



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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March 5, 2025

CBCA 8221-FEMA

In the Matter of PUTNAM COUNTY, TENNESSEE

Chelsea M. Qualls, Manager of Accounts and Budgets, Putnam County Mayor's Office, Cookeville, TN, appearing for Applicant.

Jeffrey G. Jones of Wimberly Lawson Wright Daves & Jones, PLLC, Cookeville, TN, counsel for Grantee.

Jasmyn Allen, 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 **VERGILIO, KULLBERG, and KANG.**

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

The Federal Emergency Management Agency (FEMA) requests that the panel dismiss this matter because the applicant, Putnam County, Tennessee (Putnam), submitted its appeal of FEMA's determination memorandum (DM) to the grantee, the Tennessee Emergency Management Agency (TDEM<sup>1</sup>), more than sixty days after receipt of the DM, and, consequently, Putnam's request for arbitration of its request for public assistance (PA) is untimely and must be dismissed. Putnam contends that the time period for filing its appeal

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<sup>1</sup> The parties' submissions and the record show abbreviations for the Tennessee Department of Emergency Management, the grantee or recipient in this matter, as either "TDEM" or "TEMA." For purposes of consistency, the panel will use TDEM.

should be equitably tolled. FEMA contends that statute and regulation require an applicant to submit its appeal to the grantee within sixty days of receipt of FEMA's DM, and Putnam's failure to file a timely appeal resulted in a final agency determination. For the reasons stated below, the panel concludes that Putnam's application was untimely and, therefore, applicant is ineligible for public assistance.

### Background

On April 2, 2020, the President declared a disaster in the state of Tennessee as a result of the Coronavirus (COVID-19) pandemic. Applicant's Exhibit 5 at 1.<sup>2</sup> Putnam, a local government entity within the state of Tennessee, sought PA, in the amount of \$349,771.16, for the costs of emergency and protective measures related to the COVID-19 pandemic. *Id.* FEMA's DM, which was dated January 10, 2024, granted a portion of Putnam's request for PA. *Id.* at 4. However, FEMA denied the remainder of Putnam's request, which sought \$211,621 in PA for the purchase of a vehicle, a sliding communications system, and a heating system for an observation, testing, and vaccination area. *Id.* at 3-4. The DM advised Putnam of its right to appeal, which stated, in pertinent part, the following:

The Applicant may appeal this determination to the Regional Administrator, pursuant to Title 44 of the Code of Federal Regulations § 206.206, Appeals. The appeal may be submitted electronically via the FEMA Grants Portal/Grants Manager System (GM). If the Applicant elects to file an appeal, the appeal must:

- 1) Contain documented justification supporting the applicant's position;
- 2) Specify the monetary figure in dispute; and
- 3) Cite the provisions in federal law, regulation, and/or policy with which the Applicant believes the initial action was inconsistent.

The appeal must be submitted to the Recipient, [TDEM], by the Applicant within 60 days of its receipt of this determination. The recipient's transmittal of that appeal, with recommendation, is required to be submitted to FEMA within 60 days of receipt of the Applicant's letter.

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<sup>2</sup> Citations to exhibits are found in the applicant's request for arbitration unless otherwise noted.

*Id.* at 4. The DM also provided Putnam with a point of contact and an email address at TDEM. *Id.*

On January 18, 2024, Putnam inquired by email about how to appeal the DM. Applicant's Exhibit 10 at 1-5. Putnam then received an email from FEMA, dated January 29, 2024, that stated the following:

This is your Second Notice for DM# 30764, Putnam, County of, DR4514TN. If you have already received this [DM], please disregard this second attempt.

The Department of Homeland Security's [FEMA] has determined that the applicant Putnam, County of is ineligible for [PA] funding relating to the referenced determination memo. Please see the attached [DM] for detailed information.

The Applicant must submit their appeal to [TDEM] within 60 days of the Applicant's receipt of this email.

Applicant's Exhibit 11 at 2. FEMA's January 18, 2024, email also provided an email address and telephone number for a TDEM employee to contact for further information. *Id.* On January 29 and February 16, Putnam sent emails to the TDEM person referenced in FEMA's email requesting information on how to appeal. Applicant's Exhibits 11-15. On March 4, 2024, Putnam sent a follow-up email to another individual at TDEM. Applicant's Exhibit 16. Putnam did not receive responses to those emails. Putnam Employee's Affidavit, at 5 (attached to Applicant's Response to FEMA's Motion to Dismiss). On June 5, 2024, Putnam sent a letter to TDEM requesting an appeal of FEMA's DM. Applicant's Exhibit 17 at 1. In an email dated June 13, 2024, FEMA acknowledged receipt of Putnam's appeal from TDEM. Applicant's Exhibits 18, 19 at 1.

By letter dated June 25, 2024, FEMA sent Putnam and TDEM a request for information (RFI) because Putnam's appeal was not submitted to TDEM within sixty days of receipt of the DM. Applicant's Exhibit 20 at 3. The RFI noted that Putnam had received the DM on January 29, 2024, but did not submit its appeal to TDEM until June 5, 2024. *Id.* at 3-4. While the RFI provided Putnam with the opportunity to present supplemental information to show that its appeal submission was timely, FEMA also advised Putnam that "supplementary documentation will not guarantee a favorable appeal determination." *Id.* at 4.

In a letter dated August 2, 2024, FEMA notified Putnam and TDEM of the denial of its appeal of the DM. Applicant's Exhibit 25 at 1. FEMA's letter noted that Putnam had stated in its response to the RFI that it had sent emails to TDEM regarding "its intent to

appeal and requesting guidance on how to do so.” *Id.* However, FEMA advised Putnam that its “first appeal rights have lapsed.” *Id.* at 2. On September 27, 2024, Putnam filed its request for arbitration with the Board. FEMA submitted its response to Putnam’s request for arbitration and a subsequent request that this matter be dismissed as untimely. Putnam filed its response, which requested that the panel equitably toll the sixty-day period for filing its first appeal.

### Discussion

At issue before the panel is whether Putnam filed a timely first appeal. The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5207 (2018) (Stafford Act), provides the right of appeal as follows:

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(d)(5).

The regulations applicable to this matter, provide the following:

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) (2023). A "final agency determination" is defined as including "[t]he decision of FEMA, if the applicant or recipient does not submit a first appeal within the time limits provided for in paragraph (b)(1)(i)(A) of this section." *Id.* 206.206(a).

An applicant may request arbitration before a panel of this Board if:

(A) There is a dispute of the eligibility for assistance or repayment of assistance arising from a major disaster declared on or after January 1, 2016; and

(B) The amount in dispute is greater than \$500,000, or greater than \$100,000 for an applicant for assistance in a rural area; and

(C) The Regional Administrator has denied a first appeal decision or received a first appeal but not rendered a decision within 180 calendar days of receipt.

44 CFR 206.206(b)(3)(i). "An applicant must submit a request for arbitration within 60 calendar days from the date of the Regional Administrator's first appeal decision." *Id.* 206.206(b)(3)(iii)(B)(1).

There is no dispute that Putnam failed to send its appeal of the DM to TDEM within sixty days of receipt. As the applicant failed to file its first appeal with the grantee within sixty days of receipt of FEMA's DM, we conclude that the application was untimely and, therefore, the applicant is ineligible for public assistance. *See U.S. Virgin Islands Department of Public Works*, CBCA 7345-FEMA, 22-1 BCA ¶ 38,132, at 185,231. An applicant's contention that it received inaccurate or misleading information from the Government is also no defense to its failure to file a timely appeal. *Id.* at 185,232 (citing *Lumbee Tribe of North Carolina*, CBCA 7209-FEMA, 21-1 BCA ¶ 37,969, at 184,409 (citing *Office of Personnel Management v. Richmond*, 496 U.S. 414, 420 (1990))).

Putnam argues that the sixty-day period for submitting its appeal of FEMA's DM to TDEM should be equitably tolled "[b]ased on mistaken/incorrect information provided to Applicant by various FEMA personnel." Applicant's Response to FEMA's Motion to Dismiss at 3. A "litigant is entitled to equitable tolling of a statute of limitations only if the litigant establishes two elements: '(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing.'"

*Larimer County, Colorado*, CBCA 7450-FEMA, 23-1 BCA ¶ 38,256, at 185,785 (quoting *Menominee Indian Tribe of Wisconsin v. United States*, 577 U.S. 250, 255 (2016) (quoting *Holland v. Florida*, 560 U.S. 631, 649 (2010))). However, in *Larimer County*, the applicant submitted a timely appeal of FEMA’s DM, but the grantee did not forward that applicant’s appeal to FEMA within sixty days. *Id.* at 185,783. Such is not the case in this matter, and the panel finds no facts in support of the two elements necessary to prove equitable estoppel. In this matter, neither the grantee nor any other person or agency created an extraordinary circumstance that prevented Putnam from timely filing an appeal. The record also shows no effort by Putnam to pursue its appeal after sending out several emails that were unanswered. The fact that Putnam finally sent an appeal to TDEM long past the end of the sixty-day appeal period is not explained in any reasonable manner. At most, Putnam has raised an argument similar to the applicant’s unsuccessful argument in *U.S. Virgin Islands*, where the applicant asserted that its late appeal should be excused because of mistaken or incorrect information from FEMA. 22-1 BCA at 185,231. As discussed above, such a contention also has no merit here, particularly since FEMA provided Putnam with the necessary direction for submitting an appeal. For these reasons, FEMA’s DM became final after the sixty-day appeal period passed without a timely appeal by Putnam.

#### Decision

The panel concludes that Putnam’s application was untimely, and, therefore, applicant is ineligible for the public assistance claimed in this matter.

*H. Chuck Kullberg*

H. CHUCK KULLBERG  
Board Judge

*Joseph A. Vergilio*

JOSEPH A. VERGILIO  
Board Judge

*Jonathan L. Kang*

JONATHAN L. KANG  
Board Judge