



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

February 18, 2025

CBCA 8060-FEMA, 8061-FEMA, 8062-FEMA, 8063-FEMA, 8064-FEMA

In the Matter of UNITYPOINT HEALTH

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Before the Arbitration Panel consisting of Board Judges **RUSSELL**, **GOODMAN**, and **O'ROURKE**.

O'ROURKE, Board Judge, writing for the Panel.

UnityPoint Health is a nonprofit healthcare system with subsidiary hospitals and medical programs in Iowa, southern Wisconsin, and western Illinois. The applicants, four hospitals and one home-based program within the UnityPoint network in Iowa, submitted separate requests for public assistance (RPA) to combat the COVID-19 pandemic. The following year, the applicants withdrew their RPAs because they did not have costs ready to submit for reimbursement at that time. The applicants resubmitted their RPAs in September 2022, three months after the revised deadline for submitting RPAs.

FEMA denied all five RPAs for two reasons: (1) the applicants failed to submit their respective RPAs through the grants portal, rendering them ineligible applicants, and (2) the

RPA's were submitted after the deadline, and there were no extenuating circumstances that warranted an extension for any of the RPA's. UnityPoint sought arbitration under 42 U.S.C. § 5189a(d) (2018) after the Federal Emergency Management Agency (FEMA) denied its RPA's.

For the reasons explained below, we conclude that the requirement to submit an RPA through the grants portal does not defeat a finding of eligibility as to applicant status. We further determine that none of the five applicants demonstrated extenuating circumstances to warrant extending the deadline for submitting their RPA's.

Background

Congress enacted the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. §§ 5121-5207, to provide "assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage which result from [major] disasters." *Id.* § 5121(b). The Stafford Act is "designed to assist the efforts of [eligible entities affected by major disasters] in expediting the rendering of aid, assistance, and emergency services, and the reconstruction and rehabilitation of devastated areas." *Id.* § 5121(a)(2).

On March 13, 2020, the President declared the COVID-19 pandemic a nationwide emergency and issued emergency and disaster declarations for each state and territory under the Stafford Act. For the State of Iowa, FEMA issued DR-4483-IA on March 23, 2020, which authorized the State "to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses." The declaration also authorized the State "to provide assistance for emergency protective measures (category B), including direct Federal assistance, under the public assistance program, throughout the State." The declaration limited public assistance (PA) funding to seventy-five percent of total eligible costs since such funding is intended to be supplemental.

Eight days later, on March 21, 2020, FEMA issued a memorandum to its regional administrators concerning the deadline for submission of RPA's for reimbursement of eligible COVID-19 costs. The memorandum stated that enforcement of the regulatory requirement to submit RPA's within thirty days of the declaration of a disaster was "not appropriate" in light of the "unprecedented nature of the national emergency declaration." For that reason, the deadline would "remain open for the duration of the Public Health Emergency, as declared by the Secretary of the U.S. Department of Health and Human Services, unless an earlier deadline is deemed appropriate by the Assistant Administrator, Recovery Directorate." Request for Arbitration (RFA) (CBCA 8060-FEMA), Exhibit 4.

Within the next thirty days, the applicants submitted individual RPAs in response to the disaster declaration. However, none of the applicants had costs ready to submit for reimbursement at that time. Moreover, the Government initiated phased funding relief for COVID-19 to specified medical providers, so it was unclear if PA funding would even be needed at that point. At the same time, FEMA instructed the applicants to ensure that no duplication of funding occurred from government sources, including RPAs. For all of these reasons, the applicants withdrew their RPAs in May and June 2021, more than one year after they submitted them. FEMA and the State reassured the applicants that they could withdraw their RPAs and resubmit them later when and if costs arose that required reimbursement.

On March 30, 2022, two years after the COVID-19 disaster declaration, FEMA issued new guidance altering the incident period for RPAs and moved the submission deadline up to July 1, 2022. Two days later, FEMA publicly announced the new submission deadline. One week after that, FEMA published the new deadline on its website, [fema.gov](https://www.fema.gov). FEMA also restated the new deadline in FEMA Policy 104-22-0002, issued on June 12 and published on June 13, 2022. Using these dates as guidance, the procedural history of the five UnityPoint locations are described in the following pages.

8060-FEMA: UnityPoint Dubuque-Finley

UnityPoint Dubuque-Finley (Dubuque-Finley) is a private nonprofit (PNP) hospital in Dubuque, Iowa, which operates under its parent organization, UnityPoint Health. In April 2020, Dubuque-Finley submitted an RPA through the FEMA grants portal seeking public assistance, and FEMA accepted the RPA. In May 2021, Dubuque-Finley withdrew its RPA, deeming it unnecessary because it had other funding sources. Nearly a year-and-a-half later, however, in September 2022, Dubuque-Finley submitted a written request to the recipient, the Iowa Department of Homeland Security and Emergency Management (IDHSEM), to ask FEMA to extend the deadline for submitting an RPA. Dubuque-Finley claimed that it could not submit a response before the deadline because Dubuque-Finley lost its existing funding sources and its finances were hurt by significant COVID-19-related workforce shortages, patient surges, supply disruptions, rising expenses, and increased labor costs. Dubuque-Finley also claimed that it was confused about FEMA's COVID-19-related policies.

The recipient forwarded the extension request to FEMA, which FEMA denied a few months later. FEMA based its denial on a lack of justification for the extension, explaining that Dubuque-Finley failed to point to any extenuating circumstances beyond its control that caused it to miss the revised deadline. In January 2023, Dubuque-Finley appealed FEMA's determination and filed a supplemental statement in February 2023. In January 2024, FEMA again denied Dubuque-Finley's request based on the same rationale that Dubuque-Finley had not shown there were extenuating circumstances for its late RPA submission. In response to this second denial, Dubuque-Finley filed its RFA with the Board on March 29, 2024.

8061-FEMA: UnityPoint Trinity-Fort Dodge

UnityPoint Trinity-Fort Dodge (Trinity-Fort Dodge) is a PNP hospital in Fort Dodge, Iowa. In April 2020, Trinity-Fort Dodge submitted an RPA to the recipient, IDHSEM, and the recipient placed it on hold. In December 2020, the recipient withdrew the RPA instead of submitting it to FEMA. Nearly two years after the withdrawal, in September 2022, Trinity-Fort Dodge submitted a letter to the recipient, requesting an extension to the RPA submission deadline. The recipient forwarded the request to FEMA. The letter explained how Trinity-Fort Dodge had previously submitted an RPA to FEMA but, after withdrawing it, Trinity-Fort Dodge experienced decreased funding sources. Trinity-Fort Dodge indicated that its finances were hurt by workforce shortages, patient surges, supply disruptions, rising expenses, and increased labor costs. Trinity-Fort Dodge also claimed that it was confused about FEMA's policies surrounding the requirements for submitting an RPA under the guidelines accompanying the revised deadline.

In November 2022, FEMA denied Trinity-Fort Dodge's extension request, claiming that there were no extenuating circumstances beyond the control of Trinity-Fort Dodge or the recipient that would justify an extension. In January 2023, Trinity-Fort Dodge filed an appeal, and, in March 2023, it submitted a supplemental statement. FEMA again denied Trinity-Fort Dodge's request, asserting that extenuating circumstances were not demonstrated to justify the late RPA. On March 29, 2024, Trinity-Fort Dodge filed its RFA with the Board.

8062-FEMA: UnityPoint Trinity-Muscatine

UnityPoint Trinity-Muscatine (Trinity-Muscatine) is a PNP hospital in Muscatine, Iowa. In April 2020, Trinity-Muscatine submitted its RPA for COVID-19 assistance via the grants portal to the recipient, IDHSEM, which then submitted it to FEMA. In May 2021, Trinity-Muscatine withdrew its RPA. The following year, in September 2022, Trinity-Muscatine submitted a letter to the recipient, asking FEMA for an extension to submit its RPA. The extension request was submitted outside of the grants portal. Trinity-Muscatine claimed that it had never submitted an RPA for FEMA's assistance prior to this time and stated that, because of the pandemic, Trinity-Muscatine faced obstacles such as financial stress, loss of funding, supply disruptions, increased security costs, patient surges, and workforce shortages that precluded it from submitting a request. Trinity-Muscatine's extension request was forwarded to FEMA, and, in November 2022, FEMA denied the request due to a lack of extenuating circumstances beyond Trinity-Muscatine or the recipient's control. In January 2023, Trinity-Muscatine appealed FEMA's decision and, in March 2023, added a supplemental statement. As with the other RPAs from UnityPoint subsidiaries, FEMA denied the appeal and again determined that there were no extenuating

circumstances that warranted a filing extension. On March 29, 2024, Trinity-Muscatine filed its RFA with the Board.

8063-FEMA: UnityPoint Grinnell

UnityPoint Grinnell (Grinnell), a hospital in Grinnell, Iowa, submitted an RPA to the recipient in April 2020. The recipient, IDHSEM, forwarded the RPA to FEMA, which FEMA accepted. About one year later, however, Grinnell withdrew the RPA. In September 2022, Grinnell submitted a written request to the recipient to extend the time for an RPA submission but did not submit an RPA through the grants portal. Grinnell explained in its request for an extension that it had experienced funding challenges and that due to the pandemic its finances were impacted by surges in patient care, rising expenses, increased labor costs, workforce shortages, and various supply chain issues. Grinnell also claimed to be confused by FEMA's COVID-19 policies.

Grinnell's request for an extension was forwarded to FEMA, and, in November 2022, FEMA denied Grinnell's request for an extension due to insufficient justification for an extension. Grinnell appealed FEMA's determination in January 2023 and submitted a supplemental statement in March 2023. In January 2024, FEMA once again denied Grinnell's request based on a lack of extenuating circumstances warranting a late RPA submission. On March 29, 2024, Grinnell filed its RFA with the Board.

8064-FEMA: UnityPoint At Home

UnityPoint At Home (At Home) is a PNP entity that provides home care services to patients in Urbandale, Iowa. In April 2020, At Home used the grants portal to submit an RPA for COVID-19 to the recipient, IDHSEM. The recipient forwarded the RPA to FEMA, and FEMA accepted it. In June 2021, At Home withdrew its RPA, asserting that it had "n[o] covid-19 related expenses at [that] time." However, in September 2022, At Home submitted a written request to the recipient requesting that the recipient ask FEMA for an extension of time for At Home to submit an RPA. At Home claimed that it did not meet the FEMA deadline because its finances were impacted by COVID-19-related surges in patient care, rising expenses, workforce shortages, increased labor costs, and supply disruptions. At Home also stated that it was confused by FEMA's policies.

In November 2022, FEMA denied At Home's request due to a lack of extenuating circumstances justifying an extension. In January 2023, At Home appealed FEMA's decision, and, in March 2023, it provided a supplemental statement. FEMA denied At Home's request in January 2024, concluding that there were no extenuating circumstances to justify extending the submission deadline. On March 29, 2024, At Home filed an RFA with the Board.

In response to each of the five RFAs, FEMA argues that the applicants failed to submit the RPAs through the grants portal, invalidating their status as “applicants.” In addition, FEMA argues that the applicants’ RFAs were untimely and that no, or insufficient, extenuating circumstances were offered by the applicants to justify the late submissions. For the purposes of efficiency and consistent with the parties’ request, the panel addresses all five RFAs in a single decision but makes findings and determinations on each individual RFA.

Discussion

The Board decides these arbitrations pursuant to section 423 of the Stafford Act, 42 U.S.C. § 5189a(d). In arbitration matters, the panel reviews an applicant’s eligibility for PA de novo. *Monroe County, Florida*, CBCA 6716-FEMA, 20-1 BCA ¶ 37,688, at 182,980. This review extends to determinations of issues of fact. *Harris County, Texas*, CBCA 6909-FEMA, 21-1 BCA ¶ 37,754, at 183,268 (2020).

These RFAs present two issues. The first issue concerns the subsidiaries’ eligibility as applicants since their secondary RPAs were not submitted through the grants portal. Second, if we find that the subsidiaries are eligible applicants, we must decide whether each subsidiary met the requirements for extending the RPA submission deadline. For the reasons discussed below, we determine that all five subsidiaries are eligible applicants. We further determine, however, that none of the applicants demonstrated extenuating circumstances for extending the RPA submission deadline.

I. All Five UnityPoint Locations are Eligible Applicants

At issue is whether the five UnityPoint subsidiaries are “applicants” for the purpose of requesting PA. An applicant is “a State agency, local government, or eligible private nonprofit organization . . . submitting an application to the recipient for assistance under the State’s grant.” 44 CFR 206.201(a) (2024).¹ To submit an RPA, a state, local, territorial, or tribal entity—or PNP—must first submit an RPA to FEMA through the recipient, IDHSEM. Public Assistance Program and Policy Guide (PAPPG) (Apr. 2018) at 130.² In FEMA’s

¹ Grinnell indicated in both its initial RPA submission and its re-submission in September 2022 that it was not a PNP. Statutory guidance and the PAPPG indicate that only PNPs or state, local, territorial, tribal, and local entities are eligible for FEMA public assistance funds. However, since UnityPoint indicates that it is a PNP hospital *system*, Grinnell will be considered an applicant for the purpose of this analysis.

² The April 2018 PAPPG applies to this proceeding because this version is applicable to major disasters declared on or after August 23, 2017, but before June 1, 2020. See PAPPG (June 2020) at 12; PAPPG (Apr. 2018) at vii. Therefore, the PAPPG issued in

March 21, 2020, memorandum, FEMA instructed that all RPAs must be submitted through the FEMA grants portal. However, as previously mentioned, the Stafford Act allows federal agencies to modify administrative requirements if strict adherence to those requirements is hindered as “a result of the major disaster.” 42 U.S.C. § 5141.

Board Rule 613 (48 CFR 6106.613) states that CBCA arbitration decisions are not precedential. Past decisions can be instructive, however. *See City of St. Cloud, Florida*, CBCA 7952-FEMA, et al., 24-1 BCA ¶ 38,559, at 187,408. In *Housing Preservation Trust, Inc.*, the entity, Housing Preservation Trust (HPT), was found *not* to be an applicant because it had “not submitted any RPAs . . . but only [sought] a determination that the deadline to file, which [had] long since passed, should [have been] extended.” CBCA 7517-FEMA, 23-1 BCA ¶ 38,267, at 185,807. HPT never submitted an RPA for three of the four housing entities that it claimed to oversee, and the proposed RPA for one of the entities that HPT oversaw was incomplete. *Id.* As a consequence, the panel determined that the request for a deadline extension was a pre-application matter, that HPT was not an applicant under 42 U.S.C. § 5189a(d)(1), and that the Board therefore was not authorized to resolve an eligibility dispute. *Id.*

By contrast, in *Dameron Hospital Association*, CBCA 8052-FEMA, 24-1 BCA ¶ 38,604, at 187,661, the panel concluded that the RPA, although not submitted through the grants portal, was sufficient to deem Dameron an “applicant.” *Dameron Hospital* reiterates that, under section 301 of the Stafford Act, federal agencies can modify administrative conditions if the conditions cannot be met because of the major disaster. *Id.* at 187,660-661; *see also* 42 U.S.C. § 5141.

Here, Dubuque-Finley, Trinity-Muscatine, Grinnell, and At Home submitted RPAs via the grants portal in April 2020 and subsequently withdrew them in May or June 2021. Trinity-Fort Dodge never submitted an RPA to FEMA but instead submitted an RPA to the recipient which was then placed on hold. Exhibit 8 (CBCA 8061-FEMA); in December 2020, the RPA was withdrawn before it was submitted to FEMA. Although the RPAs for all five locations were withdrawn, all five subsequently resubmitted letters to request RPA time extensions, although the letters were submitted outside of the grants portal. Accompanying the letters were the applicants’ RPAs. Because all five locations included a formal RPA along with the request letter, the case at hand is analogous to *Dameron Hospital*, the reasoning of which we find instructive. We conclude that all five entities are applicants for purposes of their RPAs.

June 2020 does not apply to this decision.

II. No Extenuating Circumstances Warranted an Extension of the Submission Deadline

Having concluded that the five UnityPoint locations are “applicants” for purposes of requests for PA, we turn to the second issue presented: whether the five UnityPoint locations facing extenuating circumstances outside of their control warranted an extension of the deadline to submit their RPAs. The FEMA Regional Administrator may extend the deadline for RPA submissions “when the recipient justifies and makes a request in writing. The justification must be based on extenuating circumstances beyond the recipient’s or subrecipient’s control.” 44 CFR 206.202(f)(2). FEMA can “extend the deadline for submitting an RPA if the [r]ecipient submits a request in writing with justification based on extenuating circumstances beyond the Applicant’s or Recipient’s control.” PAPPG at 130.

UnityPoint claims that it was only provided two weeks’ notice to submit an RPA and that the hospitals faced extenuating circumstances which warrant an extension to submit an RPA. UnityPoint asserts that the extenuating circumstances included: (1) lack of funding from other sources; (2) COVID-19 surges; (3) staffing shortages; (4) supply chain difficulties and increased costs; (5) changing FEMA policies; (6) impacted financial margins; and (7) increased labor and supply costs. While we recognize the substantial operational and cost impacts that COVID-19 had on the applicants in this case, the record does not establish a basis for overturning FEMA’s decision not to extend the applicants’ time to submit RPAs.

UnityPoint claims that the applicants only received two weeks’ notice of the updated RPA submittal deadline. Yet FEMA released guidance on April 1, 2022, notifying the applicants and the recipients that July 1, 2022, was the revised deadline to submit RPAs pertaining to COVID-19. Additionally, FEMA publicly posted this information on its website and YouTube channel and advertised this deadline via a webinar. At the start of the pandemic, Regional Administrators were notified that the RPAs would remain open throughout the duration of the public health emergency with the caveat that the FEMA Assistant Administrator could set an earlier deadline if it was deemed appropriate so long as thirty days’ notice was provided.

The applicants were afforded ninety days’ notice of the revised deadline. The information was available and widely disseminated. Neither confusion nor a lack of knowledge are adequate justification for extending the RPA submission deadline. “Lack of knowledge (or lack of communication by the responsible grantee) of the deadline for submitting an RPA is not an excuse that requires an extension of time.” *Vista on 5th Corp.*, CBCA 7691-FEMA, 23-1 BCA ¶ 38,356, at 186,269; *see also* 44 CFR 206.202(f).

Although the applicants point to numerous other FEMA decisions where extensions were granted, we do not find their reasoning persuasive under these facts. The applicants previously demonstrated that they knew how to submit RPAs, they learned of the revised

deadline before it passed, and they were part of a hospital system (UnityPoint) that timely submitted more than a dozen RPAs at various times during the pandemic. The applicants' RPAs were untimely. The applicants have not demonstrated extenuating circumstances sufficient to require FEMA to extend the time for them to submit their RPAs.

Decision

The applicants' RPAs were untimely submitted, and the applicants have not demonstrated extenuating circumstances sufficient to justify an extension of the deadline to submit their RPAs.

Kathleen J. O'Rourke

KATHLEEN J. O'ROURKE
Board Judge

Beverly M. Russell

BEVERLY M. RUSSELL
Board Judge

Allan H. Goodman

ALLAN H. GOODMAN
Board Judge