



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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November 27, 2024

CBCA 8143-FEMA

In the Matter of MANASOTA MATTERS, INC.

Angela Wilson, Chief Executive Officer of Manasota Matters, Inc., Bradenton, FL, appearing for Applicant.

Stephanie Houp, General Counsel, Suhail Chhabra, Deputy General Counsel, and Matthew Toplak, Recovery Attorney, Florida Division of Emergency Management, Tallahassee, FL, and Dezirée Elliott, Senior Attorney, Florida Division of Emergency Management, Orlando, FL, counsel for Grantee; and Melissa Shirah, Recovery Bureau Chief, and Cassie Sykes, Recovery Appeals Officer, Florida Division of Emergency Management, Tallahassee, FL, appearing for Grantee.

Anthony Homer and Rebecca J. 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 **BEARDSLEY** (Panel Chair), **VERGILIO**, and **SHERIDAN**.

**BEARDSLEY**, Board Judge, writing for the Panel.

The applicant, Manasota Matters, Inc. (Manasota), requested arbitration under the Robert T. Stafford Disaster Relief and Emergency Management Act, 42 U.S.C. § 5189a(d) (2018) (the Stafford Act), of a dispute with the Federal Emergency Management Agency (FEMA) regarding eligibility for public assistance (PA) funds. Manasota challenges FEMA's denial of its first appeal as untimely and FEMA's determination that Manasota is not an eligible private non-profit (PNP). For the reasons below, we find that Manasota's appeal was timely, but Manasota is ineligible for PA funding.

### Background

On September 29, 2022, the President declared a major disaster in the state of Florida as a result of Hurricane Ian. On December 1, 2022, Manasota, identifying itself as a PNP, submitted a request for public assistance (RPA) for five facilities in Florida. FEMA's Exhibits 6, 7. During oral argument on September 17, 2024, however, Manasota reduced the number of facilities for which it is requesting PA funds as a result of Hurricane Ian to three facilities, which are described as:

1. 2212 51st Boulevard E., Bradenton, Florida
2. 1207 18th Street W., Bradenton, Florida
3. 4615 Sloan Avenue, Sarasota, Florida

Manasota identified the primary purpose of these three facilities as providing “low-income housing.” FEMA's Exhibit 6 at 1-5. In addition, Manasota indicated that the facilities also provide emergency transient housing. *Id.* Manasota stated that it provides “housing shelter for 24 hours a day at a base cost of \$25/day” and “[t]his provides a client [with] access to full bathrooms, a full kitchen, free wifi, and free onsite laundry.” Applicant's Reply to FEMA's Response (Applicant's Reply) at 5. “Services are provided on a good faith honor system.” *Id.* In its RPA, Manasota noted that it “work[s] with fellow non-profit organizations in the area to obtain a grant for individuals.” FEMA's Exhibit 6 at 1-5. Manasota further indicated in its Request for Arbitration (RFA) that “100% of [its] occupants make 80% percent or less of the median income for [their] particular zip code.” RFA at 4. Manasota's transitional housing facilities fill “a very large gap between homeless shelters and permanent housing for individuals that need” to save money, build credit, and be able “to afford to rent a place of their own.” *Id.* at 2. Manasota indicated that the “individuals utilizing the services usually do not have any form of verifiable income.” Applicant's Reply at 5.

Manasota provided the deeds for all three of the facilities at issue to prove ownership. The deeds for two of the properties — 2212 51st Boulevard E and 1207 18th Street W — grant the properties to “Manasota Matters, Inc.” FEMA's Exhibit 8. The deed for the property located at 4615 Sloan Ave grants the property to “Nicholas Hernandez of Manasota Matters Inc.” *Id.* at 5.

On January 20, 2023, FEMA submitted a request for information (RFI) to Manasota asking (1) Manasota to verify that all of the “facilities were used for temporary and emergency lodging for persons who would otherwise be homeless”; (2) for documentation “that the service [Manasota] provides . . . qualifies as ‘low-income housing’ under any Federal, State, Territorial, or Tribal law or local ordinance”; and (3) for evidence that Manasota “has the legal obligation to repair the facilities it leases.” FEMA's Exhibit 9 at 1.

Manasota did not reply or submit additional documentation. In the absence of a reply or additional documentation, on June 7, 2023, FEMA found that Manasota owned the three properties at issue here but determined that Manasota had not demonstrated that it was an eligible PNP, providing services eligible for PA funding. FEMA's Exhibit 1 at 6. FEMA, therefore, issued a determination memorandum (DM) denying eligibility. The DM cover letter explained the proper procedure and timing requirements for filing an appeal of the DM, stating:

The Applicant must submit the appeal to the Florida Division of Emergency Management [FDEM] (Recipient) within 60 days of the Applicant's receipt of this determination. The Recipient must then transmit the appeal, with a written recommendation, to Region 4 within 60 days of receiving the Applicant's appeal.

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If you have any questions, please contact Marija Diceviciute, Florida Division of Emergency Management Appeals Officer.

FEMA's Exhibit 1 at 1.

Manasota submitted a first appeal and its Internal Revenue Service (IRS) 501(c)(3) determination letter via FEMA's Grants Portal<sup>1</sup> (GP) on August 4, 2023 — fifty-eight calendar days after receipt of the DM. Applicant's Exhibits 1 (appeal letter), 2 at 2 (showing upload to GP of the appeal letter and 501(c)(3) letter at 11:56 a.m. on August 4, 2023); Request for Arbitration (RFA) at 21 (showing upload in GP as "FEMA Appeal.docx"). Also on August 4, 2023, at 12:42 p.m., Manasota emailed its "FEMA Appeal" and "501c3" letter to Marija Diceviciute of FDEM, stating, "We uploaded these 2 documents to the grants portal." Applicant's Exhibit 3. FDEM, however, did not forward the appeal to FEMA. Thereafter, Manasota "contacted FEMA and the FDEM multiple times to request the status of the [a]ppeal and w[as] continually told to continue waiting." RFA at 4. "After several months[, Manasota] finally received information from FEMA that [its] [a]ppeal was never processed." *Id.* On February 29, 2024, Manasota resubmitted its first appeal to FDEM via GP at the suggestion of FDEM. FEMA's Exhibit 10. FDEM forwarded this appeal via email and GP to FEMA on March 5, 2024. *Id.*

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<sup>1</sup> The GP is a "web-based system used by recipients and applicants to upload documentation and information relevant to FEMA projects." FEMA Response at 10 n.3; *see also* Public Assistance Program and Policy Guide (PAPPG) (June 2020) at 35.

On May 13, 2024, FEMA issued its first appeal decision, denying the appeal and finding that Manasota's first appeal was untimely filed. FEMA's Exhibit 2. FEMA only recognized Manasota's first appeal filed in GP on February 29, 2024 — which FDEM forwarded on March 5, 2024 — not the appeal filed on August 4, 2023. *Id.* On July 8, 2024, Manasota requested arbitration from this Board to determine its eligibility for PA funding. RFA at 4-6.

## Discussion

### I. Timeliness

The Stafford Act provides that FEMA's eligibility decisions "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." 42 U.S.C. § 5189a(a). FEMA has implemented regulations requiring the applicant to "make a first appeal in writing and submit it electronically through the recipient [here, FDEM] to the Regional Administrator." 44 CFR 206.206(b)(1) (2021).

The applicant may make a first appeal through the recipient within 60 calendar days from the date of the FEMA determination that is the subject of the appeal and the recipient must electronically forward to the Regional Administrator the applicant's first appeal with a recommendation within 120 calendar days from the date of the FEMA determination that is the subject of the appeal. If the applicant or the recipient do not meet their respective 60-calendar day and 120-calendar day deadlines, FEMA will deny the appeal.

44 CFR 206.206(b)(1)(ii)(A).

This Board has the "authority to reach procedural issues," such as timeliness, "if — and to the extent that — they affect eligibility." *Board of Trustees of Bay Medical Center*, CBCA 7826-FEMA, 24-1 BCA ¶ 38,492, at 187,097; *see 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."). FEMA's regulation "essentially transforms the Stafford Act's sixty-day filing deadline into a 120-day bifurcated deadline." *City of Beaumont*, 22-1 BCA at 184,632.

FEMA changes the statutory mechanism for the appeal process by injecting the recipient into the process, leaving the applicant with no control over the recipient's action to forward the appeal to FEMA. The statute says nothing about any *further* requirement that, for the appeal to be considered timely, the recipient would have to forward it on to FEMA within the *next* sixty-day

period. To the contrary, the statute gives the right to appeal to the applicant, who perfects its appeal by filing it within sixty days after receiving notice of the funding denial. The statute does not contemplate that, once the applicant files a timely appeal within the sixty-day deadline contemplated by the statute, the appeal may retroactively be deemed untimely because FEMA's designated agent for accepting the applicant's appeal did not act appropriately in subsequently administering the timely-filed appeal.

*Id.* Even though a 2021 regulatory amendment (effective January 1, 2022, and applicable here) replaced the language in 44 CFR 206.206 on which the *City of Beaumont* panel relied, *see* 86 Fed. Reg. 45660, 45663-64 (Aug. 16, 2021), the amendment did not change but, instead, confirmed the recipient's role in the process.

Moreover, the recipient's deadline to submit the first appeal to FEMA "operates as a classic 'claim processing rule.' The statutory language does not prescribe the time-filing requirement as jurisdictional." *Larimer County, Colorado*, CBCA 7450-FEMA, 23-1 BCA ¶ 38,256, at 185,785 (citing 42 U.S.C. 5189a and *City of Beaumont*). As a procedural rule, and not a jurisdictional bar, this deadline for filing the first appeal can be waived or equitably tolled. *Id.* (finding that the recipient filing deadline could be equitably tolled if an applicant has diligently pursued its rights but is prevented from timely filing by a circumstance beyond its control, such as the recipient's failure to timely submit the appeal to FEMA). As such, a recipient's failure to forward an applicant's appeal to FEMA within its 120-day deadline does not render the first appeal untimely filed. *Id.* (finding the first appeal timely filed even though the recipient forwarded the appeal to FEMA on the 121st day); *City of Beaumont*, 22-1 BCA at 184,632-33 (finding the first appeal timely filed despite the recipient's forwarding the appeal to FEMA on the 128th day).

Here, Manasota timely filed its first appeal by uploading its appeal and 501(c)(3) letter in GP and, on the same day, emailing the appeal and 501(c)(3) letter to FDEM, both within sixty days of the date of FEMA's decision. FDEM's failure to forward Manasota's appeal to FEMA was only "an administrative delay in processing an otherwise timely-filed appeal." *City of Beaumont*, 22-1 BCA at 184,633. Accordingly, we find the appeal to be timely submitted and will reach the merits of the eligibility issue.

## II. Eligibility

The panel has been asked to determine whether Manasota, a PNP,<sup>2</sup> “owns or operates an eligible facility.” See PAPPG at 43. Eligible facilities include facilities that provide “a noncritical, but essential social service” to the general public, including facilities that provide “[l]ow-income housing (as defined by Federal or [State, local, Territorial, or Tribal (SLTT)] law or regulation).” PAPPG at 43, 46 (table 2); see also PAPPG at 227-29 (PNP facility eligibility examples); 44 CFR 206.221(e) and (f) (providing detailed definition of PNP facility and organization). “If a PNP operates multiple facilities . . . FEMA must evaluate each building independently.” PAPPG at 56; see also *Diocese of Beaumont*, CBCA 7812-FEMA, et al., 24-1 BCA ¶ 38,568, at 187,456-58 (granting PA funding for some but not all buildings owned by an eligible PNP applicant because not all buildings were used for eligible services). It is the applicant’s responsibility to provide documentation to substantiate its eligibility to receive PA funds and to clearly explain how those documents support the applicant’s position. See PAPPG at 63-64. Here, the documentation provided by Manasota does not substantiate its eligibility for PA funds.

### 1. Facility Ownership

FEMA requires all PNP applicants to submit proof of ownership of the facilities or other proof of legal responsibility to repair the incident-related damage. PAPPG at 47, 53. In its DM, FEMA determined that Manasota owns the three properties for which it is now claiming PA funding. FEMA’s Exhibit 1 at 4. Manasota provided deeds and grants to support a finding that it owns the properties. FEMA Exhibit 8. While the panel finds that Manasota owns two of the properties (2212 51st Boulevard E., 1207 18th Street W.), the third property (4615 Sloan Ave.) is privately owned by Nicholas Hernandez. Although Mr. Hernandez seems to work for Manasota and appeared before the Board at the oral argument on behalf of Manasota, he, not Manasota, is the owner of the third property at issue here. Manasota provided no proof that it has legal responsibility to repair the incident-related damage for this third property (4615 Sloan Avenue). As a result, only two of the facilities (2212 51st Boulevard E. and 1207 18th Street W.) potentially qualify for PA funding.

### 2. Eligible Services

In addition to showing that the PNP owned the properties, Manasota must show that each property provided an eligible service. PAPPG at 43-44. Here, Manasota has failed to demonstrate that its facilities provided services eligible for PA funding. To be eligible,

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<sup>2</sup> FEMA does not dispute the classification of Manasota as a PNP. FEMA’s Exhibit 1 at 6.

Manasota had to show that its facilities, independently evaluated, provide “a noncritical, but essential social service . . . to the general public” and qualify as low-income housing as defined by SLTT law or regulation. *See* PAPPG at 43-45, 46 (table 2). Manasota has not pointed to a SLTT law or regulation that defines its facilities as low-income housing. None of the documents provided by Manasota confirms that its facilities provide low-income housing. Manasota’s bylaws, articles of incorporation, membership agreements, letters from the IRS, pamphlet defining public housing, and statement regarding the geographic area median income do not demonstrate that Manasota’s facilities provide a noncritical, but essential social service, specifically low-income housing, that would make the applicant eligible for PA funding. Neither Manasota’s bylaws nor its articles of incorporation describe Manasota’s purpose as one to provide low-income housing. *See* FEMA’s Exhibits 11 at 2 (The articles of incorporation state that the purpose of Manasota is “exclusively for charitable purposes that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code, or the corresponding section of [any] future federal tax code.”), 12 at 1 (The bylaws say that the purpose of Manasota is “to promote economic growth and development throughout Florida by repairing dilapidated homes, providing individuals and families with housing and transportation assistance, and promoting financial self sufficiency.”). The 501(c)(3) exemption letter from the IRS, while necessary to establish that Manasota is a PNP, does not describe the type of services that Manasota provides at its facilities. *See* FEMA’s Exhibit 13. The other IRS letter provided by the applicant grants a 2023 request for an allocation of capacity limitation for 2212 51st Boulevard E. under the Section 48(e) Low-Income Communities Bonus Credit Program but is not instructive because the application was not submitted by Manasota. *See* Applicant’s Exhibit 7.

Manasota asserts that it has no way to prove that it offers eligible services because “single room rental/use is exempt from licensing,” and Manasota’s residents do not have, and are not required to provide, “documented proof of their financial hardship.” RFA at 5. However, Manasota fails to provide any documentation that would support its application. Although Manasota indicates that it is listed with United Way 211 for low-income housing, RFA at 6, there is no evidence provided that it was so listed. Manasota indicated that it meets “section 3 and section 6(1) and (2) of the [IRS] Safe Harbor [G]uidelines in that 100% of the occupants make 80% or less of the median income for that particular zip code[,]” RFA at 4,<sup>3</sup> but failed to provide sufficient information or documentation to support this assertion. While the occupants may not have to verify their income level, Manasota must have some

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<sup>3</sup> This is an apparent reference to the IRS Safe Harbor Guideline (the Guideline). Rev. Proc. 96-32, 1996-1 C.B. 717, 1996-20 I.R.B 14; *see* Applicant’s Exhibit 6. The Guideline provides a tax-exempt status under 26 U.S.C. § 501(c)(3) for organizations that provide housing to “low-income” and “very low-income” residents. Rev. Proc. 96-32 § 3.01(1)–(3).

criteria that must be met, some documents to describe the services provided, or even a register that identifies the occupants and the time they stayed in the facilities. Manasota, however, provided no such documentation.

Manasota provided six checks in support of its claim that Manasota provided eligible services at its facilities. *See Applicant's Exhibits 9-14.* Four of the checks are for social security or disability payments to individuals, not Manasota. *See Applicant's Exhibits 11-14.* The addresses on the checks are not the addresses of the facilities at issue here. *Id.* Manasota insists that these checks were signed "into the non-profit operating account to pay for low-income living expenses." Applicant's Reply at 5-6. However, nothing on the checks corroborates that assertion. Of the other checks provided, one check, while from the Community Coalition on Homelessness Corporation, is not made out to Manasota and does not reference either facility at issue. Applicant's Exhibit 10. Another check is from Semper Fi & America's Fund made out to Manasota's executive officer with no reference to the intended disabled veteran recipient, no reference to either of the facilities at issue, and no indication as to where it was deposited. *See Applicant's Exhibit 9; Applicant's Reply at 6.*

Other documentation Manasota submitted to the Board similarly does not show that the facilities at issue provide eligible services. Emails from 2019 from a case manager at Turning Points to Manasota indicate only that checks for certain named individuals were ready to be picked up by, or had been mailed to, Manasota. *See Applicant's Exhibits 17, 18, 19, 19 ("pg 2"), 20.* A 2021 letter for rent to be paid to Manasota by Jewish Family & Children's Service for a specific individual does not show that the facilities at issue provide low-income housing. *See Applicant's Exhibit 16.*

Manasota has failed to provide sufficient evidence that the two facilities at issue provide an eligible, noncritical, but essential social service to the general public. Manasota also failed to cite to any SLTT law or regulation that defines its facilities as low-income housing.



Decision

The applicant is not eligible for PA funding.

*Erica S. Beardsley*

ERICA S. BEARDSLEY  
Board Judge

*Patricia J. Sheridan*

PATRICIA J. SHERIDAN  
Board Judge

**VERGILIO**, Board Judge, writing separately.

Although I agree with the reasoning of the panel (that the record fails to establish that the applicant is eligible to receive public assistance), I would not reach that issue. The applicant did not follow the process to submit a first appeal. The initial FEMA determination had become final before the applicant submitted its request for arbitration.

The initial FEMA determination memorandum informed the applicant regarding the filing of a first appeal and the required actions, including:

The Applicant must submit the appeal to the Florida Division of Emergency Management (Recipient) within 60 days of the Applicant's receipt of this determination. The Recipient must then transmit the appeal, with a written recommendation, to Region 4 within 60 days of receiving the Applicant's appeal.

FEMA regulation states: "If the applicant or the recipient do not meet their respective 60-calendar day and 120-calendar day deadlines, FEMA will deny the appeal." 44 CFR 206.206(b)(1)(ii)(A) (2021). FEMA guidance found in the Public Assistance and Program Policy Guide (PAPPG) (June 2020) echoes the regulation: "If either the Applicant or Recipient does not meet the respective 60-day deadlines, FEMA will deny the appeal as untimely." PAPPG at 40. A timely appeal is a two-step process requiring action by an applicant and a grantee/recipient.

FEMA has dictated time limits for submitting a first appeal and indicated the consequence of not meeting the deadlines: FEMA will deny a first appeal if either the applicant and/or the grantee (recipient) fail to meet time limits. Here, one can assume that the applicant entered appropriate information in the grants portal (although not apparent on the record, as there is no indication of the amount in dispute and other details are lacking); however, the record indicates that the applicant transmitted the appeal to the recipient under the name of a companion private non-profit entity. There is no indication that the grantee, Florida Division of Emergency Management (FDEM), treated the submission as an appeal by the applicant; FDEM did not meet the time limit in submitting a first appeal and recommendation to FEMA, as it took no apparent action on the submission. Similarly, there is no indication that FEMA treated the submission as a first appeal. Consistent with the regulation and PAPPG, FEMA properly denied the first appeal it received later. I conclude that the applicant has demonstrated no basis in the record to alter the denial and would not reach beyond the regulations, which were issued after a notice and comment period, with FEMA leaving the two-step process in place, despite some voiced objections. The first version of the PAPPG also contained the two-step appeal process. PAPPG (Jan. 2016) at 139-40. I do not venture to speculate on congressional intent when it provided for arbitration.

*Joseph A. Vergilio*  
JOSEPH A. VERGILIO  
Board Judge