

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

Before the Director of the Department of Insurance and Financial Services

In the matter of:

Docket No.: 24-000937

Peggy Fritz

Petitioner-Appellee,

Case No.: 24-1104-EI

and

Department of Insurance and Financial Services

Appellee,

v

Liberty Mutual Personal Insurance Company,

Respondent-Appellant

ISSUED AND ENTERED

On July 12, 2024

by Joseph A. Garcia

Special Deputy Director and General Counsel

FINAL DECISION

I. INTRODUCTION

On May 16, 2024, Administrative Law Judge Erick Williams (Judge Williams) issued a Proposal for Decision (PFD) in the above-captioned matter. Judge Williams recommended that the Director issue a final decision consistent with the Findings of Facts and Conclusions of Law as outlined in the PFD. Judge Williams based his recommendation on the pleadings, oral argument, and documentary evidence presented by the parties in support of their respective positions. Subject to the modifications set forth herein, 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 to the 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. For these reasons, and as set forth below, Respondent's appeal of the Review and Determination dated December 15, 2023 (Review and Determination) is granted in Respondent's favor.

II. FINDINGS OF FACT

The Findings of Fact in the May 16, 2024 PFD are adopted, subject to the below modifications, and made part of this Final Decision. Although the PFD is adopted subject to the below modifications, it is also

necessary—for the purpose of clarity—to highlight the following factual developments that occurred between the time of the issuance of the Review and Determination, and the issuance of the PFD:

1. A contested case hearing occurred on February 28, 2024, and continued on May 15, 2024, during which the Respondent's compliance analyst Kenneth Gould testified specifically concerning Respondent's calculation method.
2. Respondent presented additional exhibits (200 pages) related to Respondent's calculation method.

The Director incorporates the following modifications to the Findings of Fact set forth in the PFD:

1. On page 6, paragraph no. 2, although Ms. Fritz's original complaint did not specifically allege "rounding errors," she did allege that she was charged an improper premium for the October 6, 2023 to October 6, 2024 policy period. Thus, the scope of the Review and Determination, which analyzed Respondent's premium calculation specific to Ms. Fritz, was responsive to Ms. Fritz's complaint.
2. On page 8, paragraph no. 2, the Department of Insurance and Financial Services (DIFS) did not simply "refuse" to participate in the contested case hearing. Rather, on March 11, 2024, in response to Judge Williams' Order to Reopen, DIFS explained that it was not included as an initial party to the cause of action, nor is DIFS typically a party in Review and Determination appeals. DIFS also noted that neither party filed a witness list that named any DIFS employee and further explained why DIFS' appearance at the hearing would be improper.
3. On page 8, paragraph no. 4, the finding in favor of Respondent in the PFD and in this Final Decision is unrelated to the statement contained in the PFD that it "takes a lot to fight an insurance company" or that "Ms. Fritz was not represented by a lawyer." The decision in favor of Respondent is the product of the fact that the preponderance of the evidence following the contested case hearing supports Respondent's position.

III. CONCLUSIONS OF LAW

The Conclusions of Law set forth in the May 16, 2024 PFD are adopted in full, made part of this Final Decision, and restated herein as follows: the preponderance of the evidence supports Respondent's position concerning its price calculation procedure.

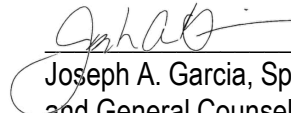
IV. ORDER

Therefore, it is ORDERED that:

1. The PFD is adopted, subject to the above-identified modifications, and made part of this Final Decision.

2. Respondent did not charge Ms. Fritz an incorrect premium for the at-issue policy period.

Anita G. Fox, Director
For the Director:



Joseph A. Garcia, Special Deputy Director
and General Counsel

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

IN THE MATTER OF:

Docket No.: 24-000937

**PEGGY FRITZ,
Petitioner-Appellee**

Case No.: 24-1104-EI

and

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

**DEPARTMENT OF INSURANCE AND
FINANCIAL SERVICES,
Appellee**

**Case Type: DIFS-Essential
Insurance**

v

**Filing Type: Determination Order
Appeal**

**LIBERTY MUTUAL PERSONAL
INSURANCE COMPANY,
Respondent-Appellant**

_____ /

**Issued and entered
this 16th day of May 2024
by: Erick Williams
Administrative Law Judge**

PROPOSAL FOR DECISION

This proposal for decision finds that Liberty Mutual did not overcharge Peggy Fritz by \$10.00 due to rounding errors.

BACKGROUND

Jurisdiction: MCL 500.2113.

On September 18, 2023, Peggy Fritz filed a complaint with the Department of Insurance and Financial Services (DIFS) against Liberty Mutual Personal Insurance Company (Liberty Mutual) alleging that she was charged an improper premium for automobile insurance for the October 6, 2023, to October 6, 2024, policy period.

On December 15, 2023, DIFS issued a Review and Determination finding that Liberty Mutual overcharged Ms. Fritz by \$10.00 due to rounding errors. On December 20, 2023, Liberty Mutual appealed DIFS's Determination.

A hearing convened under MCL 24.271 *et seq.* on February 28, 2024. Peggy Fritz participated. Carrie Kennedy represented Liberty Mutual. Kenneth Gould, Liberty Mutual Compliance Analyst, testified. No one from DIFS participated.

A second session of the hearing convened on May 15, 2024. Carrie Kennedy represented Liberty Mutual. Kenneth Gould, Liberty Mutual Compliance Analyst, was present. Peggy Fritz did not participate. No one from DIFS participated. No testimony was taken on May 15, 2024.

APPLICABLE LAW

MCL 500.2113 reads:

(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 500.3107d(1) reads:

For an insurance policy that provides the security required under section 3101(1) and is issued or renewed after July 1, 2020, the applicant or named insured may, in a way required under section 3107e and on a form approved by the director, elect to not maintain coverage for personal protection insurance benefits payable under section 3107(1)(a) if the applicant or named insured is a qualified person, and if the applicant's or named insured's spouse and any relative of either that resides in the same household have qualified health coverage or have coverage for benefits payable under section 3107(1)(a) from an insurer that provides the security required by section 3101(1).

EXHIBITS

The following exhibits were admitted in evidence:

ALJ Exhibits:

ALJ-1 DIFS Review and Determination

Liberty Mutual Exhibits:

Exhibit R1	Table of Contents
Exhibit R2	Summary
Exhibit R3-R5	Rate Calculation 2022 Renewal
Exhibit R6-R8	Rate Calculation 2023 Renewal
Exhibit R9-R10	Impact Analysis Document
Exhibit R11-R101	Liberty Filed Auto Rate Rule Manual
Exhibit R102	Policy Billing Summary
Exhibit R103-R107	2022 Renewal Policy Declaration Pages
Exhibit R108-R112	2023 Renewal Policy Declaration Pages
Exhibit R113-R183	2020 Full Policy as Issued
Exhibit R184-R185	10-9-2023 Liberty Response to MI DIFS
Exhibit R186-R187	11-29-2023 Liberty Response to MI DIFS
Exhibit R188-R196	Liberty Auto Underwriting Manual
Exhibit R197-R198	SERFF Filing LBPM-133469105 Summary
Exhibit R199-R200	SERFF Filing LBPM-133489542 Summary

FINDINGS OF FACT

From 1974 until 2019, Michigan had a mandatory auto insurance system that paid medical expenses without limit for policyholders injured in auto accidents. In 2019, the law was amended to allow policyholders to “save money” by declining coverage for medical expenses. MCL 500.3107d(1).

Ms. Fritz, a Liberty Mutual policyholder, took advantage of her opportunity to decline coverage for medical expenses. In subsequent years, she was disappointed that she was not saving the money she expected, and she filed this complaint under MCL 500.2113.

Ms. Fritz’s September 18, 2023, complaint reads:

I changed my due date back several months ago, to a later date, and they raised my rate \$50.00 a month, stating it was because there was more owed, since I changed my due date, now it is time to renew, and they again have raised my rate another \$10.00 a month, when they told me it would go back down to \$200.00 a month with my renewal. What is the purpose of being able to decline PIP when all they do is find another reason to constantly raise your insurance premium? I have had no changes, and kept my date the same... I would [like] a new quote, or I will find another carrier, people can't afford all these constant increases for [no] reason other than to make up for their loss with PIP.

On December 15, 2023, DIFS issued a Review and Determination that reads in part:

Respondent has shown their auto insurance rates have been filed and approved with DIFS in compliance with Section 2106(2) of the Code, MCL 500.2106(2) under SERFF Tracking # LBPM-133489542 and SERFF Tracking #LBPM-133469105. However, when calculating Petitioner's premium for the October 6, 2023 to October 6, 2024, policy period via the Dollar Amount Impact Analysis, the total premium should be \$3,215, not \$3,224 as shown on Petitioner's Policy Declarations. The Dollar Amount Impact Analysis reveals inaccurate rounding by Respondent. Respondent has shown its calculated premium for the rate increase for Vehicle 1 is \$209; however, the actual calculated premium for the rate increase for Vehicle 1 equals \$202.76, rounded up to \$203. Respondent has shown its calculated premium for the rate increase for Vehicle 2 is \$214; however, the actual calculated premium for the rate increase for Vehicle 2 equals \$210.45, rounded down to \$210.

Respondent's Automobile Rule Manual, G.7 Whole Dollar Premium states, "The premium for each coverage will be rounded to the nearest whole dollar, separately for each coverage provided by the policy. In the application of this rule, a premium involving \$0.50 or more shall be rounded to the next higher whole dollar. In the case of cancellation by the company, the return premium shall be carried to the next higher whole dollar."

Respondent rounded the following rating factors in violation of their rating manual:

Vehicle 1

The Bodily Injury Rating Factor equals \$15.99 and Respondent rounded up to \$17.

The Property Damage Rating Factor equals \$6.08 and Respondent rounded up to \$7.

The PIP Rating Factor equals \$34.77 and Respondent rounded down to \$34.

The Comp Glass Rating Factor equals .16 and Respondent rounded up to \$1.

The Comp Fire Rating Factor equals \$3.34 and Respondent rounded up to \$4.

The Comp Weather Rating Factor equals \$9.13 and Respondent rounded up to \$10.

The Collision Rating Factor equals \$81.35 and Respondent rounded up to \$85.

The rating errors for Vehicle 1 total \$6.24.

Vehicle 2

The Property Damage Rating Factor equals \$4.55 and Respondent rounded down to \$4.

The PIP Rating Factor equals \$34.77 and Respondent rounded down to \$34.

The Comp Glass Rating Factor equals .16 and Respondent rounded up to \$1.

The Comp Theft Rating Factor equals \$5.51 and Respondent rounded down to \$5.

The Comp Weather Rating Factor equals \$9.13 and Respondent rounded up to \$10.

The Collision Rating Factor equals \$84.16 and Respondent rounded up to \$88.

The rating errors for Vehicle 2 total \$3.55.

The Director finds that Respondent is not in compliance with their Automobile Rate Manual, G.7 Whole Dollar Premium, which requires premium for each separate coverage totaling \$.50 or more to be rounded to the nearest dollar. Respondent's own calculation of Petitioner's premium did not adhere to this rating rule and overcharged Petitioner in the amount of \$10. Within 10 days of receipt of this Review and Determination, Respondent shall reimburse Petitioner for the overcharged premium and provide proof of such to DIFS.

It is important to note that the DIFS Review and Determination from December 15, 2023, was not responsive to Ms. Fritz's original complaint. Fritz's complaint did not allege rounding errors.

On January 8, 2024, Liberty Mutual filed an appeal.

On February 28, 2024, a hearing on the appeal convened before the Michigan Office of Administrative Hearings and Rules, a state agency independent of DIFS. Liberty Mutual participated in the hearing, and Ms. Fritz participated, but DIFS did not participate. Ms. Fritz stated that she attempted to file an appeal but was discouraged to do so by someone at DIFS, since Liberty Mutual had already filed an appeal. During the hearing, Ms. Kennedy, Ms. Fritz, and I agreed that each of us had expected a representative of DIFS to participate in the hearing.

For the February 28, 2024, hearing, Liberty Mutual presented several exhibits, including Exhibit R-2, which summarizes the company's response to the DIFS Determination. Liberty Mutual's response was limited to a defense of its price calculation method, and particularly, its rounding method. The summary reads:

Attached are the documents Liberty is submitting as Respondent under docket number 24-000937.

To summarize, the Michigan Department of Insurance and Financial Services ("DIFS") asserted in its Review and Determination that Liberty is not in compliance with its own Automobile Rate Manual, G.7 Whole Dollar Premium, which requires that each separate coverage totaling \$0.50 or more be rounded up to the nearest dollar. As such, DIFS determined that Liberty owes the Petitioner, Ms. Fritz, \$10.00. Liberty disagrees with the DIFS determination that its premium calculation is in violation of the Rate Manual.

The DIFS made their determination based on the impact analysis document comparing the 2022 and 2023 auto policy renewal premiums. This document was provided to the DIFS at their request to help understand the dollar amount change of each factor.

The impact analysis document was created as an attempt to help break down the impact of all the rating factor changes as they pertain to the total premium change and help the DIFS understand which factors impacted the premium increase. This was done by comparing each factor in 2023 to each factor in 2022. For example, their BI Early Shopper discount factor was 0.899 in 2023 and 0.880 in 2022, so the "% impact" from Early Shopper for BI was $(0.889/0.880)-1 = 2.2\%$, which you can see in cell D134 of each of the 3 files. To calculate a dollar amount impact, we simply multiplied that percentage impact by the vehicle premium in 2022 for that coverage ($2.2\% * \$108 = \4.69). This is our best approximation of trying to quantify what the dollar impact would be for any individual variable, knowing that the total premium change is due to the combination of all the changing factors, combined multiplicatively.

Additionally, this percentage conversion is not what is actually happening in Liberty's system. The system applies a filed factor for each characteristic of the policy and performs a calculation for that year for each coverage type. It doesn't compare it to a previous year, like the document the DIFS used to make their determination. Liberty has confirmed that the correct factors that were filed with the DIFS were used in calculating the premium and that it is correctly rounding to the nearest whole dollar. Further, Liberty has reviewed and confirmed that the 2022 and 2023 renewal rate calculations provided to the DIFS for Ms. Fritz' policy 100% match to system production and the rounding logic is working correctly.

At the February 28, 2024, hearing, Mr. Gould offered testimony that was essentially in line with the summary in Exhibit R-2.

It is important to note that Liberty Mutual's presentation at the February 28 hearing was not responsive to Ms. Fritz's original complaint, which was not about rounding procedures. Liberty Mutual's appeal was an attempt to defend its price calculation process and demonstrate that the company had followed its written rounding policy.

On March 11, 2024, I issued an Order to Reopen, inviting DIFS to participate in the reopened hearing. I do not have subpoena power in these cases, and thus, lack the

power to order DIFS to appear. On March 18, 2024, DIFS declined the invitation, claiming judicial immunity.

The reopened hearing convened on May 15, 2024. Liberty Mutual participated. DIFS refused to participate. Notice of the May 15, 2024, hearing session had been sent to Ms. Fritz, but she did not appear. We waited 10 minutes for Ms. Fritz to appear. We went on the record at 9:10 a.m. and closed the record at 9:19 a.m. without an appearance by Ms. Fritz. No new evidence was taken at the May 15, 2024, hearing session.

Two findings follow from the evidence presented in this case.

First, there is not enough evidence to prove that Ms. Fritz was a victim of misrepresentation or overcharging. It takes a lot to fight an insurance company. Fritz was not represented by a lawyer, she did not present testimony from an expert witness, her presentation did not identify specific features of the Liberty Mutual price calculation system or business model that were unfair, and she did not participate in the May 15, 2024, hearing session. For those reasons, her presentation fails.

Second, there is not enough evidence to prove that Liberty Mutual committed rounding errors in pricing Ms. Fritz's policy. Liberty Mutual has come forward with evidence to rebut DIFS's Determination. DIFS's analysis was based on a "Dollar Amount Impact Analysis" document, a derivative worksheet that was not an integral part of the price calculation process. No one presented any evidence to refute Liberty Mutual's rebuttal or to support DIFS's analysis. The preponderance of the evidence supports Liberty Mutual's position.

CONCLUSIONS OF LAW

In contested cases under the Michigan administrative procedures act, unless a statute or rule provides otherwise, the proponent of an order or petition has the burden of proof and the burden of going forward. *Brown v Beckwith Evans*, 192 Mich App. 158, 168; 480 NW2d 311 (1991). *Bunce v Secretary of State*, 239 Mich App 204, 216, 607 NW2d 372, 378 (1999).


This case presents two issues.

The first issue is best expressed by Ms. Fritz, who asked: "What is the purpose of being able to decline PIP when all they do is find another reason to constantly raise your insurance premium?" On that issue, Ms. Fritz has the burden of proof. Ms. Fritz failed to carry her burden because she presented no substantial evidence of misrepresentation or overcharging.

The second issue has to do with alleged rounding errors. Liberty Mutual came forward with evidence on that issue, and no one rebutted that evidence. Liberty Mutual has presented convincing evidence that the DIFS Determination is incorrect because it was based on a derivative worksheet that was not an integral part of the price calculation procedure. Thus, on the rounding issue, the preponderance of the evidence supports Liberty Mutual's position.

PROPOSED DECISION

Liberty Mutual did not overcharge Ms. Fritz by \$10.00 due to rounding errors.



Erick Williams
Administrative Law Judge

EXCEPTIONS

The parties may file Exceptions to this Proposal for Decision within twenty-one (21) days after it is issued and entered. An opposing party may file a Response to Exceptions within fourteen (14) days after initial Exceptions are filed (see computation of filing time at Mich Admin Code, [R 792.10104](#)). For any Exceptions and Responses to Exceptions, a party must:

- 1) State the **case name and docket number** as shown on the first page of this Proposal for Decision;
- 2) File with the Michigan Office of Administrative Hearings and Rules-General Adjudication, by **e-mail (preferred):** MOAHR-GA@michigan.gov; **fax:** 517-763-0148; **regular mail:** MOAHR-GA, P.O. Box 30695, Lansing, Michigan 48909-8195; or **overnight carrier delivery (UPS, FedEx, DHL):** MOAHR-GA, c/o Department of Licensing and Regulatory Affairs, Mail Services, 2407 N. Grand River Avenue, Lansing, Michigan 48906; and
- 3) **Serve a copy on all parties** to the proceeding at the email/regular mail addresses shown on the attached Proof of Service.

Notice to Agency to Provide MOAHR with Subsequent Agency or Court Orders

Pursuant to Mich Admin Code, R 792.10120(2)(i), the state agency that is a party to this matter, and/or referred this matter to MOAHR shall serve MOAHR with any subsequent orders entered as a result of this ALJ's decision or proposed decision, including but not limited to the agency's final order, order to remand the matter to MOAHR for further proceedings, or order on appeal, as soon as practicable following entry of the order to:

Michigan Office of Administrative Hearings and Rules, General Adjudication, by **email (preferred)** to: MOAHR-GA@michigan.gov; **or by regular mail** to: MOAHR-GA, P.O. Box 30695, Lansing, Michigan 48909-8195.

See: Mich Admin Code, R 792.10120(2)(i).