the likelihood that an insured will file a claim.

In Respondent's Answer to Petitioner's Exceptions, Respondent argues that the PFD should be adopted, and Petitioner's appeal dismissed. Respondent disputes Petitioner's argument that information regarding reason code 0258 was not forthcoming by Respondent and contends that both Respondent and LexisNexis adequately explained reason code 0258 and its application to insurance scoring and premium determinations. Contrary to Petitioner's position, Respondent maintains that Petitioner's complaint does, in fact, revolve around a $0.50 increase in the insurance premium attributable to his insurance score. Finally, Respondent contends that actuarial data and evidence confirm the existence of a correlation between an applicant's insurance score and the risk of loss.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Findings of Fact in the May 9, 2019, Proposal for Decision are adopted and made a part of this Final Decision, with one exception—a change to the chart contained in paragraph 6—as discussed in the paragraph that follows.

The PFD includes a chart reflecting the reasons Petitioner's policy premium increased in the 2018 policy year. *See* PFD, p 8, ¶ 6. The chart incorrectly duplicated the percent impact of the "mortgage free" and "claim free" rating component percentages, which yielded errors in the subsequent rating component percentages for "insurance tier," "age of insured," and "fixed expense fees." The chart contained in the PFD is therefore stricken and replaced with the following:

Rating Component	Percent Impact	Running Total
Base Rate	3.3%	3.3%
Amount of Insurance ($152,500 vs $155,500)	0.8%	4.2%
Deductible	-1.0%	3.2%
Aging of Home (64 Years vs 65 Years) and Roof (5 Years vs 6 Years)	2.3%	5.5%
Mortgage Free	-0.2%	5.4%
Claim Free	1.4%	6.8%
Insurance Tier (49)	0.9%	7.7%
Age of Insured (Age █ vs Age █)	-0.5%	7.2%
Fixed Expense Fees	2.2%	9.3%

With the above-described change being made to paragraph 6 of the Findings of Fact portion of the PFD, the Findings of Fact contained therein are adopted and made part of this Final Decision.

The Conclusions of Law set forth in the May 9, 2019, Proposal for Decision are adopted in full and made a part of this Final Decision, and restated herein as follows:

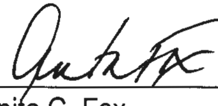
1. Petitioner has not met his burden of proof that Respondent unlawfully used an insurance score to determine insurance premiums.
2. Respondent has presented *prima facie* evidence that it did not unfairly discriminate against Petitioner and has provided Petitioner with requested information pertinent to his insurance rates.
3. Respondent's insurance rates charged to Petitioner are in conformity with the Code and Respondent's approved filings with the Department of Insurance and Financial Services.
4. Petitioner has made no argument based in law that Respondent acted contrary to the Code by considering his credit score in developing an insurance score for purposes of determining Petitioner's homeowner's rates.
5. Pursuant to Section 2153 of the Code, "credit information and an insurance score may be used to determine premium installment payment options and availability" with certain limited conditions. *See* MCL 500.2153(1). Respondent has neither alleged nor proven any violation of the Code with regard to Respondent's use of credit information or an insurance score in determining the premiums for his homeowner's insurance policies.
6. The evidence in the record supports the conclusion that there is a statistically significant correlation between opening a credit card account and closing it two days later and the likelihood that an insured will file a claim.

The factual findings in the PFD, following the change made to paragraph 6 noted above, are in accordance with the preponderance of the evidence and the conclusions of law are supported by reasoned opinion.

IV. ORDER

Therefore, it is ORDERED that:

1. The PFD is adopted in full, subject to the correction made to paragraph 6 referenced above, and made part of this Final Decision.
2. Petitioner's appeal of the Review and Determination, brought pursuant to MCL 500.2113(5), is dismissed.



Anita G. Fox
Director

STATE OF MICHIGAN
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

IN THE MATTER OF:	**Docket No.: 18-019529**
Thomas J. Bolduc, **Petitioner**	**Case No.: 18-1031-EI**
v	**Agency: Department of Insurance and Financial Services**
Auto-Owners Insurance Company, **Respondent**	**Case Type: DIFS-Insurance**
___________________________/	**Filing Type: Appeal**

Issued and entered
this 9th day of May 2019
by: Thomas A. Halick
Administrative Law Judge

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

Appearances: Thomas J. Bolduc, Petitioner, appeared on his own behalf. Lori McAllister, Dykema Gossett, PLLC, appeared on behalf of Auto-Owners Insurance Company, Respondent.

This contested case proceeding under the Insurance Code, 1956 PA 218, as amended, MCL 500.100 *et seq.* (hereafter "Insurance Code"), commenced in the Michigan Administrative Hearing System[1] ("MAHS") with the issuance of a Notice of Hearing, dated October 23, 2018, scheduling a hearing for November 20, 2018. The Notice of Hearing was issued based on an Order Referring Complaint for Hearing and Order to Respond, issued on October 10, 2018 by the Special Deputy Director of DIFS, Randall S. Gregg.

[1] As of the date of this Proposal for Decision, the agency formerly known as MAHS is called the Michigan Office of Administrative Hearings and Rules ("MOAHR"). The Administrative Law Judge ("ALJ") is not involved in the rule-making process.

The matter concerns Petitioner's appeal and request for hearing under Section 2113(5) of the Insurance Code, MCL 500.2113(5), filed with the Department of Insurance and Financial Services ("DIFS") on or about September 12, 2018. The gravamen of Petitioner's Complaint is a challenge to Respondent's legal authority to use credit information or a credit-based insurance score to determine insurance premiums. Respondent's attorney filed a "Notice of Intent to Appear" dated November 7, 2018 and denied the allegations in the Complaint. The November 20, 2018, hearing date was converted to a prehearing conference, after which time the undersigned issued an Order Following Prehearing Conference, rescheduling the hearing for December 17, 2018. On November 29, 2018, Petitioner filed a written request to adjourn the hearing to provide him time to retain legal counsel, which was granted by an Order entered December 14, 2018, and the hearing was rescheduled for January 29, 2019. On January 15, 2019, MAHS issued an Amended Order which corrected the time for the hearing to commence at 1:30 pm on January 29, 2019. The hearing proceeded as scheduled. Petitioner testified on his own behalf. Petitioner offered the following exhibit:

P-1 Letter from Thomas J. Bolduc to Mr. Patrick McPharlin, Director, Department of Insurance and Financial Services, dated March 16, 2018.

Respondent presented the testimony of Kacie Schafer, Manager of Policy and Underwriting; and, Cindy Leclear, Manager of Actuarial. Respondent offered the following exhibits:

R-A Screen shot of Bolduc Insurance Score Reason Code

R-B Screen shot of 2017 and 2018 premiums

R-C Letter dated March 9, 2018 from Kathryn Brunet to Tom Bolduc

R-D Letter dated April 3, 2018 from Julie Curtis to Tom Bolduc

R-E Letter dated April 6, 2018 from Tom Froman to Tom Bolduc

R-F Excerpts of Auto-Owners Rate & Rule Filing effective September 6, 2016

R-G Excerpts of Auto-Owners Rate & Rule Filing effective September 6, 2017

R-H Excerpts of Auto-Owners Rate & Rule Filing effective September 6, 2015

R-I Excerpts of Auto-Owners Rule Filing effective September 6, 2017

R-J Rating Component Summary

The Administrative Law Judge, on his own motion, admitted the following exhibit:

ALJ Exhibit 1 July 20, 2018 Review and Determination

ISSUES AND APPLICABLE LAW

The issue presented in this matter, as set forth on the Notice of Hearing, is as follows: "Petitioner is appealing Respondent's rating of his homeowners' policy based on use of insurance scoring." The Insurance Code provides 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.

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.

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 rerate 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.

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. Petitioner's home was insured through Auto-Owners Insurance Company ("Respondent" or "Auto-Owners") for approximately five years before the filing of the instant complaint. He has never filed a claim and has always paid premiums on time.
2. Petitioner's credit score of ███ in 2017, decreased to ███ for the 2018 policy period.
3. Respondent issued a homeowners' insurance policy to Petitioner for the policy term March 25, 2017 to March 25, 2018, for a total policy premium of $323.21.

4. Respondent issued a homeowners' insurance policy to Petitioner for the policy term March 25, 2018 to March 25, 2019, with a total policy premium of $323.72. The overall increase of 51 cents resulted from various factors, not merely the change in Petitioner's credit score.
5. Respondent's SERFF Filings (AOIC-131066103 and AOIC-131006018) included the most recently filed and approved rates and rules for the use of Insurance score information.
6. Petitioner's policy premium increased in the 2018 policy year due to the following [See ALJ Exh. 1]:

Rating Component	Percent Impact	Running Total
Base Rate	3.3%	3.3%
Amount of Insurance ($152,500 to $155,500)	0.8%	4.2%
Deductible	-1.0	3.2%
Aging of Home (64 vs 65 yrs.) and Roof (5 years vs 6 yrs.)	2.3%	5.5%
Mortgage Free	-0.2%	5.5%
Claim Free	-0.2%	5.4%
Insurance Tier (49)	1.4%	6.8%
Age of Insured (█ vs █)	0.9%	7.7%
Fixed Expense Fees	2.2%	9.3%

7. As indicated above, the increase in Petitioner's premium related to the insurance score was 0.9%.
8. Based on Respondent's approved SERFF Filing for the year at issue, an insurance score within the range of █ to █ was rated in "Tier 49" for purposes of determining Petitioner's premium. Petitioner's insurance score (credit score) for 2017 was █.
9. For 2018, Petitioner's insurance score was █, within the range of scores for Tier 49 (█).

10. Respondent issued a notice to Petitioner that his policy premium increased in 2018. Petitioner asked his insurance agent why his premium increased and was told that the increase was due to his credit score.
11. Petitioner learned from NexusLexus that the increase was related to "code 258" which is described as "Ratio of Total Amount Balances on Open Accounts to Age of Oldest Account."
12. All 2018 policy renewals for insureds within Tier 49 increased by 5% for reasons unrelated to credit scores.
13. Respondent obtained information regarding credit scores or insurance scores from a third-party vendor, LexisNexis.
14. In a letter dated March 9, 2018, Respondent explained that credit scores are similar to insurance scores, in that they "change over time." Respondent's letter misinformed Petitioner by stating that "Your insurance score changed from ███ to ███ which accounts for an increase of about 5%." Respondent later corrected this error and advised Petitioner that the insurance score resulted in a premium increase of .9%.
15. Petitioner's insurance score was influenced by various factors, including the age of his home (1953) and roof (2012), his claim history (none), prompt payment history, and changes to his chosen coverage limit in 2018 ($155,500) and deductible amount ($2,500). The coverage limit for the 2017 period was $152,500, and the deductible amount was $1,000.
16. "The Insurance Score is developed from credit related information including: types of accounts, balances, dates opened, and account activity, plus public record items and inquiries initiated by the insured." [Resp. Exh. H "GR-15 Homeowners General Rules"].

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. Petitioner has the burden of proof to show by a preponderance of the evidence that Respondent unlawfully used an insurance score to determine insurance premiums. 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 Petitioner has not met his burden of proof. Respondent has presented *prima facie* evidence that it did not unfairly discriminate against Petitioner, it has provided Petitioner with all reasonable information

pertinent to insurance rates, and has charged insurance rates to Petitioner in conformity with the 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 the Insurance Code. Petitioner has made no argument based in law that Respondent acted contrary to the Insurance Code by considering his credit score[2] in developing an insurance score for purposes of determining rates. Rather, Petitioner's complaint amounts to a disagreement with the public policy underlying the provisions of the Code that permit the use of credit information in developing rates. Petitioner testified that during the 2017 policy term, he opened a credit card account through a retailer and closed the account two days later, which apparently negatively affected his credit score. There is testimony in the record that such activity has a statistically significant correlation to the likelihood that an insured will file a claim. Petitioner believes this should not apply to him because he has an excellent credit score and pays off all credit card balances monthly.

On cross-examination by Mr. Bolduc, Respondent's witness (Ms. Schafer) admitted that Auto-Owners was mistaken when they first told him that the change in his credit score increased his premium by 5%. She testified that the correct number is 0.9%, which was also set forth in DIFS' "Review and Determination." [See Resp. Exh. R-C, and ALJ Exh. 1].

Under section 2153 of the Insurance Code, "credit information and an insurance score may be used to determine premium installment payment options and availability" with certain limiting conditions. MCL 500.2153(1). Respondent has neither alleged nor proven any violation of the Code with regard to Respondent's use of credit information or an insurance score in determining the premiums for his homeowners' insurance policies. It is clear from this record that Petitioner strongly disagrees with the public policy underlying section 2153 of the Code. He asserts that "Insurance companies are working with impunity and have their own score with hundreds of variables which are baseless and used too [sic] manipulate to their advantage, this is preposterous and criminal." [ALJ Exh. 1]. Petitioner further asserts that "the Government of Michigan must revolutionize insurance companies and the insurance institute" and he requests that his "insurance score as well as my bill must be amended now!" [ALJ Exh. 1]. However, this Tribunal has no authority to grant Petitioner any relief in the absence of evidence to establish a violation of the Code. The evidence does not support such a finding. It is concluded that the record evidence in this matter shows that Petitioner's appeal should be dismissed and Respondent's action affirmed.

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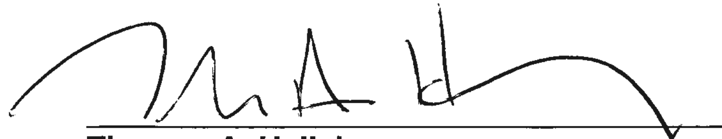
[2] Respondent's witness, Kacie Schafer, testified "insurance scoring" or the "insurance score" is like a credit score, which is obtained from a third-party vendor (Lexus/Nexus) and that Auto-Owners does not see the actual credit information.

PROPOSED DECISION

The undersigned Administrative Law Judge proposes that the Director adopt the above findings of fact and conclusions of law and dismiss Petitioner's appeal.

EXCEPTIONS

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



Thomas A. Halick
Administrative Law Judge