

Circuit Court for Baltimore City
Case No. 24-C-20-004756

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1338

September Term, 2021

KELLIE BALLARD

v.

MARYLAND INSURANCE
ADMINISTRATION, *et al.*

Kehoe,
Tang,
Adkins, Sally D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Adkins, Sally D., J.

Filed: November 23, 2022

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

The Appellant—Kellie Ballard (“Ballard”)—was a named insured under a personal liability umbrella policy (“PLUP”) with State Farm Fire & Casualty Company (“State Farm”) from 1993 until November 1, 2013 when State Farm declined to renew the policy. Ballard filed a complaint with the Maryland Insurance Administration (“MIA”) involving State Farm’s alleged withholding of a copy of her PLUP policy, investigation into her filed claim, and the non-renewal of her PLUP policy. After the MIA found that State Farm had not violated Maryland insurance law, Ballard requested a hearing, which the MIA transferred to the Office of Administrative Hearings (“OAH”). The OAH agreed with the MIA’s decision that State Farm had not violated the law by not renewing Ballard’s PLUP. The Administrative Law Judge (“ALJ”) issued a proposed decision, which the MIA adopted. Ballard petitioned for judicial review of the MIA’s decision. The Circuit Court for Baltimore City affirmed the decision of the MIA. This appeal followed.

Ballard presents us with three questions on appeal which we have revised as follows:

1. Whether the MIA and OAH erred in failing to address State Farm’s improper withholding from Ballard of true and correct copies of her personal liability umbrella policy?
2. Whether the MIA and OAH erred in neglecting to address State Farm’s denial of Ballard’s October 4, 2013 claim under her PLUP policy?
3. Whether the MIA and OAH erred in determining State Farm properly cancelled Ballard’s PLUP policy and rejected her application(s) for its renewal?

We answer all questions in the negative and therefore affirm the judgment of the Circuit Court for Baltimore City.

FACTS AND PROCEDURAL HISTORY

Kellie Ballard and her husband, Michael Ballard, contracted for a PLUP policy with State Farm at some point in 1993. Ballard continued with PLUP coverage from State Farm until November 1, 2013, when the policy expired and was not renewed by State Farm. At the time, State Farm's internal underwriting guidelines required all umbrella policies exceeding \$5 million to be reviewed annually.¹ Before its non-renewal, Ballard had a \$10 million PLUP policy with State Farm. On July 9, 2013, State Farm emailed Ballard's insurance agent, directing the agent to have Ballard submit a PLUP renewal application with required information for underwriting. The email stated that all required information needed to be submitted by August 8 or the policy would be non-renewed. On August 29, a member of the insurance agent's staff emailed Ballard to advise that State Farm's underwriting team required additional information to approve the renewal.² The insurance agent's staff reminded Ballard on September 10 of the required information to be submitted. On September 12, State Farm sent notice to Ballard that it did not intend to renew her PLUP policy upon its expiration on November 1, 2013, citing incomplete underwriting information.³

¹ Ballard disputes that State Farm required annual review of PLUP policies exceeding \$5 million; however, the ALJ made a finding of fact that State Farm required annual renewal applications for PLUPs exceeding five million dollars.

² According to Ballard, her insurance agent had submitted a renewal application on her behalf without informing her. This conduct was not complained of to the MIA.

³ In addition to this non-renewal, Ballard sent a non-bound application for a PLUP renewal on December 10, 2013. State Farm denied that application, also citing incomplete underwriting information. We discuss both non-renewals in our discussion, *infra*.

In the meantime, on October 4, 2013, Ballard filed a claim or inquired about filing a claim, alleging to be a victim of “identity theft.”⁴ That claim was closed without payment. There was dispute in the record over whether Ballard or her husband had voluntarily withdrawn the claim or whether State Farm had determined coverage was inapplicable because the PLUP policy provided only coverage for liability exposure, not for injury suffered from identity theft.⁵

On July 5, 2018, Ballard filed a complaint with the MIA. The complaint alleged that State Farm improperly cancelled her PLUP policy, improperly handled her identity theft claim, and failed to provide a copy of her PLUP policy upon request. Ballard alleged that State Farm improperly cancelled her PLUP because she had filed her October 4, 2013 identity theft claim against the policy. The MIA investigated and determined that State Farm’s non-renewal notice complied with Maryland insurance law’s requirements for timeliness, mailing method, and content; that the October 4, 2013 claim was closed without payment due to Ballard’s statement that the claim should never have been filed; and that the MIA was attaching a complete copy of her PLUP policy to the determination letter for

⁴ The record contained minimal detail on the facts of the “identity theft” claim. In a letter to the MIA regarding her complaint, Ballard wrote, “At the time I submit[ted] my claim I was not yet fully aware or informed of all the facts and circumstances surrounding the subject of my claim. At the time of [the] claim I was only aware that my identity and signature had been misuse[d] / stolen to secure loans worth millions of dollars of which I had no knowledge.”

⁵ Resolution of this dispute does not impact our analysis in this case.

Ballard. Ballard requested a hearing, and the MIA transferred the hearing responsibility to the OAH.

The ALJ considered one issue at the hearing: “Did [State Farm’s] cancellation of [Ballard’s] Personal Liability Umbrella Policy comply with Maryland insurance law?” At the hearing, Ballard requested that the ALJ also consider whether State Farm should be required to provide her with copies of her insurance policies. The ALJ denied this request because Ballard never filed a discovery request for the policy with the OAH and because the issue at the hearing was limited as set forth by the MIA in its notice of hearing. The MIA’s notice of hearing stated, “This Hearing will be held under the provisions of the Annotated Code of Maryland, Insurance Article, Section 2–210, at the request of Kellie Ballard. Ballard asserts that State Farm Fire and Casualty Company erred in the cancellation of her umbrella policy.”

After the hearing, the ALJ issued a proposed decision finding that State Farm’s non-renewal of Ballard’s PLUP complied with Maryland insurance law. In making this determination, the ALJ made the following findings of fact:

1. The Complainant [Kellie Ballard] was the holder of a Personal Liability Umbrella Policy (PLUP) with the Licensee [State Farm] until November 1, 2013.
2. The Licensee requires annual renewal applications for PLUPs exceeding five million dollars. The Complainant’s PLUP was ten million dollars; therefore, the Complainant was required to submit a renewal application annually for underwriting review.
3. The Complainant’s insurance agent was Salma Yousufzai of the Salma Yousufzai Agency.

4. On August 29, 2013, a member of Ms. Yousufzai's staff emailed the Complainant to advise that the Licensee's underwriting department reviewed her PLUP renewal application and required that the following information be provided as soon as possible:
 - Full Policy Declaration and any Endorsements for Commercial Liability Policy for Savannah Chanelle Vineyards in California[, of which Ballard is Owner and CFO;]
 - Documentation that the Complainant's husband cleared a District Court Failure to Comply suspension and proof that his license is not suspended; and
 - Status of daughter – whether she is still attending college out-of-state and whether she has a car with her.
5. On September 10, 2013, a member of Ms. Yousufzai's staff emailed the Complainant, attached a copy of the August 29, 2013 email, and reminded the Complainant that without the requested enumerated information the Licensee would be unable to renew her PLUP.
6. On a date unknown from the record, the Complainant met with Salma Yousufzai Agency staff and advised that the required information would be provided as soon as possible.
7. By notice dated September 12, 2013, the Licensee informed the Complainant that it did not intend to renew the Complainant's PLUP after its expiration on November 1, 2013. The notice stated that the Licensee had not received complete underwriting information from the Complainant. The notice advised that in order to consider the policy for renewal, the Complainant would have to submit a completed renewal application and all required information about liability exposures.
8. On October 30, 2013, Ms. Yousufzai's [staff] emailed the Complainant to advise that the Licensee was not continuing PLUP coverage due to a lack of requested information. The email referenced the prior August 29, 2013 and September 10, 2013 emails from her staff which sought information, referenced a meeting with the Complainant wherein the Complainant assured staff that the information would be

provided, and stated that the requested information was never received.

9. On December 10, 2013, Ms. Yousufzai submitted a non-bound application for a PLUP on behalf of the Complainant. The application included information pertaining to Savannah Chanelle Vineyards in California. On March 26, 2014, the Licensee sent a notice to the Complainant that the application was denied for lack of complete and accurate underwriting information.
10. The Licensee did not receive sufficient information from the Complainant to assess potential automobile exposure under the PLUP.
11. The Licensee received inconsistent information regarding a possible personal risk exposure through the Complainant's winery business in California.
12. The Licensee's application of its underwriting standard to the Complainant's PLUP was reasonably related to its economic and business purposes.

The ALJ admitted the entire MIA file into the record, which included the complaint, communications between the MIA, Ballard, and State Farm, and various attachments. The ALJ also admitted an exhibit on behalf of State Farm. Ballard did not offer any exhibits at the hearing. State Farm presented witness testimony that Ballard failed to submit required documents that were material to State Farm's ability to assess its risk; that as a result, State Farm had to send its notice of non-renewal; and that the notice of non-renewal complied with the requirements of Md. Code Ann., Ins. § 27-602.⁶ She also testified that there was

⁶ Section 27-602(c)(1) of the Insurance Article provides that "at least 45 days before the date of the proposed cancellation or expiration of the policy, the insurer shall send to the named insured at the named insured's last known address, by a first-class mail tracking method, a written notice of intention to cancel for a reason other than nonpayment of premium or notice of intention not to renew a policy issued in the State."

no basis for Ballard’s contention that the non-renewal was due to the identity theft claim she filed on October 4, 2013 because State Farm had already issued its September 12, 2013 notice of non-renewal prior to the filing of that claim. The ALJ found the witness to be credible, and Ballard did not cross-examine the witness.

The MIA adopted the ALJ’s proposed decision. Ballard petitioned for judicial review, which was heard in the Circuit Court for Baltimore City. Ballard raised three issues for the circuit court:

(1) whether the MIA and OAH erred in failing to address State Farm’s improper withholding from [Ballard] of true and correct copies of her PLUP; (2) whether the MIA and OAH erred in failing to address State Farm’s handling of the October 4, 2013 claim, and (3) whether the OAH erred in upholding MIA’s determination that State Farm lawfully terminated [Ballard’s] PLUP.

The court found no error in the ALJ’s decision.⁷ The court determined that the issue of the denial of Ballard’s identity theft claim was not properly before the ALJ. Thus, any error regarding Ballard’s request for a copy of her policy was harmless since it related only to the investigation of her claim, and not the non-renewal of her policy. The circuit court affirmed the decision of the MIA, and this appeal followed.

STANDARD OF REVIEW

When reviewing decisions made by an administrative agency, we look “*through*” the decision of the circuit court and to the decision of the administrative agency itself.

⁷ In a footnote, the circuit court stated that “[p]etitioner did not present argument to support [the] allegation of error” that the OAH erred in upholding the MIA’s determination that the PLUP non-renewal was lawful.

People’s Couns. for Balt. Cty. v. Country Ridge Shopping Ctr., Inc., 144 Md. App. 580, 591 (2002). Our “role is limited to determining if there is substantial evidence in the record as a whole to support the agency’s findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law.” *United Parcel Serv., Inc. v. People’s Couns. for Balt. Cty.*, 336 Md. 569, 577 (1994). Even where the administrative agency’s decision is based on the law, “its expertise should be taken into consideration and its decisions should be afforded appropriate deference in our analysis of whether it was ‘premiered upon an erroneous conclusion of law.’” *Kenwood Gardens Condos., Inc. v. Whalen Props., LLC*, 449 Md. 313, 325 (2016) (citation omitted).

When we conduct a substantial evidence review, as we do in this case, the test is “whether a reasoning mind reasonably could have reached the factual conclusion the agency reached[.]” *Mayor & Aldermen of City of Annapolis v. Annapolis Waterfront Co.*, 284 Md. 383, 398 (1979) (citation omitted). The Court does not “substitute its judgment for the expertise of those persons who constitute the administrative agency.” *United Parcel Serv.*, 336 Md. at 576–77 (citation omitted). Finally, “[w]e defer to the [agency’s] fact-finding and inferences, provided they are supported by evidence which a reasonable person could accept as adequately supporting a conclusion.” *Kenwood Gardens Condos.*, 449 Md. at 325.

DISCUSSION

State Farm’s Provision of Ballard’s PLUP Policy

Ballard’s first claim of error is that the MIA and OAH failed to address State Farm’s withholding of her PLUP policy. Ballard has repeatedly alleged that State Farm did not

provide her with a copy of her original PLUP policy from 1993. She claims that the MIA never made a finding that State Farm had provided her with her 1993 policy or that the forms given to her were identical to her original policy. Additionally, Ballard contends that the OAH erred in ruling that the alleged failure to provide a copy of her policy was beyond the scope of the hearing.

Although the MIA’s determination letter did not find that State Farm had or had not provided Ballard with a copy of her policy, the MIA provided her a copy they had obtained from State Farm attached to its determination letter. In its July 26, 2019 letter to Ballard, the MIA stated, “Regarding your request for a complete copy of your PLUP policy, enclosed please find a copy of the last declarations page along with the complete policy forms applicable to the policy period effective November 1, 2012 to November 1, 2013.” For the purposes of its investigation, the MIA deemed that Ballard now had a complete copy of her policy.

On Ballard’s hearing request form, she mentions State Farm’s alleged failure to provide a copy of her PLUP policy in two places. The first occurs under the section of the form asking, “What are the facts about your case?” There, she wrote, “To date, State Farm has failed and refused to provide me with the requested copy of my policy.” The second is under the section asking, “What do you want the Insurance Administration to do?” There, she refers to being provided a copy of her policy while requesting that the MIA investigate her October 4, 2013 claim for “substantial losses as defined in the Declarations page of my policy and most probably included in the actual policy *which has never been*

provided to me.” (emphasis added). She then states, “I renew my request that State Farm provide a copy of my policy as it was in effect on October 1, 2013.”

Under the Insurance Article, “[t]he Commissioner shall hold a hearing . . . on written demand by a person aggrieved by any act of, threatened act of, or failure to act by the Commissioner . . .” Md. Code Ann., Ins. § 2–210(a)(2)(ii). Within 30 days of receiving demand for a hearing, “the Commissioner shall” grant or refuse the hearing. Md. Code Ann., Ins. § 2–210(b)(2). The MIA may either conduct the hearing itself or delegate the authority to conduct the hearing to the OAH. Md. Code Ann., State Gov’t § 10–205(a)(1). “If the Commissioner does not grant or refuse a hearing within the 30-day period, the hearing is deemed to have been refused.” Md. Code Ann., Ins. § 2–210(b)(3).

It is not clear that Ballard’s statement that she “renew[s her] request” to be provided a copy of her policy is a written demand to the MIA for a hearing on this issue. Regardless, Ballard did not follow the proper steps to appeal the MIA’s refusal to grant a hearing.

In its notice of hearing, the MIA only granted a hearing on the issue of State Farm’s non-renewal of Ballard’s PLUP policy. Under the Insurance Article, the Commissioner’s inaction in granting or refusing a hearing becomes a refusal thirty days after the Commissioner receives the demand for a hearing. Md. Code Ann., Ins. § 2–210(b)(3). Thus, the MIA’s inaction in granting Ballard a hearing on being provided a copy of her policy became a refusal to grant a hearing thirty days after it received her request. As a result, the MIA may have erred in not granting Ballard a hearing on being provided a copy of her policy after receiving written demand for one. *See* Md. Code Ann., Ins. § 2–210(a)(2)(ii).

The Insurance Article also outlines the process for appeal if an aggrieved person disagrees with the Commissioner’s decision. A person may appeal “the refusal of the Commissioner to grant a hearing” by filing a petition for judicial review within 30 days of the refusal. Md. Code Ann., Ins. § 2–215(d)(3).

Ballard did not follow the proper procedure for challenging the MIA’s refusal to grant her a hearing on State Farm’s investigation into her claim. Ballard requested a hearing from the MIA on August 15, 2019. Due to the MIA’s inaction on granting or refusing a hearing on this issue, the Commissioner officially refused to grant a hearing under the statute on September 14, 2019. *See* Md. Code Ann., Ins. § 2–210(b)(3). Accordingly, Ballard needed to petition for judicial review of the Commissioner’s refusal to grant a hearing by October 14, 2019. *See* Md. Code Ann., Ins. § 2–215(d). Ballard did not petition for judicial review from the MIA’s adoption of the ALJ’s proposed decision until June 30, 2021. As a result, she failed to follow the proper avenue to challenge the MIA’s error in not granting her a hearing on being provided a copy of her policy.

Ballard contends that that “the suggestion that [she] should have filed a separate appeal of the agency’s hearing notice itself is absurd. No code, case, or COMAR is cited for that proposition.” On the contrary, *Muhl v. Magan*, a case on which Ballard herself relied, outlined that exact procedure. 313 Md. 462 (1988). In that case, Dr. Magan complained to the Insurance Commissioner about his malpractice insurance. *Id.* at 470. After an investigation did not go in Dr. Magan’s favor, he made a written demand for a hearing within 30 days of the investigator’s decision. *Id.* at 471. After thirty days had

passed where Dr. Magan had not been granted a hearing, he filed his order for appeal of the Commissioner’s refusal to grant a hearing in the circuit court. *Id.* at 472.

The steps taken in *Muhl v. Magan* demonstrate the steps that the Insurance Article requires to appeal the Insurance Commissioner’s refusal to grant a hearing where the refusal was not explicit. Ballard did not properly follow these steps. Ballard should have petitioned for judicial review once the MIA’s inaction in granting a hearing became a refusal under the statute. Because Ballard did not appeal the MIA’s refusal to grant her a hearing to the circuit court as required by the Insurance Article, the ALJ did not err in excluding this issue from the scope of the hearing.

State Farm’s Handling of Ballard’s October 4, 2013 Claim

Ballard’s second claim of error is that the MIA and OAH erred by failing to address State Farm’s denial of her October 4, 2013 identity theft claim under her PLUP policy. Although the MIA may have erred in failing to grant Ballard a hearing on this issue, she neglected to follow the proper procedure for challenging the MIA’s failure to grant her a hearing, as outlined above.

On Ballard’s hearing request form, she alleged that the MIA “failed to consider whether [she] had a timely and legitimate pending claim filed within a current policy period.” Additionally, under the section asking, “What do you want the Insurance Administration to do?”, she wrote

I want the [Insurance Administration] to investigate and verify my October 4, 2013 claim was timely filed with the policy I would like to understand how a claim filed on October 4, 2013 was simultaneously ‘closed without payment’ the same day, without any investigation or explanation. I request that

State Farm be directed to re-open my timely and legitimately submitted claim, that State Farm be directed to conduct a full and appropriate investigation into my claim and the circumstances surrounding it and to appropriately reimburse me for my substantial losses as defined in the Declarations of my policy Lastly, I request a hearing to make all appropriate determinations regarding my coverage under my State Farm policy . . . as it was in effect from November 1, 2012 through November 1, 2013.

Accordingly, Ballard made a clear, written demand on the MIA for a hearing on the issue of how State Farm handled her identity theft claim.

Despite this demand, the MIA only included the issue of the PLUP policy's non-renewal on its hearing notice—neither granting nor refusing Ballard's request for a hearing on the investigation of her identity theft claim. The MIA's inaction in granting or expressly refusing Ballard a hearing became a refusal thirty days after it received her request. As a result, the MIA erred in not granting Ballard a hearing on this issue because it was obligated to do so upon written demand. *See* Md. Code Ann., Ins. § 2-210(a)(2)(ii).

Despite MIA's error, Ballard likewise did not follow the proper procedure for challenging the MIA's refusal to grant her a hearing on State Farm's investigation into her claim. Ballard requested a hearing on August 15, 2019. The MIA's inaction in granting or refusing a hearing officially became a refusal under the statute on September 14, 2019. *See* Md. Code Ann., Ins. § 2-210(b)(3). Accordingly, Ballard needed to petition for judicial review by October 14, 2019. *See* Md. Code Ann., Ins. § 2-215(d). Because Ballard did not petition for judicial review until June 30, 2021, she failed to follow the proper procedure to challenge the MIA's refusal to grant her a hearing regarding State

Farm’s investigation into her claim. Thus, the ALJ did not err in excluding this issue from the scope of the hearing.

State Farm’s Non-Renewal of Ballard’s PLUP Policy

Ballard’s final claim of error is that the MIA erred in determining that State Farm’s refusal to renew her PLUP policy or issue her a new one⁸ complied with Maryland insurance law.⁹ She contends that (1) State Farm had never required annual review of her PLUP policy and (2) State Farm chose not to renew her policy because she had filed a claim under her policy on October 4, 2013 for her alleged injury from identity theft. She further asserts that refusal to renew on these bases was arbitrary and capricious and thus in violation of Maryland insurance law. In evaluating this claim of error, we consider whether there is substantial evidence in the record to support the agency’s determinations. *United Parcel Serv., Inc.*, 336 Md. at 577. We defer to the agency’s findings of fact and inferences. *Kenwood Gardens Condos., Inc.*, 449 Md. at 325.

The Insurance Article prohibits “[a]n insurer . . . [from] cancel[ing] or refus[ing] to underwrite or renew a particular insurance risk . . . for any arbitrary, capricious, or unfairly discriminatory reason.” Md. Code Ann., Ins. § 27–501(a)(1). The statute continues,

⁸ We deal with Ballard’s claim that State Farm improperly denied a subsequent application, *infra*.

⁹ A portion of the ALJ’s proposed decision discussed § 27–602, which provides the timing and content requirements for a notice of an insurer’s intention not to renew a policy. That State Farm’s notice of non-renewal complied with the timing and content requirements does not seem to be disputed. We conclude that there was substantial evidence to support the ALJ’s finding that State Farm’s notice of non-renewal complied with § 27–602.

“Except as provided in this section, an insurer . . . may not cancel or refuse to underwrite or renew a particular insurance risk or class of risk except by the application of standards that are reasonably related to the insurer’s economic or business purposes.” Md. Code Ann., Ins. § 27–501(a)(2). The insurer bears the burden of showing that the non-renewal of a policy “is justified under the underwriting standards demonstrated.” Md. Code Ann., Ins. § 27–501(g).

Upon review of the record, including the ALJ’s findings of fact and the evidence it considered, we conclude that there is sufficient evidence in the record to support MIA’s determination that State Farm complied with the Insurance Article. The ALJ found as a fact that State Farm required annual renewal applications for PLUP policies exceeding \$5 million and that this requirement applied to Ballard’s policy. State Farm’s witness testified at the hearing before the ALJ that “at the time there was, and actually today, there still is a requirement that all PLUP policies that are in excess of [\$]5 million be reviewed on an annual basis. So before that coverage could be extended for another year, the insureds who certainly would be working through [an] agent, would be required to submit a new app[lication].” The ALJ explicitly found State Farm’s witness “to have been a thoroughly prepared and credible witness[,]” noting that “[i]t was evident that she had carefully reviewed the records.” Ballard “did not cross-examine her, and so her testimony was uncontroverted.” State Farm’s underwriting guidelines were included as an exhibit in the MIA file that the ALJ considered.

Ballard claims that her PLUP policy had never been subject to this annual review process. She points to language on the declaration page of her policies as proof that such

a requirement did not actually exist.¹⁰ The declaration page included the following statement:

Automatic Renewal – If the policy period is shown as 12 months, this policy will be renewed automatically subject to the premiums, rules and forms in effect for each succeeding policy period. If this policy is terminated, we will give you written notice in compliance with the policy provisions or as required by law.

State Farm contends that Ballard’s interpretation of this language ignores the language “subject to the premiums, rules, and forms in effect for each succeeding policy period.”

State Farm categorizes its underwriting guidelines as a rule in effect that limits the applicability of automatic renewal.

Based on our review of the record, we conclude that the ALJ was reasonable in finding that State Farm’s underwriting guidelines required annual renewal applications for PLUP policies exceeding \$5 million. The ALJ considered testimony from State Farm’s witness, as well as the underwriting guidelines themselves. We do not think the language on the declaration page of the policy is sufficient to render the ALJ’s determination unreasonable. We are persuaded that the ALJ could reasonably have concluded that State Farm’s underwriting guidelines were a rule that limited the automatic renewal provision.

¹⁰ In addition, there is a letter in the record dated August 9, 2007 to Ballard and her husband stating that their PLUP policy was due to renew. Ballard claims that, because the letter does not mention additional underwriting, the annual review of renewals did not occur. It is not clear to us that the letter reminding the policyholders that their policy was due for renewal proves whether or not annual review of PLUP policies exceeding \$5 million occurred. Notably, the letter in the record indicates that Ballard’s policy was for \$3 million at the time, which would not have triggered the annual renewal application requirement under State Farm’s guidelines.

Thus, the ALJ's conclusion that State Farm complied with Maryland insurance law is not clearly erroneous on the grounds that the underwriting guidelines did not exist.

We also conclude that there is substantial evidence to support the ALJ's determination that Ballard's identity theft claim did not cause State Farm to refuse to renew her PLUP policy. State Farm's witness explained that its refusal to renew Ballard's PLUP policy was due to her failure to submit required information for underwriting when requested to do so. The witness described how the missing information influenced State Farm's ability to assess risk. Maryland insurance law requires that the insurer send notice of its intention to cancel a policy, for any reason other than nonpayment of premiums, 45 days before the date of cancellation or expiration. Md. Code Ann., Ins. § 27-602(c)(1). State Farm's witness explained that because it had not received the information it requested, State Farm was obligated to send advanced notice of non-renewal to Ballard. The notice dated September 12, 2013 complied with the timing requirements of Md. Code Ann., Ins. § 27-602(c)(1). As we mentioned before, the ALJ found the testimony of State Farm's witness credible.

In addition, Ballard's contention that the real reason for her non-renewal was her identity theft claim is belied by the record. The ALJ noted that Ballard's "extremely brief testimony pertained to the PLUP itself. She offered no response to [State Farm's] testimony that she failed to submit required documents and information for review by underwriting." State Farm requested the required underwriting information from Ballard on August 29 and September 10, 2013. State Farm sent its notice of non-renewal on September 12, 2013—twenty-two days before Ballard's identity theft claim was filed. It

is obvious that the timing of events is at odds with Ballard's contention that the filing of her identity theft claim caused the non-renewal of her policy.

Ballard's Second Application

Ballard submitted a second application for a PLUP policy on December 10, 2013. State Farm denied this application for "lack of complete and accurate underwriting information" on March 26, 2014. Ballard likewise claims that this denial was arbitrary and capricious and thus in violation of Maryland insurance law.

State Farm's witness explained that, although the application included some of the missing information from the prior non-renewal, State Farm could not determine an accurate number of vehicles and drivers and was provided inconsistent information about the Ballards' winery business based in California. This included the question of whether any of its business activities were conducted on Maryland property. The State Farm representative explained how automobile liability and the location of business activities influenced risk. Ballard did not cross-examine State Farm's witness. This is the same witness the ALJ expressly found credible.

At the hearing, Ballard testified only about attempting to get copies of her policy.

Her direct testimony included the following:

[Ballard]: Okay. I have – I've been requesting again my true and complete policies so that we could go ahead and examine our policies to address our claims, and I have not yet received it.

[State Farm objected on the basis of relevance, and the ALJ sustained the objection.]

[Ballard]: Well, that's why I came here is to ask you, the judge, to see if you could get State Farm to provide me with

the correct policies so that I can consult with an attorney on our \$10 million Maryland state umbrella policy. And I have not yet received it.

* * *

The only other thing I have is a notarized letter from a woman who has worked with me who has also witnessed going around with me trying to get copies of my umbrella policies and how we've been denied these policies. And that is all I have because I can't go any further until I get my policies.^[11]

The ALJ noted in the proposed decision that Ballard offered no response to State Farm's testimony that she had failed to submit the required documents for underwriting.

Before this Court, Ballard points to a portion of an email sent from her agent on October 30, 2013 pertaining to the initial non-renewal of her policy:

On October 4, 2013, [Ballard] called State Farm's Claim Department and filed a claim under the Umbrella policy. Due to the fact that there is an ongoing Lawsuit and the Additional Information was not received, State Farm's Underwriting Department is declining the renewal application and your coverage will cease at 12:01 AM on November 1, 2013.

The email seemingly refers to Ballard's identity theft¹² as a factor in State Farm's non-renewal of her policy. Ballard claims that this email proves that State Farm based its non-renewal and decision not to issue a new policy on her identity theft claim. In response,

¹¹ In closing, Ballard stated, "Again, I'm here to get copies of my policies so that I can hire an attorney to review the policy with me. Until I do so, nothing matters. It – I cannot – I cannot go forward without having the policy I paid for, for all these years. I entrusted State Farm. And for them to not provide me with the real and complete policies is just unheard of." Her opening statement was similarly limited to being provided a copy of her policy.

¹² On its face, the email is not entirely clear that it relates to the filed claim. Ballard explained in her brief that the ongoing lawsuit related to Ballard's claim. State Farm's witness testified before the ALJ that Ballard's identity theft claim pertained to litigation that had been initiated by the Ballards.

State Farm highlights a subsequent email from a claim representative sent December 5, 2013, stating, “As we discussed, I was able to discuss with Underwriting, and found that the claim that was set up did not have any influence in the non-renewal of your Umbrella Policy.” The email continues, “[Underwriting was] able to tell me that, due to the high limits of that policy, annual re-applications are needed to renew the policy.”

The language on which Ballard relies is only a portion of a longer email. The remainder of the email deals with State Farm’s decision not to renew her policy. In full, the body of the email reads:

Good afternoon. I am writing to let you know that after careful review, State Farm is not going to continue coverage of your Umbrella policy. Since your policy is over \$2,000,000,¹³ a new application is required each year. The application and any Underwriting Liability Exposures are taken into consideration each year. If any changes are uncovered in the Underwriting process, the new application can be denied. We requested additional required Underwriting information by e-mail on August 29, 2013 and September 10, 2013 and we didn’t receive the information. We also had a meeting with [Ballard] in the office and explained that we MUST receive the information in order to renew the policy. [Ballard] assured us that she would provide the information as soon as possible. You also received Certified Letter from State Farm’s Underwriting Department dated September 12, 2013 stating that the policy would be non-renewed because all of the requested Underwriting Information was not received (please see attached). Amy [agency staff member] tried very hard to obtain the additional information even going so far as to contact your agent in California for information for the Vineyard and also Michael’s updated information from the Maryland MVA and District Court, but she was unsuccessful in receiving the information. As you see

¹³ It is not clear from the record where this \$2 million figure came from given that State Farm’s witness testified, and the ALJ found, that the underwriting guidelines required annual renewal applications for policies exceeding \$5 million.

in Amy’s e-mails she tried very hard to collect the required information from you before the Non-Renewal Notice was mailed with the understanding that you would provide the information in timely manner.

On October 4, 2013, [Ballard] called State Farm’s Claim Department and filed claim under the Umbrella policy. Due to the fact that there is an ongoing Lawsuit and the Additional information was not received; State Farm’s Underwriting Department is declining the renewal application and your coverage will cease at 12:01 AM on November 1, 2013.

We will contact you in a couple of months to discuss whether we can submit a new application for coverage.

Please see the emails that Amy Oser [agency staff member] sent you below regarding the required information needed.

It is clear that conflicting evidence on this issue appeared in the record. It is properly within the ALJ’s province to weigh the evidence presented and to make credibility determinations. Faced with competing emails,¹⁴ we cannot say that it was unreasonable for the ALJ to conclude that State Farm’s decision not to issue the PLUP policy complied with Maryland insurance law. While the email on which Ballard relies appears to support her position that her identity theft influenced State Farm’s decisions, evidence in the record suggests otherwise. This evidence includes testimony from State Farm’s witness about the underwriting information State Farm requested but never received; the email contradicting

¹⁴ We also note that both emails discussed contain multiple levels of hearsay. While administrative proceedings allow the admission of hearsay evidence, the “evidence must demonstrate sufficient reliability and probative value” *Travers v. Balt. Police Dep’t.*, 115 Md. App. 395, 411. We do not comment on the reliability or probative value of either email except to say that the ALJ was responsible for weighing this evidence against all other evidence in the record. *See Parham v. Dep’t of Lab., Licensing & Regul.*, 189 Md. App. 604, 618 (2009) (“One indication of [hearsay evidence’s] reliability is whether it has been directly contradicted by other more reliable evidence.”).

the portion of the email on which Ballard relies; and the underwriting guidelines themselves. As noted, the ALJ had expressly commented on the credibility of State Farm’s witness. Ballard did not refute the testimony of State Farm’s witness or present evidence that she had submitted the documents State Farm required for underwriting.¹⁵

In light of this record, we conclude that a reasoning mind could find, as the ALJ did here, that State Farm’s denial of Ballard’s PLUP application was “reasonably related to [its] economic or business purposes” based on its underwriting guidelines. *See* Md. Code Ann., Ins. § 27–501(a)(2). We cannot say that the ALJ improperly weighed the evidence or was unreasonable in reaching the stated conclusions. Substantial evidence in the record supports the ALJ’s conclusion that State Farm’s non-renewal complied with Md. Code Ann., Ins. §§ 27–501 and 27–602. For the reasons we have discussed, that conclusion was not clearly erroneous.

CONCLUSION

We affirm the judgment of the Circuit Court for Baltimore City. We agree with the ALJ and the circuit court that the issues of State Farm’s alleged failure to provide a copy of her PLUP policy and the handling of her October 4, 2013 claim were not issues before the ALJ. The MIA’s decision that State Farm did not violate Maryland insurance law was

¹⁵ In her brief, Ballard also points to a log note from State Farm’s system that states, “Cancellation date 11/03/2013 Company initiated cancellation. Company non-renewed due to loss history or another reason.” We do not see how this note supports Ballard’s position given that State Farm never paid out for Ballard’s identity theft claim and no other loss history was presented in the record.

supported by substantial evidence in the record, and its conclusions were not clearly erroneous.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**

The correction notice(s) for this opinion(s) can be found here:

<https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/1338s21cn.pdf>