



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

July 27, 2023

CBCA 7764-FEMA

In the Matter of FRANCISCAN ALLIANCE, INC.

Wendy Huff Ellard and Parker Wiseman of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, Jackson, MS; and Danielle Aymond of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, Baton Rouge, LA, counsel for Applicant.

Carmen Goodman, Recovery Director, Emergency Management and Preparedness Division, Indiana Department of Homeland Security, Indianapolis, IN, appearing for Grantee.

Christiana Cooley and Rebecca Otey, 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 **RUSSELL**, **SHERIDAN**, and **SULLIVAN**.

SULLIVAN, Board Judge, writing for the panel.

Franciscan Alliance, Inc. (FA or applicant) sought to arbitrate the first appeal decision of the Federal Emergency Management Agency (FEMA), in which FEMA denied applicant's request for public assistance (PA) funds to reimburse the costs of coronavirus (COVID-19) medical care that FA incurred on behalf of its employees pursuant to its health benefits and workers compensation plans. We find that the manner in which these costs were incurred removes them from the scope of FEMA's COVID-19 policy for the reimbursement of medical costs and deny the claim.

Background

On April 3, 2020, the President issued a major disaster declaration for the State of Indiana due to the ongoing COVID-19 pandemic. The declaration authorized PA funding for eligible emergency protective measures taken in response to the COVID-19 pandemic.

On March 15, 2021, FEMA issued a policy entitled “Coronavirus (COVID-19) Pandemic: Medical Care Eligible for Public Assistance (Interim) (Version 2).” Exhibit 15 (Medical Care Policy).¹ The Medical Care Policy applied retroactively to all work performed on or after January 20, 2020. *Id.* at 2. The goal of the Medical Care Policy was to “define[] the framework, policy details, and requirements for determining the eligibility of medical care work and costs under the PA Program.” *Id.* at 1.

In February 2021, applicant, a private nonprofit (PNP) healthcare system and eligible medical care facility under the Medical Care Policy, submitted its request for PA funds in the amount of \$3,063,164, for “medical costs for employees with COVID and medical costs for employees who contracted COVID while working. Both the health plan [and] workers compensation plans are self-insured, so these are costs directly related to COVID that are not reimbursed through other sources.” Exhibit 9 at 2.

In February 2022, FEMA denied the claim. While the emergency medical services provided may have been eligible emergency protective measures under the Medical Care Policy, FEMA determined that reimbursement of the costs was precluded by the policy’s limit on duplication of benefits. FEMA found that FA’s self-funded health benefits and workers compensation plans were akin to insurance and, therefore, another funding source for the costs incurred.

Applicant appealed, asserting that “[m]edical care is an eligible emergency activity for care of patients and the medical costs we have claimed are for medical care of employees directly related to the incident with no alternative for recovery.” Exhibit 11 at 3. In March 2023, FEMA denied the appeal, finding that the claimed costs were not necessary to eliminate or lessen an immediate threat resulting from the declared disaster and that “any federal reimbursement for actual medical care costs for these patients would be duplicative of the patients’ medical coverage and workers’ compensation plans.” Exhibit 1 at 5.

On May 8, 2023, applicant requested arbitration before the Board. The panel heard oral arguments on July 19, 2023.

¹ All cited exhibits were provided by applicant in support of either its request for arbitration (RFA) or its reply to FEMA’s response to its RFA.

Discussion

Pursuant to the Medical Care Policy, to be eligible for reimbursement, costs incurred must be a direct result of the emergency. Exhibit 15 at B.1; *id.* at C.1 (“work must be directly related to the treatment of COVID-19 patients.”). “Medical care and associated costs” eligible for reimbursement of PA funds include costs incurred “to support the provision of medical care” and the “clinical care of patients not covered by another funding source as described throughout this policy.” *Id.* at B.2; *id.* at C.1 (“For medical care provided in a primary medical care facility . . . work must be directly related to the treatment of COVID-19 patients.”). The Medical Care Policy reiterates the Stafford Act’s prohibition on providing PA funds when there is funding from another source: “FEMA cannot provide PA funding for clinical care and other costs funded by another source, including private insurance, Medicare, Medicaid/CHIP, other public insurance, a pre-existing private payment agreement, or the COVID-19 Uninsured Program for uninsured patients.” *Id.* at D.4.b.

FA plays two roles—one, it is a provider of medical treatment, and two, it is an employer that has a statutory obligation to provide health and workers compensation benefits to its employees. FA incurred the costs at issue in performing this second role. FA chose to pay for these benefits out of its operating funds. But, in doing so, FA did not change the function of these benefits. Applicant’s employees seek medical care, and applicant is obligated to pay for it pursuant to its health benefits and workers compensation plans. This funding mechanism constitutes another source of funds for the payment of medical expenses akin to insurance. FEMA correctly determined that reimbursement is precluded by the Stafford Act.

Applicant asserts that the health benefits plan is not insurance and, therefore, cannot constitute funding from another source. The Stafford Act’s duplication of benefits section does not just prohibit duplication with insurance but also prohibits duplication from any other source. *See* 42 U.S.C. § 5155(a) (2018) (prohibiting assistance for any loss “as to which [a person] has received financial assistance under any other program or from insurance or any other source”); *id.* § (c) (“A person receiving Federal assistance for a major disaster or emergency shall be liable to the United States to the extent that such assistance duplicates benefits available to the person for the same purpose from another source.”). The Medical Care Policy contains the same limitations. Exhibit 15 at D.4. Applicant’s narrow reading of the limitation to only include benefits from insurance has been rejected repeatedly. *See, e.g., City of Chicago v. Federal Emergency Management Agency*, No. 08 CV 4234, 2013 WL 1222348, at *7 (N.D. Ill. Mar. 21, 2013). Instead, the provision has been read to cover payments from private, non-insurance sources as well as insurance proceeds and federal funding. *See, e.g., Public Utility District No. 1 v. Federal Emergency Management Agency*, 371 F.3d 701, 711-12 (9th Cir. 2004); *City of Laguna Niguel v. Federal Emergency*

Management Agency, No. SACV 09-0198 DOC (MLGx), 2011 WL 13176735, at *7 (C.D. Cal. Feb. 3, 2011).

The fact that FA has incurred these costs as an employer, rather than a medical provider, also removes the costs from coverage under the Medical Care Policy because FA did not incur the costs as a direct result of the COVID-19 emergency. While the employees required medical care and treatment as the result of their work treating COVID-19 patients, FA incurred these costs in paying for that medical care through its health benefits and workers compensation plans. These costs are not the direct costs of providing medical care; instead, they are the costs of providing these benefits to their employees. FEMA correctly determined that these costs were not for providing an eligible emergency protective measure.

Decision

Applicant's claim for reimbursement is denied.

Marian E. Sullivan

MARIAN E. SULLIVAN
Board Judge

Beverly M. Russell

BEVERLY M. RUSSELL
Board Judge

Patricia J. Sheridan

PATRICIA J. SHERIDAN
Board Judge