

STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

Before the Director of Insurance and Financial Services

Randy Pitt,

Petitioner

v

Case No. 19-1040-EI
Docket No. 19-010912

Home-Owners Insurance
Company,

Respondent

For the Petitioner:

Randy Pitt

[REDACTED]

Phone: [REDACTED]

For the Respondent:

Lori McAllister (P39501)
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Phone: (517) 374-9150

Issued and entered
this 24th day of October 2019
by Randall S. Gregg
Senior Deputy Director

FINAL DECISION

I. INTRODUCTION

On August 20, 2019, Administrative Law Judge Christopher S. Saunders (Judge Saunders) issued a Proposal for Decision (PFD). He recommended that the Director issue a Final Decision consistent with the Findings of Fact and Conclusions of Law as outlined in his PFD. The factual findings in the PFD are in accordance with the preponderance of the evidence and the conclusions of law are supported by reasoned opinion. In addition, neither party filed exceptions. Michigan courts have long recognized that the failure to

file exceptions constitutes a waiver of any objections not raised. *Attorney General v Public Service Com'n*, 136 Mich App 52 (1984); MCL 24.281. For these reasons, and as set forth below, the PFD is adopted in full, and the April 2, 2019 Review and Determination is affirmed.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Findings of Fact in the August 20, 2019 PFD are adopted in full and made part of this Final Decision. The Conclusions of Law set forth in the August 20, 2019 PFD are also adopted in full, made part of this Final Decision, and restated herein as follows:

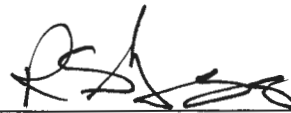
1. Petitioner has not shown, by a preponderance of the evidence, that Respondent improperly raised his premium rates or failed to provide Petitioner with credits for adjustments made to his coverage during the policy terms at issue.

2. Petitioner has not shown, by a preponderance of the evidence, that Respondent acted in violation of the Insurance Code.

III. ORDER

Therefore, it is ORDERED that:

1. The PFD is adopted in full and made part of this Final Decision.
2. The Review and Determination issued by DIFS on April 2, 2019 is affirmed.



Randall S. Gregg
Senior Deputy Director

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

IN THE MATTER OF:

Docket No.: 19-010912

**Randy Pitt,
Petitioner**

Case No.: 19-1040-EI

v

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

**Home-Owners Insurance
Company,
Respondent**

Case Type: DIFS-Insurance

Filing Type: Appeal

**Issued and entered
this 20th day of August 2019
by: Christopher S. Saunders
Administrative Law Judge**

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

This proceeding is held under the authority of the Michigan Insurance Code of 1956, being 1956 PA 218, as amended, MCL 500.100 *et seq.* (hereafter 'Code').

On or about December 5, 2018, Randy Pitt, (Petitioner) submitted a complaint to the Department of Insurance and Financial Services (DIFS). In the complaint, Petitioner alleged that Home-Owners Insurance Company (Respondent) overcharged him for his automobile insurance and cited specific instances. On January 4, 2019, DIFS forwarded Petitioner's complaint to Respondent and advised such that the matter must be reviewed through Respondent's internal complaint review and resolution process in accordance with MCL 500.2113 as well as 1981 AACS R 500.1508 and R 500.1509.

After review by Respondent, Respondent determined there had been no overcharge and no violation. On March 4, 2019, Petitioner submitted a request for review and determination to DIFS pursuant to MCL 500.2113 and 1981 AACS R 500.1510 through R 500.1514. On March 19, 2019, Respondent provided written documentation and information to DIFS pertaining to Petitioner's auto insurance policy. On April 2, 2019, DIFS issued a Review and Determination wherein it was determined that Respondent had provided sufficient support for the premium charged on Petitioner's auto insurance policy, that Respondent sufficiently responded to Petitioner's concerns regarding policy

changes and refunds, and that Respondent has filed and is using rates in compliance with MCL 500.2106.

Based on the Review and Determination issued by DIFS, Petitioner filed a request for hearing. On May 8, 2019, a request for hearing was received by the Michigan Office of Administrative Hearings and Rules (MOAHR). On May 31, 2019, Respondent filed Respondent's Answer to Complaint. On May 15, 2019, a Notice of Hearing was issued scheduling a hearing for June 17, 2019.

The hearing was held as scheduled on June 17, 2019. Administrative Law Judge (ALJ) Christopher S. Saunders presided over the hearing. Randy Pitt, Petitioner, appeared on his own behalf and provided testimony. Attorney Lori McAllister appeared on behalf of Respondent. [REDACTED] of Auto-Owners Insurance provided testimony on behalf of Respondent. The record was closed at the conclusion of the hearing.

EXHIBITS

The following exhibits were offered by Petitioner and admitted into evidence:

1. Petitioner's Exhibit 1 is a printout showing what Petitioner had insured through Respondent insurance company, issued on June 12, 2018.
2. Petitioner's Exhibit 2 contains an EFT notice for a date of December 5, 2018, and a photograph of a summary of accounts page from [REDACTED] Federal Credit Union.
3. Petitioner's Exhibit 3 contains photographs of various bank statements and withdrawals from Petitioner's bank account.

The following exhibits were offered by Respondent and admitted into evidence:

1. Respondent's Exhibit A is a copy of the Review and Determination, dated April 2, 2019.
2. Respondent's Exhibit B is a letter sent by Respondent to DIFS, dated March 19, 2019.
3. Respondent's Exhibit C contains a copy of Auto-Owners Filing number AOIC-131654246.
4. Respondent's Exhibit D contains a copy of Auto-Owners Filing number AOIC-131255041.

5. Respondent's Exhibit E contains a copy of Auto-Owners Filing number AOIC-131482230.
6. Respondent's Exhibit F is an itemized statement of activity pertaining to Petitioner, dated March 15, 2019.
7. Respondent's Exhibit G is a copy of the declaration pages for Petitioner's automobile policy for the period of January 18, 2018, through January 18, 2019.
8. Respondent's Exhibit H is a copy of the endorsement for Petitioner's insurance policies, effective January 18, 2018.
9. Respondent's Exhibit I is a letter from Respondent to Petitioner, dated June 12, 2018.
10. Respondent's Exhibit J is a copy of the endorsement for Petitioner's insurance policies, effective June 8, 2018.
11. Respondent's Exhibit K is a cancellation notice, dated June 18, 2018.
12. Respondent's Exhibit L is a copy of the endorsement for Petitioner's insurance policies, effective September 24, 2018.
13. Respondent's Exhibit M is a copy of the endorsement for Petitioner's insurance policies, effective October 26, 2018.
14. Respondent's Exhibit N is a copy of the endorsement for Petitioner's insurance policies, effective December 12, 2018.
15. Respondent's Exhibit O is a copy of the endorsement for Petitioner's insurance policies, effective January 18, 2019.
16. Respondent's Exhibit P is a document showing insufficient funds incidents pertaining to Petitioner.
17. Respondent's Exhibit Q is a copy of an insurance score notice pertaining to Petitioner.

APPLICABLE LAW

500.2106 Applicability of chapters 24 and 26; file,

approval, and use of rates; inconsistent provisions.

Sec. 2106.

(1) Except as specifically provided in this chapter, chapter 24 and chapter 26 do not apply to automobile insurance and home insurance.

(2) Subject to section 2108(6), an insurer shall file rates with the department for approval in compliance with this act.

(3) An insurer may use rates for home insurance as soon as those rates are filed.

(4) To the extent that other provisions of this act are inconsistent with this chapter, this chapter governs with respect to automobile insurance and home insurance.

MCL 500.2106.

500.2109 Rates for automobile insurance and home insurance; requirements; determining existence of reasonable degree of competition.

Sec. 2109.

(1) All rates for automobile insurance and home insurance shall be made in accordance with the following provisions:

(a) Rates shall not be excessive, inadequate, or unfairly discriminatory. A rate shall not be held to be excessive unless the rate is unreasonably high for the insurance coverage provided and a reasonable degree of competition does not exist for the insurance to which the rate is applicable.

(b) A rate shall not be held to be inadequate unless the rate is unreasonably low for the insurance coverage provided and the continued use of the rate endangers the solvency of the insurer; or unless the rate is unreasonably low for the insurance provided and the use of the rate has or will have the effect of destroying competition among insurers, creating a monopoly, or causing a kind of insurance to be unavailable to a

significant number of applicants who are in good faith entitled to procure that insurance through ordinary methods.

(c) A rate for a coverage is unfairly discriminatory in relation to another rate for the same coverage if the differential between the rates is not reasonably justified by differences in losses, expenses, or both, or by differences in the uncertainty of loss, for the individuals or risks to which the rates apply. A reasonable justification shall be supported by a reasonable classification system; by sound actuarial principles when applicable; and by actual and credible loss and expense statistics or, in the case of new coverages and classifications, by reasonably anticipated loss and expense experience. A rate is not unfairly discriminatory because it reflects differences in expenses for individuals or risks with similar anticipated losses, or because it reflects differences in losses for individuals or risks with similar expenses.

(2) A determination concerning the existence of a reasonable degree of competition with respect to subsection (1)(a) shall take into account a reasonable spectrum of relevant economic tests, including the number of insurers actively engaged in writing the insurance in question, the present availability of such insurance compared to its availability in comparable past periods, the underwriting return of that insurance over a period of time sufficient to assure reliability in relation to the risk associated with that insurance, and the difficulty encountered by new insurers in entering the market in order to compete for the writing of that insurance.

MCL 500.2109.

500.2119 Underwriting rules to be in writing; inconsistent transactions prohibited; uniform application of underwriting rules required; adoption of underwriting rules by insurer with more than 1 rating plan; underwriting rules for new applicants and for renewals; filing and public inspection of underwriting

rules; order prohibiting use of inconsistent underwriting rule.

Sec. 2119.

(1) Each insurer subject to this chapter shall put in writing all underwriting rules used by the insurer. An insurer shall not transact automobile or home insurance inconsistently with its underwriting rules.

(2) An insurer shall apply its underwriting rules uniformly and without exception throughout this state, so that every applicant or insured conforming with the underwriting rules will be insured or renewed, and so that every applicant or insured not conforming with the underwriting rules will be refused insurance or nonrenewed, when the information becomes available to the insurer.

(3) An insurer with more than 1 rating plan for automobile insurance contracts providing identical coverages shall not adopt underwriting rules that would permit a person to be insured, for automobile insurance, under more than 1 of the rating plans.

(4) An insurer may establish underwriting rules for new applicants that are different than rules for renewals of existing insureds only if the applicants or existing insureds are not eligible persons. Underwriting rules pertaining to renewals of existing insureds who are not eligible persons may be based on a contractual obligation of the insurer not to cancel or nonrenew.

(5) For informational purposes, an insurer shall file with the commissioner its underwriting rules before their use in this state. All filed underwriting rules shall be available for public inspection. If the commissioner finds that an underwriting rule is inconsistent with this chapter, the commissioner, after a hearing held under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, shall by order prohibit further use of the underwriting rule.

(6) This section does not prohibit an insurer from insuring persons who are not eligible persons under underwriting

rules established under this section and sections 2117, 2118, and 2120.
MCL 500.2119.

FINDINGS OF FACT

Based upon argument of the parties, review of the hearing file, the respective pleadings and documentary submissions, I find the following material facts:

1. At all times relevant to Petitioner's complaint in this matter, Petitioner insured the vehicles in question through Respondent insurance company.
2. For the term of January 18, 2018, through January 18, 2019, Petitioner had a 2004 [REDACTED], a 2005 [REDACTED], a 2000 [REDACTED], and a 1983 [REDACTED] insured through Respondent. (Pet. Exhibit 1, Resp. Exhibit G).
3. Petitioner's premiums for all insured vehicles were divided into monthly installments for the insured term throughout the time Petitioner has been insured by Respondent. Petitioner is assessed a total amount due for the term at the beginning of the term and that amount is paid in monthly installments throughout the term.
4. On January 6, 2018, Petitioner filed an insurance claim with Respondent after his wife was involved in a motor vehicle accident where she had a collision with a deer in one of his insured vehicles. The claim was for \$1,335.31. Petitioner was not at fault for the accident. (Resp. Exhibit B).
5. On May 31, 2016, Petitioner filed an insurance claim for an accident that occurred with one of his insured vehicles. The claim was for \$1,073.05. Petitioner was not at fault for the accident. (Resp Exhibit B).
6. The January 6, 2018, claim did not affect Petitioner's January 18, 2018, through January 18, 2019, policy because the claim was filed after the policy would have been renewed.
7. Petitioner's policy beginning January 18, 2019, was affected by the January 6, 2018, claim. The policy beginning January 18, 2019, was affected due to the January 6, 2018, claim because that claim put Petitioner over the threshold of \$1,500.00 for the last 3 years (when combined with the May 31, 2016, claim) and therefore affected his loss history rating. (Resp. Exhibits B and E).

8. Petitioner had a credit from his 2017 policy. That credit was applied as a one-time credit for the month of February 2018. Therefore, Petitioner's premium payment for the month of February 2018 was lower than his regular premium payment for the remainder of the term. (Resp. Exhibit F).
9. On June 12, 2018, Petitioner's policy was changed to reflect the removal of the 1983 [REDACTED] from his policy. Petitioner was given a credit of \$61.40 for the removal of the vehicle. (Resp. Exhibits F and J).
10. The credit given to Petitioner was prorated and applied in monthly installments over the remaining period of the term. (Resp. Exhibit F).
11. On September 26, 2018, Petitioner added a 2003 [REDACTED] to his policy. (Resp. Exhibits F and L).
12. Petitioner testified that he requested PL/PD coverage but that full coverage was applied to the 2003 [REDACTED].
13. Petitioner testified that he contacted his insurance agent and told his agent he did not want the full coverage on the [REDACTED].
14. On October 30, 2018, Petitioner's policy was changed to remove the full coverage from the 2003 [REDACTED] and apply the PL/PD coverage. Petitioner was given a credit of \$59.97 which was applied to his policy, was prorated, and applied in monthly installments over the remaining period of the term. (Resp. Exhibits F and M).
15. On February 1, 2019, Petitioner was given an additional credit of \$21.86 for the months of September and October 2018, when the 2003 [REDACTED] had full coverage instead of the PL/PD. That credit was applied to the balance Petitioner owes for the 2018 policy term. (Resp. Exhibit F).
16. As of the date of the hearing, Petitioner owed \$268.44 to Respondent for the 2018 policy. Because Petitioner switched agents, that amount was not rolled into his 2019 policy. (Resp. Exhibit F).
17. Respondent issued a rate increase for all its customers for the 2018 policy term. That rate increase affected Petitioner's policy.
18. Respondent has submitted filings with DIFS in accordance with Chapter 21 of the Code on December 4, 2017; December 3, 2018; and May 31, 2018. (Resp. Exhibits C, D, and E).

CONCLUSIONS OF LAW

In an administrative hearing, the moving party must prove its position by a preponderance of the evidence. *Michigan State Employees Assoc v Michigan Civil Service Com*, 126 Mich App 797, 802; 338 NW2d 220 (1983). Proof by a preponderance of the evidence requires the trier of fact to determine that the evidence supporting the existence of a contested fact outweighs the evidence supporting its nonexistence. *Martucci v Detroit Police Commissioners*, 322 Mich 270; 33 NW2d 789 (1948). In the matter at hand, the burden is on Petitioner to show, by a preponderance of the evidence, that the alleged violations of the Code contained in his complaint occurred.

Petitioner asserts that he is entitled to refunds from Respondent resulting from policy changes made while he was insured with such. Petitioner stated at the hearing that he has not received a check from Respondent after the policy changes went into effect. The changes in question pertain to Petitioner removing coverage for one vehicle (the [REDACTED]) and reducing coverage for another vehicle (the 2003 [REDACTED]).

Mr. [REDACTED] testified on behalf of Respondent that Petitioner would not receive a check for the credits given to him for the change in coverage. He testified that Petitioner is billed a certain amount at the time the policy is created. That policy is for one year and therefore Petitioner owes an amount for the entire year which is divided into monthly payments. Therefore, if a change in the policy is made in the middle of the year and credit should be due to the policy holder, that credit is not given back to the policy holder in the form of a check, because the policy holder has not paid the entire amount due for the term of the policy. The credit would be applied to the remaining payments due to be made by the policy holder, and the total amount paid for the term of the policy would thereby be reduced.

In this matter, that is what happened. The evidence presented shows that Petitioner was given credits for removing the 1983 [REDACTED] and for the reduction in coverage for the 2003 [REDACTED] (see Resp. Exhibit F). Those credits were applied to the remaining payments Petitioner was required to make to Respondent for the term of the policy. Additionally, Petitioner (as of the time of the hearing) owed \$268.44 to Respondent for the 2018 policy. The amount owed was initially \$330.30 but was reduced in part by a credit given to Petitioner in the amount of \$21.86 for the months of September and October 2018 where there was full coverage instead of PL/PD on the 2003 [REDACTED] (see Resp. Exhibit F). Therefore, I find that the preponderance of the evidence shows that Petitioner was in fact given credit for the change in coverage and that those credits were applied to the amounts owed for his policies. Petitioner also claimed late fees due for the credits but provided no authority for the imposition of such or any contract

showing that such fees would be applicable. Furthermore, as I have found that the credits were properly given to Petitioner, there would be no basis for the imposition of any late fees associated therewith.

Additionally, Petitioner claims that his premiums were improperly raised in February or March of 2018. Petitioner claims that his premiums increased \$30.00 during this time. Mr. [REDACTED] credibly testified that Petitioner was given a one-time credit from his 2017 policy which was applied for the month of February 2018. Therefore, the reduced payment Petitioner saw for that month was a result of the credit being applied, and the "increase" of \$30.00 for the remaining months of the policy term was the actual monthly payment absent the credit. Mr. [REDACTED] further testified that any increase for the year of 2018 would have been an across the board increase for all customers, as would have been outlined in the filings submitted to DIFS contained in Resp. Exhibits C, D, and E.

Mr. [REDACTED] further testified that although Petitioner did make a claim in 2018, that claim would not have affected his 2018 policy as the policy had already been issued prior to the accident. Even though Petitioner was not at fault in the accident, his loss history rating changed for the 2019 policy term due to the accident. His loss history rating changed because Petitioner made two claims which totaled over \$1,500.00 in a period of 3 years, an accident in 2016, and the one in 2018. The change in loss history rating and the subsequent change in policy premiums are in compliance with the filings submitted to DIFS contained in Resp. Exhibits C, D, and E.

In summary, I do not find that Petitioner has shown, by a preponderance of the evidence, that Respondent improperly raised his premium rates, or failed to give Petitioner credits for adjustments made to his coverage during the policy terms in question. I do not find that Petitioner has shown, by a preponderance of the evidence, that Respondent acted in violation of the Code.

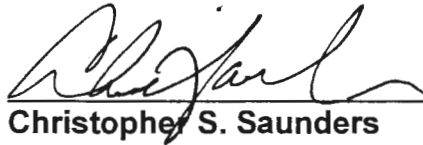
PROPOSAL FOR DECISION

Based on the testimony and evidence submitted in this matter, I do not find that Petitioner has shown, by a preponderance of the evidence, that Respondent acted in violation of the Code as alleged in his complaint. Accordingly, the Review and

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Determination issued by DIFS on April 2, 2019 should be **AFFIRMED**.

A handwritten signature in black ink, appearing to read "Chris Saunders", is written over a solid horizontal line.

Christopher S. Saunders
Administrative Law Judge

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.

PROOF OF SERVICE

I certify that I served a copy of the foregoing document upon all parties and/or attorneys, to their last-known addresses in the manner specified below, this 21st day of August 2019.



E. Cussans
Michigan Office of Administrative Hearings
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