UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 12, 2026

CBCA 8864-FEMA

In the Matter of MERCY HOSPITAL IOWA CITY LIQUIDATION TRUST

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Christiana Cooley and Vanessa Antoun, 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**, **RUSSELL**, and **NEWSOM**.

NEWSOM, Board Judge, writing for the Panel.

A nonprofit hospital sought public assistance (PA) funding from the Federal Emergency Management Agency (FEMA) under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. §§ 5121–5207 (2024), for costs that it incurred during the COVID-19 pandemic. After submitting its request for public assistance, the Hospital declared bankruptcy, sold its assets, and ceased most of its operations. In this arbitration, the trustee in bankruptcy pursues the hospital's request for PA. We conclude that the applicant is not eligible for PA.

Background

As will become apparent in this decision, it is important to distinguish between two entities: Mercy Hospital, Iowa City (the Hospital), and Mercy Hospital Iowa City Liquidation Trust (the Trust or applicant). The Hospital incurred the costs for which the Trust now seeks PA.

The President declared COVID-19 a major disaster for the State of Iowa on March 23, 2020. FEMA and the State of Iowa thereafter entered into a FEMA-State Agreement to provide a framework to govern federal assistance that FEMA would provide as a result of the disaster to entities in Iowa. FEMA Exhibit 2 at 1.

To cope with the pandemic, starting in March 2020, the Hospital hired contract labor to help provide COVID-19 patient care. Applicant Exhibit 2 at 1. In early April 2020, the Hospital submitted a request for PA to FEMA to cover its COVID-related costs. FEMA Exhibit 7 at 1. In May 2020, FEMA initially determined that the Hospital was eligible for PA as a private nonprofit (PNP) entity. *Id.* More than two years later, between December 2022 and August 2023, the Hospital submitted documentation to support requests for reimbursement totaling $10,940,486.12 for COVID-related contract labor costs. FEMA Response to the Panel's Pre-Hearing Order at 2; FEMA Exhibits 7, 8.

Due to financial pressures, the Hospital became insolvent. On August 7, 2023, before FEMA could obligate funding, the Hospital filed a petition for relief under Chapter 11 of the bankruptcy code. Applicant Exhibit 3 at 1. The Hospital subsequently sold substantially all of its assets to the University of Iowa. The bankruptcy court approved that sale on November 7, 2023, and the sale closed on January 31, 2024. FEMA Exhibit 6 at 44, 71. After the sale, the Hospital's only remaining facilities were a vacant medical office building and a parking lot. *Id.* at 116.

The bankruptcy court thereafter approved the creation of the Trust. Applicant Exhibit 3. The Trust's "primary purposes," according to the court-approved agreement, are to liquidate the remaining Hospital assets and distribute the proceeds to the Trust's beneficiaries and creditors. *Id.* at 3. The Trust has "no objective to continue or engage in the conduct of a trade or business (except to the extent reasonably necessary to carry out, and consistent with, the liquidating purpose . . ."). *Id.* Moreover, in April 2025, the Hospital amended its articles of incorporation to state that it operates "exclusively for the purposes" described in the liquidation plan. FEMA Exhibit 4 at 5. Thus, neither the Hospital nor the Trust currently operates as a medical facility. Both exist solely to liquidate and distribute the remaining assets.

The Trust then pursued FEMA PA on behalf of the Hospital. FEMA denied PA on the ground that the applicant is not an eligible PNP and that payment would violate applicable cost principles. Applicant Exhibits 1, 2.

Discussion

FEMA determines PA eligibility based on four essential elements, which it reviews in order: (1) applicant eligibility; (2) facility eligibility; (3) work eligibility; and (4) cost eligibility. 44 CFR 206.220 to .228 (2020); Public Assistance and Program Policy Guide (PAPPG) (Apr. 2018) at 9. Eligible applicants include state and local governments, tribal governments, and private nonprofit organizations (PNPs). 44 CFR 206.222. Unlike state and local governments, PNPs must satisfy strict eligibility conditions. *See* 44 CFR 206.222(b), .221(e); PAPPG at 10-14. To be eligible for PA, a PNP must own or operate a facility that provides "critical services" or certain "essential services" as those terms are defined by the Act and implementing regulations. 42 U.S.C. § 5172(a)(3); 44 CFR 206.221(e)(7). Providing emergency medical care is a qualifying "critical service." 42 U.S.C. § 5172(a)(3)(B). A PNP must also have a United States Internal Revenue Service tax exemption ruling and demonstrate that it is a nonprofit entity under state law. 44 CFR 206.221(f); PAPPG at 10-11.

It is clear that the Trust is not a PNP. It performs no medical operations and exists solely to liquidate the remaining Hospital assets. The Trust argues, however, that it is an eligible applicant because it is the successor to the Hospital's interests, in accordance with bankruptcy law. Applicant Reply Brief at 3, 11-13. For the Trust to be eligible under this theory, two things must be true: the *Hospital* must be an eligible PNP, and the Hospital's interests in PA must have transferred from the Hospital to the Trust. We conclude that neither premise is true and deny eligibility.

First we address whether the Hospital is an eligible PNP. Notably, in May 2020, FEMA determined the Hospital to be an eligible PNP but that was while the Hospital was still operating and before it declared bankruptcy, sold substantially all of its assets, and, in 2023, ceased medical operations. Since at least January 2024, when the sale closed, if not before, the Hospital stopped providing medical services. Currently, it operates "exclusively" to support the liquidation of its remaining assets and to distribute them to beneficiaries and creditors.

The Trust argues that an applicant's eligibility is determined *only* at the time the costs were incurred and asserts that there is no obligation for an applicant to remain eligible through the date that FEMA obligates funds. Applicant Reply Brief at 4-7. FEMA argues that a PNP must operate an eligible facility through the entirety of the grant process to remain eligible, relying in part on *St. Luke's Hospital*, FEMA-4507-DR-OH (Feb. 13, 2026) (https://www.fema.gov/appeal/financial-accounting-reconciliation-private-nonprofit-0#_ftn9 (last visited August 12, 2026)). In *St. Luke's Hospital*, the applicant was eligible at the time it performed the work but thereafter transferred its assets to a third party and ceased operations, just as the Hospital did here. FEMA concluded that the applicant had lost its eligibility for PA. *Id*. Elsewhere we have explained that while the Board reviews FEMA eligibility decisions *de novo*, the Board's objective is not to reopen issues of statutory and regulatory interpretation "that FEMA persuades us it has resolved on behalf of the Executive Branch." *Livingston Parish Government*, CBCA 6513-FEMA, 19-1 BCA ¶ 37,436, at 181,938-39.

The statute and regulations do not explicitly identify the date or dates on which eligibility is determined, but we conclude that they nevertheless support FEMA's interpretation, as articulated in *St. Luke's Hospital* and argued here. The Stafford Act's purposes are to "assist the efforts of the affected States in expediting the rendering of aid, assistance, and emergency services" and "alleviate the suffering and damage which result from . . . disasters." 42 U.S.C. § 5121(a)(2), (b). This language suggests that the purpose of the Act is to provide support to communities experiencing disasters. *Accord* PAPPG at 6-7 (PA exists "so communities can quickly respond to and recover from major disasters or emergencies.") Here, however, PA funds provided by FEMA would not go to support community services; it would go to Hospital creditors.

Furthermore, the regulations governing applicant eligibility are written in the present tense. For example, a PNP facility is defined as a "facility providing essential governmental type services to the general public," 44 CFR 206.221(e), and a PNP organization means a nongovernmental agency or entity that "currently has" an IRS ruling letter and other documentation. 44 CFR 206.221(f). This signifies a continuing obligation to remain eligible throughout the grant process.[1]

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[1] The Trust quotes portions of the regulations and the PAPPG in an attempt to argue that FEMA must determine applicant eligibility at the time the work is performed. Applicant Reply Brief at 6-7. The excerpts that it quotes, however, pertain to *facility* and *work* eligibility, not applicant eligibility, which is at issue here. PAPPG at 20; 44 CFR 206.223. Similarly, the Trust's reliance on our decision in *Roman Catholic Church of the Archdiocese of New Orleans*, CBCA 5549-FEMA, 18-1 BCA ¶ 37,089, is inapposite. In that matter, FEMA did not dispute the applicant's eligibility. *See id.* at 180,562 ("FEMA does not dispute that the building is an eligible nonprofit facility . . . or that the [Archdiocese] is an eligible applicant for public assistance funding.").

Second, even if eligibility were determined solely at the time that the Hospital incurred the costs, the Trust still would not be eligible because there is no property interest in FEMA PA that can be transferred in bankruptcy. The debtor's estate in bankruptcy includes, with narrow exceptions, "all legal or equitable interests of the debtor in property." *USCS Chemical Chartering, LLC v. Agency for International Development*, CBCA 2058, 12-1 BCA ¶ 34,915, at 171,665 (citing 11 U.S.C. § 541(a)(1)). In many cases, causes of action that can be brought by the debtor are encompassed by the term "legal or equitable interests" in property. *Chartschlaa v. Nationwide Mutual Insurance Co.*, 538 F.3d 116, 122 (2d Cir. 2008).

Here, however, in the agreement between FEMA and the recipient, the State of Iowa, the state explicitly agreed that it did not possess any property interest in federal funds made available by FEMA. FEMA Exhibit 2 at 8. The Agreement provides in relevant part:

> *No Property Interest. The State and subrecipients have no property interest in the funds made available through the HHS/Smartlink account*. At any time during the lifecycle of the grant, FEMA may adjust the amounts available to the State in HHS/Smartlink due to grant amendments, partial or full grant terminations, closeouts, or other reasons.

Id. (emphasis added). Given that the recipient held no property interest in PA funding, it follows that the Hospital, as a subrecipient of the State of Iowa, similarly possesses no property interest in such funding. It follows that no such interest transferred to the Trust during the bankruptcy proceedings. The Trust characterizes this outcome as "discrimination" based on its economic condition, but that is wrong. This outcome is a consequence of the Hospital's decision to sell its assets and cease operations.

Decision

The applicant is not eligible for public assistance.

Elizabeth W. Newsom

ELIZABETH W. NEWSOM
Board Judge

Harold D. Lester, Jr.
HAROLD D. LESTER, JR.
Board Judge

Beverly M. Russell
BEVERLY M. RUSSELL
Board Judge