

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

**Before the Director of the Department of Insurance and Financial Services**

**Joann Helmbold**

**Petitioner**

**v**

**LM General Insurance Company**

**Respondent**

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**Docket No. 20-023466**

**Case No. 20-1058-EI**

**For the Petitioner:**

Joann Helmbold  
8006 Bray Road  
Vassar, MI 48768

**For the Respondent:**

LM General Insurance Company  
Presidential Service Team  
175 Berkeley St.  
Boston, MA 02116

Stephen P. Brown  
Plunkett Cooney  
38505 Woodward Ave., Ste. 100  
Bloomfield Hills, MI 48304  
sbrown@plunkettcooney.com

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**Issued and entered  
this 13<sup>TH</sup> day of July 2021  
by Randall S. Gregg  
Senior Deputy Director**

**FINAL DECISION**

**I. Introduction**

On May 18, 2020, Joann Helmbold (Petitioner) filed a complaint with the Department of Insurance and Financial Services (DIFS) alleging that her automobile insurance policy, underwritten by Respondent LM General Insurance Company (a.k.a., Liberty Mutual Insurance Company), was issued with an incorrect premium for the policy period March 1, 2020 to March 1, 2021. DIFS conducted a Review and Determination of the Petitioner's complaint pursuant to Section 500.2113 of the Michigan Insurance Code, MCL 500.2113. The Review and Determination process concluded on August 26, 2020 with a finding that

the Petitioner was overcharged \$204.36. Respondent was directed to pay that amount to the Petitioner. Respondent complied.

The Petitioner believed she was owed a larger refund. She appealed the Review and Determination and requested a hearing before the Director of DIFS as provided under Section 2113(5) of the Insurance Code, MCL 500.2113(5).

A hearing was held on January 4, 2021, before Administrative Law Judge Thomas Halick. On March 15, 2021, Judge Halick issued a Proposal for Decision (PFD) recommending that the August 26, 2020 Review and Determination be affirmed. Neither party filed exceptions to Judge Halick's PFD. Michigan courts have long recognized that the failure to file exceptions constitutes a waiver of any objections not raised. *Attorney General v. Public Service Comm'n*, 136 Mich App. 52 (1984); see also MCL 24.281.

## **II. Findings of Fact and Conclusions of Law**

The Findings of Fact in the March 15, 2021, PFD are in accordance with the preponderance of the evidence and are adopted in full and made part of this Final Decision. The PFD's Conclusions of Law are supported by reasoned opinion and are also adopted in full, made a part of this Final Decision, and restated herein as follows:

1. The Petitioner's complaint was precipitated by a declarations page sent to Petitioner stating an annual premium of \$8,213.00, for her Chevrolet Equinox. Petitioner also received a quote, dated July 10, 2020, for a 12-month policy with a premium of \$1,468.00 for the Equinox. Had Petitioner accepted this offer, coverage would have taken effect the day after acceptance. This offer was based on rates in effect as of July 10, 2020, and did not apply to prior periods. She did not accept the offer.

2. In calculating the Petitioner's premium, Respondent included multiple vehicles, when in fact, it should have included only the Equinox. In addition, Respondent, on another occasion, erroneously calculated the Equinox premium as \$8,709.00. The correct premium, based on the rates then in effect,

should have been \$7,275.00. This resulted in an overcharge for the 52 days for which the policy was in effect (March 1, 2020 through April 22, 2020). The premium for the policy period beginning March 1, 2020, was based on a rate revision filed December 15, 2019. The July 10, 2020, quoted premium of \$1,468.00 was based on a new rate revision which applied to policies taking effect after July 1, 2020. This quote was not applicable to the policy period at issue in this case.

3. Petitioner has been made whole for Respondent's overcharge.

### **III. Order**

Therefore, it is ORDERED that the Respondent is not required to refund any additional premium to the Petitioner.



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Randall S. Gregg  
Senior Deputy Director

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

**IN THE MATTER OF:**

**Docket No.: 20-023466**

**Joann Helmbold,  
Petitioner**

**Case No.: 20-1058-EI**

**v**

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

**LM General Insurance Company,  
Respondent**

**Case Type: DIFS-Insurance**

**Filing Type: Auto Insurance**

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**Issued and entered  
this 15<sup>th</sup> day of March 2021  
by Thomas A. Halick  
Administrative Law Judge**

**PROPOSAL FOR DECISION**

**PROCEDURAL HISTORY**

Appearances: Joann Helmbold, Petitioner, appeared in pro per. The law firm of Plunkett Cooney, P.C., by Stephen P. Brown (P48847), appeared on behalf of LM General 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 Office of Administrative Hearings and Rules ("MOAHR") with the issuance of a Notice of Hearing, dated November 4, 2020, scheduling a hearing for January 4, 2021. The Notice of Hearing was issued based on an Order Referring Complaint for Hearing and Order to Respond, issued on October 26, 2020 by the Senior Deputy Director of DIFS, Randall S. Gregg.

On November 4, 2020, MOAHR received a Request for Hearing, filed by DIFS, which included the following attachments:

1. Complaint, Case No. 20-1058-EI October 20, 2020, Letter from Joann Helmbold to Nicholeigh Drake, DIFS (3 pages, not dated, not marked as an exhibit)

2. Policy Declarations page from Liberty Mutual Insurance Policy No. AOS-248-065319-70 9 9 (three pages, marked by Petitioner as **“Fax A”**)
3. Ledger of transactions (three pages, marked by Petitioner as **“Fax A1”**)
4. Policy Declarations for Liberty Mutual Policy AOS-248-065310-70 0 9, showing total annual costs of \$11,143.00, effective March 1, 2020 (three pages marked by Petitioner as **“Fax B”**), for the policy period 3/1/2020 to 3/1/2021
5. Letter dated 7/10/2020 from Liberty Mutual to Joann L. Helmbold, offering a 12 month auto insurance quote in the amount of \$1,468.00 / year – Marked by Petitioner as **“Fax C”** – 2 pages
6. Share Draft 8, March 7, 2020 – April 5, 2020 – 4/3/2020 Electronic Withdrawal / Liberty Mutual Payment 200403 (\$999.74) – Marked by Petitioner as **“Fax D”** – 2 pages
7. Letter dated 7/10/2020 from Liberty Mutual to Joann L. Helmbold, offering a 12 month auto insurance quote in the amount of \$1,468.00 / year – Marked by Petitioner as **“Fax C”** – 2 pages (This is identical to the Letter listed above as Fax C, with the exception that one page of the document includes handwritten notes, regarding the August 12, 2020, 10:30 a.m. conference with DIFS).
8. Order Referring Complaint for Hearing, October 26, 2020 (two pages)
9. Review and Determination – DIFS – August 26, 2020, 4 pages

On May 18, 2020, Petitioner filed a Complaint with DIFS alleging that her automobile insurance policy with Respondent was assessed an incorrect premium of \$8,709.00 for the policy period of March 1, 2020 to March 1, 2021, after adding the 2020 Chevrolet Equinox and deleting the 2001 Ford Mustang, effective March 31, 2020. Petitioner appealed the August 26, 2020 Review and Determination by the Director’s Designee, and requested a hearing under Section 2113(5) of the Insurance Code, MCL 500.2113(5), with the Department of Insurance and Financial Services (“DIFS”).

Respondent’s attorney filed a “Notice of Appearance” dated November 17, 2020, and denied the allegations in the Complaint.

On December 14, 2020, Respondent filed Respondent LM General Insurance Company's Answer to Petitioner Joann Helmbold's October 20, 2020 Complaint and Appeal of the August 26, 2020 Review and Determination by the DIFS' Director's Designee.

On January 4, 2021, the hearing proceeded as scheduled. Petitioner testified on her own behalf. Attorney Brown presented legal argument.

Petitioner offered the following exhibits, which were admitted into evidence:

1. Complaint, Case No. 20-1058-EI **October 20, 2020**, Letter from Joann Helmbold to Nicholeigh Drake, DIFS (3 pages, not dated, not marked as an exhibit). This document was identified on the record as **Petitioner's Exhibit A** – but not physically marked.
2. Policy Declarations page from Liberty Mutual Insurance Policy No. AOS-248-065319-70 9 9 (three pages, marked by Petitioner as "**Fax A**")
3. Ledger of transactions (three pages, marked by Petitioner as **Fax A1**)
4. Policy Declarations for Liberty Mutual Policy AOS-248-065310-70 0 9, showing total annual costs of \$11,143.00, effective March 1, 2020 (three pages marked by Petitioner as "**Fax B**"), for the policy period 3/1/2020 to 3/1/2021
5. Letter dated 7/10/2020 from Liberty Mutual to Joann L. Helmbold, offering a 12 month auto insurance quote in the amount of \$1,468.00 / year – Marked by Petitioner as "**Fax C**" – 2 pages
6. Share Draft 8, March 7, 2020 – April 5, 2020 – 4/3/2020 Electronic Withdrawal / Liberty Mutual Payment 200403 (\$999.74) – Marked by Petitioner as "**Fax D**" – 2 pages
7. Letter dated 7/10/2020 from Liberty Mutual to Joann L. Helmbold, offering a 12 month auto insurance quote in the amount of \$1,468.00 / year – Marked by Petitioner as "**Fax C**" – 2 pages (This is identical to the Letter listed above as Fax C, with the exception that one page of the document includes handwritten notes, regarding the August 12, 2020, 10:30 a.m. conference with DIFS).

8. Order Referring Complaint for Hearing, October 26, 2020 (two pages)
9. Review and Determination – DIFS – August 26, 2020, 4 pages

Respondent offered the following exhibit which was admitted into evidence:

- A. Emails dated October 22, 2020; October 20, 2020; October 14, 2020 (3 pages).

### **ISSUES AND APPLICABLE LAW**

The issue presented in this matter, as set forth on the Notice of Hearing, is as follows: “Petitioner alleges that her auto policy was assessed an incorrect premium for the policy period of March 1, 2020, through March 1, 2021, after adding a vehicle and deleting a different vehicle effective March 31, 2020.” 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.

### **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 automobiles have been insured by LM General Insurance Company (a.k.a., Liberty Mutual) including a 2020 Chevrolet Equinox and a 2001 Ford Mustang.
2. In January of 2020, the 2020 Chevrolet Equinox was added to Petitioner's insurance policy along with the 2001 Ford Mustang. Petitioner testified that her policy had also included a 1992 Dodge van. [Hearing Recording (Rec) at 14:34].

3. Petitioner sold the Ford Mustang and the Dodge van, and purchased the 2020 Chevrolet Equinox.
4. Respondent errantly removed coverage for the 2020 Chevrolet Equinox prior to the date that the policy renewed on March 1, 2020.
5. On March 1, 2020, Petitioner's policy renewed for the Ford Mustang only, with a total annual premium in the amount of \$3,867.00.
6. The 2020 Chevrolet Equinox was added to the policy effective March 1, 2020, with an annual premium of \$11,143.00, for both the Chevrolet Equinox and the Ford Mustang.
7. Effective March 31, 2020, the Ford Mustang was removed and the annual premium for the Chevrolet Equinox was \$8,709.00.
8. On April 22, 2020, Petitioner canceled her policy.
9. The correct premium amount for the policy period of March 1, 2020 to March 1, 2021, should have been \$7,275.00 for the 2020 Chevrolet Equinox, not \$8,709.00, as shown on the declaration sheet.
10. Respondent overcharged Petitioner in the amount of \$1,434.00 for the annual premium on the 2020 Chevrolet Equinox. This is a per diem rate of \$3.93.
11. Petitioner was insured under the policy for 52 days, at the per diem rate of \$3.93. Petitioner overpaid her premium in the amount of \$204.36.
12. Respondent credited Petitioner's account in the amount of \$204.36, as ordered by the Director's Order in file no. 187258-001, dated August 26, 2020. Respondent determined that Petitioner's account was still overdue in the amount of \$66.53, and "charged off" that amount, leaving a zero dollar balance on Petitioner's account.

### CONCLUSIONS OF LAW

The principles that govern judicial proceedings also apply to administrative hearings. 8 *Callaghan's Michigan Pleadings and Practice* (2<sup>nd</sup> 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 her burden of proof. Respondent has presented *prima facie* evidence that it 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.

This dispute was apparently precipitated by a declarations page sent to Petitioner stating an annual premium in the amount of \$8,213.00, for the Chevrolet Equinox. See, Petitioner's Fax B, Policy Declarations, Total Annual Costs: \$11,143.00 – listing a 2001 Ford Mustang (\$2,488), and 2020 Chevrolet Equinox (\$8,213).

Petitioner also received an offer for a 12 month insurance quote, from a Liberty Mutual agent, dated July 10, 2020, in the amount of \$1,468.00 per year for the Chevrolet Equinox. Had Petitioner accepted this offer, coverage would have taken effect the day after acceptance. She did not accept the offer. This offer was based on rates in effect as of July 10, 2020, and did not apply to prior periods. Petitioner could not understand why the prior premium for the Equinox was \$8,213, and the new quote was \$1,468.00. She also noted that her bank account had been automatically deducted in the amount of \$999.00 for an insurance premium (based on the \$8,213 premium).

Respondent does not dispute the DIFS determination, and has fully complied with the Order to reimburse Petitioner in the amount stated in the Order.

The likely source of this dispute is an erroneous premium determined by Respondent, which included multiple vehicles, when in fact, it should have included only one vehicle. In addition, LM General admits that it made an error with respect to the correct amount for the policy premium for a 12 month period for a 2020 chevy in the \$8,709, which should have been \$7,275. This resulted in an overcharge for the 52 days for which the policy was in effect from March 1, 2020 through April 22, 2020. Petitioner has been made whole for this overcharge. The premium for the policy period effective March 1, 2020, was based on a rate revision filed December 15, 2019 (SERFF filing no. LBPN – 132100653).

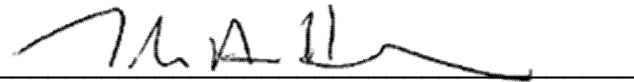
The July 10, 2020, quoted premium of \$1,468.00, was based on a new rate revision approved by DIFS, and recent amendments to the insurance code that affect the cost of personal injury protection, which applied to policies taking effect *after July 1, 2020*. This quote was not applicable to the policy period at issue in this case.

**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 Office of Financial and Insurance Services, Division of Insurance, Attention: Dawn Kobus, P.O. Box 30220, Lansing, Michigan 48909, within twenty (20) days of issuance of this Proposal for Decision. An opposing party may file a response within ten (10) days after exceptions are filed.

A handwritten signature in black ink, appearing to read 'THALICK', written over a horizontal line.

**Thomas A. Halick**  
**Administrative Law Judge**