



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

September 30, 2022

CBCA 7418-FEMA

In the Matter of BOARD OF TRUSTEES OF BAY MEDICAL CENTER

Wendy Huff Ellard of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, Jackson, MS; and Robert C. Jackson of Hand Arendall Harrison Sale, LLC, Panama City, FL, counsel for Applicant.

Sherin Joseph, Appeals and Compliance Supervisor, Melissa Shirah, Recovery Bureau Chief, and Marija Diceviciute, Appeals Officer, Florida Division of Emergency Management, Tallahassee, FL, appearing for Grantee.

Ramoncito DeBorja, Office of Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, Washington, DC, counsel for Federal Emergency Management Agency.

Before the Arbitration Panel consisting of Board Judges **LESTER**, **SHERIDAN**, and **KULLBERG**.

The applicant, the Board of Trustees of Bay Medical Center, seeks public assistance in the amount of \$2,221,083.31. The Federal Emergency Management Agency (FEMA) has requested that this matter be dismissed as untimely, but the applicant contends that it filed a timely appeal. For the reasons stated below, the panel finds that the applicant filed a timely appeal and, accordingly, denies FEMA's request to dismiss this matter. The panel's decision addresses only the issue of the timeliness of the applicant's appeal.

Background

Hurricane Michael struck the Panama City, Florida, area on October 10, 2018, with sustained winds up to 155 miles per hour. The combination of wind and rain caused damage to the Bay Medical Center's outpatient clinic. The applicant submitted to FEMA its damage, description, and dimensions report and its estimated cost of repair using FEMA's cost estimating format. The applicant sought public assistance in the amount of \$3,239,816.39. On July 23, 2021, FEMA issued its eligibility determination memorandum (DM) that granted a lesser amount of public assistance to the applicant in the amount of \$1,018,733.08. The DM advised the applicant that it may submit an appeal "to the Recipient, Florida Division of Emergency Management . . . within 60 days of its receipt of this determination." In an email dated October 18, 2021, the Florida Division of Emergency Management (FDEM) advised the applicant that FEMA had obligated funding for the project worksheet (PW). FDEM further advised the applicant of its appeal rights and stated the following:

Should you disagree with FEMA's determination, you may elect to file an appeal in accordance with 44 CFR § 206.206. The appeal must be filed to the Florida Division of Emergency Management (Recipient) within 60 calendar days of receipt of this correspondence. The appeal must include the amount in question, documented justification that supports your position, and the provisions in Federal law, regulation, and/or policy with which the initial action was inconsistent.

The applicant submitted its appeal to FDEM on December 17, 2021, and the applicant represented that it had "rejected the DM and asked for continued facilitated discussion with FEMA on the Project with FEMA representatives." FDEM forwarded the applicant's appeal to FEMA.

By letter dated March 29, 2022, FEMA advised FDEM that the applicant had received the DM on July 23, 2021, but the applicant did not submit its appeal to the recipient until December 17, 2021, which was past the sixty-day period for filing an appeal. The applicant subsequently filed its request for arbitration at the Board, which was docketed on June 1, 2022. FEMA requested that this matter be dismissed because the applicant filed an untimely appeal. The applicant filed a response to FEMA's request for dismissal, and FEMA filed its "sur response."

Discussion

The issue before the panel is whether the sixty-day period for the applicant to file its appeal commenced on July 23, 2021, when FEMA issued its DM, or whether it commenced on October 18, 2021, when the applicant received notice of FEMA's obligation of funding

for the PW. The applicant contends that the latter applies, and FEMA argues that the former applies. In the alternative, the applicant urges the Board to waive the sixty-day period.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5207 (2018) (Stafford Act), provides, with regard to the right of appeal, the following:

Any decision regarding eligibility for, from, or amount of assistance under this subchapter may be appealed within 60 days after the date on which the applicant for such assistance is notified of the award or denial of award of such assistance.

Id. § 5189a (a). With regard to the Board’s authority to conduct arbitrations, the Stafford Act further provides the following:

To participate in arbitration under this subsection, an applicant—

. . . .

(B) may submit a request for arbitration after the completion of the first appeal under subsection (a) at any time before the Administrator of the Federal Emergency Management Agency has issued a final agency determination or 180 days after the Administrator’s receipt of the appeal if the Administrator has not provided the applicant with a final determination on the appeal. The applicant’s request shall contain documentation from the administrative record for the first appeal and may contain additional documentation supporting the applicant’s position.

Id. § 5189a(5).

The regulations applicable to this matter, at the time of the disaster, provided that “[a]n eligible applicant . . . may appeal any determination previously made related to an application for or the provision of Federal assistance.” 44 CFR 206.206 (2018). “The applicant . . . will make the appeal in writing through the recipient to the Regional Administrator.” *Id.* 206.206(a). “Appellants must file appeals within 60 days after receipt of a notice of the action that is being appealed.” *Id.* 206.206(c).

Statute and regulation are clear that an applicant must file an appeal with the recipient within sixty days of receipt of a determination by FEMA, but this matter presents the panel with two determinations and two appeal periods. This panel has the authority to determine timeliness of an appeal. *City of Beaumont, Texas*, CBCA 7222-FEMA, 22-1 BCA ¶ 38,018,

at 184,631 (“There is no basis for excluding the issue of timeliness from the arbitration proceeding . . .”). Both the DM and the PW, which the applicant received at different times, included a notice of its appeal rights. FEMA does not address the fact that the PW was accompanied with a notice of the applicant’s appeal rights, which would be implicitly a part of an appealable determination. Nothing in the Stafford Act or the applicable regulations would preclude the applicant from submitting an appeal under those circumstances. FEMA has provided no basis in fact or law for finding the applicant’s appeal untimely.

Decision

The panel finds that the applicant’s appeal was timely. As timeliness is the only matter to be decided, the panel remands this matter to the parties to address the merits of the applicant’s request for public assistance.

H. Chuck Kullberg

H. CHUCK KULLBERG
Board Judge

Harold D. Lester, Jr.

HAROLD D. LESTER, JR.
Board Judge

Patricia J. Sheridan

PATRICIA J. SHERIDAN
Board Judge