



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

---

July 6, 2026

CBCA 8702-FEMA

In the Matter of AULTMAN HEALTH FOUNDATION

Wendy Huff Ellard of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, Jackson, MS; Ernest B. Abbott of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, Washington, DC; and Chris Bomhoff of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, Fort Lauderdale, FL, counsel for Applicant.

Anne Vitale, Associate Legal Counsel, Ohio Department of Public Safety, Ohio Emergency Management Agency, Columbus, OH, counsel for Grantee.

Rebecca Otey and Sarah Ahmadia, 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 **SHERIDAN**, **ZISCHKAU**, and **O'ROURKE**.

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

Pursuant to the arbitration provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. §§ 5121–5207 (2024), Aultman Health Foundation (applicant or Aultman) has asked us to arbitrate the denial by the Federal Emergency Management Agency (FEMA) of Aultman's request for \$27,734,418.16 in costs incurred for staffing premium and incentive pay provided to Aultman's employees for the treatment of coronavirus (COVID-19) patients across its multiple eligible medical facilities in the state of Ohio.

We are tasked with determining whether Aultman has demonstrated that the claimed costs meet FEMA public assistance (PA) eligibility criteria. We conclude that Aultman's

request for premium pay was paid pursuant to a pre-disaster written labor policy that is non-discretionary in nature and constituted an incremental, unbudgeted cost tied to eligible COVID-19 emergency work. *See* Public Assistance Program and Policy Guide (PAPPG) (Apr. 2018) at 23-25. Accordingly, we determine that Aultman’s premium pay costs—that are tied to COVID-19 emergency work—are eligible for PA.

For *incentive* pay, however, we reach the opposite conclusion. We determine that Aultman’s requested reimbursement of incentive pay fails to meet FEMA’s eligibility requirements because Aultman did not establish that the claimed costs were paid pursuant to a pre-disaster written labor policy that is non-discretionary in nature.

### Background

This dispute centers around two types of pay costs set forth in project worksheets (PWs) 750977 and 750986. Request for Arbitration (RFA) at 1-2. Applicant requests PA reimbursement for \$27,734,418.16 in payments made to its permanent employees for premium pay and incentive pay during the COVID-19 pandemic. *Id.*

On March 31, 2020, the President declared the COVID-19 pandemic a major disaster for the state of Ohio, with an incident period of January 20, 2020, to May 11, 2023. Ohio: Major Disaster and Related Determinations, 85 Fed. Reg. 26702 (May 5, 2020). The declaration authorized the state to provide assistance for emergency protective measures (EPMs) under the PA program. *Id.* at 26,703. During the incident period, applicant, an eligible private nonprofit (PNP) healthcare provider, incurred labor costs providing EPMs at medical care facilities in Ohio. *See* RFA at 8, 11.

From May 2022 through May 2024, applicant submitted seven project requests for COVID-19-related labor costs. FEMA worked with applicant to identify more than \$20,000,000 in potentially eligible labor costs associated with *contract* staffing and overtime. *See* FEMA Exhibit 6, Damage Inventory Report at 2-5. Eligible contract staffing and overtime costs were awarded in the original project. In addition to those costs found eligible by FEMA, applicant requested reimbursement of premium pay and incentive pay costs for its permanent force account labor (FAL)<sup>1</sup> employees. As discussed below, FEMA raised eligibility concerns regarding these two categories of costs and, ultimately, found them ineligible for PA.

---

<sup>1</sup> FAL refers to “force account labor” whereby an applicant uses its own employees (permanent or temporary) for eligible work. PAPPG at 23. FAL for emergency work is reimbursable under FEMA’s PA program if certain criteria are met. *Id.*

FEMA policy delineates a specific framework and requirements for determining the eligibility of medical care work and costs requested pursuant to the COVID-19 emergency and major disaster declarations. FEMA Exhibit 4, FEMA Policy 104-21-0004, Coronavirus (COVID-19) Pandemic: Medical Care Eligible for Public Assistance (Interim) (version 3) (Medical Care Policy). Under this policy, applicants must show that the work is required as a direct result of the COVID-19 pandemic incident in accordance with 44 CFR 206.223(a)(1) (2020). FEMA Exhibit 4 at 2. For medical care provided in a primary medical care facility, the work must be directly related to the treatment of COVID-19 patients. *Id.* at 3.

Pursuant to the PAPPG, to determine the eligibility of overtime, premium pay, and incentive pay time costs, FEMA looks at an applicant's pre-pandemic written compensation policy to determine whether the applicant was required to make the payments for which it seeks PA reimbursement. PAPPG at 23-24. The PAPPG provides that, consistent with 42 U.S.C. § 5170b(d)(2), applicants are not to be denied overtime payments required under the Fair Labor Standards Act, 29 U.S.C. §§ 201–219. Overtime of an applicant's permanent full-time and part-time personnel providing EPMs is generally eligible, while straight-time FAL hours are only eligible in very limited circumstances. PAPPG at 23-24.

On June 2, 2024, FEMA notified applicant that premium and incentive pay costs were likely ineligible because: (1) the submitted policies lacked set, non-discretionary criteria for activating premium pay types; and (2) the premium pay costs were tied to straight-time hours. FEMA Exhibit 7. Straight-time hours are regular-time hours budgeted by Aultman that an employee works in a day paid at their normal, base hourly rate.

In July 2024, applicant agreed to segregate these types of costs into two new projects to allow the remaining costs that FEMA found eligible to move forward. *See* FEMA Exhibit 1, Declaration of Jessica Price ¶ 6. In each of the new project applications, applicant requested reimbursement for both premium pay and incentive pay, with \$16,382,748.03 requested for costs incurred during the first part of the incident period (January 2020 through July 1, 2022) and \$11,351,670.13 requested for costs incurred during the following period (July 2, 2022 through May 11, 2023). *See* RFA, Exhibit 3, First Appeal Analysis at 1.

In support of its claimed labor costs, Aultman provided FEMA, and later the Board, with several documents related to its labor policies, both dated and undated. *See* RFA, Exhibit 4, FEMA Determination Memorandum (DM) (project 750977) at 1-3; RFA, Exhibit 5, DM (project 750986) at 1-3. Aultman submitted a Staffing Premium Policy, dated June 22, 2018, which specifies that “the objective of the staffing premium [policy] is to offer and pay additional hourly compensation for hours worked to . . . employees who work unscheduled hours when additional staffing is needed.” RFA, Exhibit 10 (Premium Pay Policy) at 1. The policy was updated in 2021—after the March 2020 disaster

declaration—with language that applied the same policy criteria and provided that employees would be paid the same premium pay (i.e., statutory time-and-a-half pay) who worked unscheduled hours when additional staffing was needed. *See* FEMA Exhibit 2 (Revised Premium Pay Policy). Aultman also submitted an employee handbook from 2019, which does not mention premium or incentive pay. *See* RFA, Exhibit 9.

Regarding incentive pay, the applicant submitted a 2018 Management of Census policy, which provided that incentive pay may be offered as approved by the chief nursing officer (CNO). RFA, Exhibit 13 at 3. Applicant supplemented its pre-disaster policies with undated policy documents which contain the same language. In addition, in response to the eligibility concerns raised by FEMA, Aultman submitted a certified memorandum detailing the process by which it determined when additional staff would be needed. RFA, Exhibit 12.

On December 30, 2024, FEMA issued DMs denying applicant's claims for premium pay and incentive pay. RFA, Exhibits 4, 5. FEMA determined that Aultman failed to demonstrate that the premium and incentive pay costs either were related to overtime hours or fell within an eligibility exception for straight-time hours. In addition, FEMA determined that, even if the costs were associated with overtime hours, the pay would be ineligible because Aultman's premium and incentive pay policies relied on discretionary criteria for implementation. On March 7, 2025, Aultman appealed these determinations to FEMA Region V. RFA, Exhibits 6, 7. FEMA denied the appeals on August 20, 2025, largely for the same reasons stated in the DMs. RFA, Exhibit 3. On October 20, 2025, Aultman submitted its RFA.

### Discussion

The PAPPG provides in relevant part:

FEMA determines the eligibility of overtime, premium pay, and compensatory time costs based on the Applicant's pre-disaster written labor policy, provided the policy:

- Does not include a contingency clause that payment is subject to Federal funding;
- Is applied uniformly regardless of a Presidential declaration; and
- Has set non-discretionary criteria for when the Applicant activates various pay types.

If these requirements are not met, FEMA limits PA funding to the Applicant's non-discretionary uniformly applied pay rates.

PAPPG at 23. Another provision of the PAPPG, although relating only to employees on administrative leave who are called back to duty (which is not the situation at issue here), shows FEMA's willingness to provide PA in appropriate situations for pay beyond strict overtime, providing that "[e]xtraordinary costs (such as call-back pay, night-time and weekend differential pay, and hazardous duty pay) for essential employees who are called back to duty during administrative leave to perform eligible Emergency Work are eligible if costs are paid in accordance with a labor policy that meets the criteria above." *Id.* at 25.

The panel reviewed all the labor policies that the applicant had in place prior to the pandemic. Aultman's 2018 Staffing Premium Policy provides:

I. **Policy:** To provide staffing premium for non-exempt employees who work unscheduled hours when additional staffing is needed.

II. **Purpose:** The objective of the staffing premium is to offer and pay additional hourly compensation for hours worked to non-exempt employees who work unscheduled hours when additional staffing is needed.

III. **Procedure:**

A. **Staffing Premium Eligibility:**

Non-exempt employees are eligible for staffing premium if they were not scheduled to work a shift and not scheduled for On-Call and work when additional staffing is needed.

B. **Method of Payment:**

Staffing premium hours are paid at time-and-a-half of the employee's base hourly rate, not including any differentials, if the staffing premium hours are in the first forty hours worked in the workweek, beginning when the employee arrives to work and clocks in. If the staffing premium hours are in statutory overtime hours (i.e., if the employee has worked 40 or more hours in the workweek), the employee will be paid statutory overtime only.

RFA, Exhibit 10. These provisions, along with the fact that Aultman based its activation of the policy on a pre-determined staff-to-patient ratio, show that Aultman's premium pay policy was non-discretionary in nature. When staff shortages were identified based on these required ratios, the policy was activated. The fact that the CNO received a request to activate the policy does not render it discretionary. The CNO merely verified the staffing shortages and, once verified, activated and implemented the premium pay policy by calling off-shift employees to return to work to alleviate the shortages. If an employee was *not scheduled* to work a shift and was *not* on-call and is called back to work additional hours due to a staffing need and does so, the employee is paid premium pay at the time-and-a-half rate.

Thus, there is no indication that premium pay was conditioned on any factors other than these three: (1) the employee was not scheduled to work; (2) the employee was not on call; and (3) the employee works the additional unscheduled hours. Which employee is contacted first or second by the CNO to fill staffing shortages is not the type of discretion that renders a premium pay policy disqualifying. The work shifts at issue here were both unscheduled and unbudgeted. Moreover, they were solely required because the staff-to-patient ratios fell below pre-determined thresholds caused by the influx of COVID-19 patients.

Furthermore, FEMA argues that work performed during the first forty hours of work is ineligible for premium pay under 44 CFR 206.228(a)(2)(iii), as it would pay employees premium pay for work performed during regular hours (also referred to as straight-time). We disagree. Here, the costs claimed for premium pay were for unscheduled, unbudgeted hours to cover emergency work related to COVID-19. What makes these costs extraordinary and, therefore, eligible for premium pay is that they are incurred outside of the employee's regularly scheduled shifts.

Although Aultman's 2021 Revised Premium Pay Policy includes more information regarding the process of determining when additional staffing is needed, that additional information goes to the *process* for determining the need for additional staff. The 2021 revisions did not affect the non-discretionary nature of the policy: once an employee is selected for working additional unscheduled hours, the employee is paid the defined premium rate for those hours without exception. The record indicates that premium pay was uniformly paid for Aultman's employees who were called back to perform this emergency COVID-19 work.

We reach a different conclusion for Aultman's incentive pay costs. Aultman cites to an undated "Premium Pay Procedures & Guidelines" policy, stating, "Incentive pay only to staff to required staffing needs" and "Resource Team will be considered in staffing numbers prior to incentive approval." RFA, Exhibit 11. The policy includes a table specifying

various incentive pay hourly amounts, such as \$10 and \$15, and two references to “\$25-50” ranges, but the policy does not provide a clear indication of the circumstances for payments to employees. *See id.*

Aultman also relies on its Management of Census Policy, dated September 25, 2018, which includes the following provisions regarding incentive pay:

- E. Allocation of Staff for Peak Census
  - 1. Nursing:
    - a. Utilize the Resource Team.
    - b. Staff the units to the required level and reassign staff to the overflow unit.
    - c. Offer additional alternative shifts to the current working staff.
    - d. Increase part-time employees as available.
    - e. Offer Incentive Pay (as approved by CNO).

RFA, Exhibit 13 at 3. Having carefully reviewed the policies regarding incentive pay, we conclude that they fail to meet several requirements. First, Aultman’s “Premium Pay Procedures & Guidelines” policy is undated, and, as such, it cannot demonstrate that a non-discretionary policy was in place prior to the pandemic. Second, the policies do not dictate when specified amounts are paid to an employee. The rates in the Premium Pay Procedures & Guidelines policy differ across different time periods, and it is unclear how Aultman applies them, indicating a level of discretion. Indeed, both policies refer directly to approval of incentive pay by the CNO, yet they do not elaborate on the approval process. Applicant contends that activation of these policies is non-discretionary in the same way as the premium pay policy but fails to explain how. We conclude that any one of these reasons renders incentive pay costs to be ineligible for PA reimbursement.

### Decision

Aultman’s premium pay costs are eligible for public assistance, and Aultman’s incentive pay costs are ineligible.

Jonathan D. Zischkau  
JONATHAN D. ZISCHKAU  
Board Judge

Kathleen J. O'Rourke  
KATHLEEN J. O'ROURKE  
Board Judge

**SHERIDAN**, Board Judge, writing separately.

I respectfully disagree with the majority's opinion as I conclude that the Premium Pay Policy is also discretionary, making Aultman ineligible for PA funding for such costs. The portion of the premium policy addressing the applicable procedure reads:

**Staffing Premium Eligibility:** Non-exempt employees are *eligible* for staffing premium if they were not scheduled to work a shift and not scheduled for On-Call and work when additional staffing is needed.

RFA, Exhibit 10 at 1 (emphasis added). This paragraph merely states the conditions under which employees become *eligible* for premium pay. The word "eligible," as defined in the synonym section of the Merriam-Webster online dictionary, means "qualified to participate or be chosen." <https://www.merriam-webster.com/dictionary/eligible> (last visited July 6, 2026). When one buys a lottery ticket, one becomes eligible to win the pot, but the pot is by no means guaranteed to the individual. No language in the remaining portions of this policy or elsewhere in the record makes it mandatory for Aultman to provide premium pay. There is no indication in the record that Aultman paid a staffing premium to each and every employee who became eligible for premium pay. The next paragraph in the Premium Pay Policy addresses the "method of payment" for premium pay:

Staffing premium hours are paid at time-and-a-half of the employee's base hourly rate . . . . For any employees in areas that are scheduled for Overtime Over-Scheduled Shift, but are working pursuant to Staffing Premium, *all hours will be paid* pursuant to this Staffing Premium policy.

RFA, Exhibit 10 at 1 (emphasis added). Certainly, the language in this "method of payment" paragraph stating that "all hours will be paid" does not override the eligibility paragraph and the discretionary nature of the eligibility paragraph requiring an employee to be more than just eligible. There is no information in the written policy as to who makes the decision to award "staff premium" to an individual. Finally, there is no indication in the written policy

as to how an eligible employee moves from being merely eligible for premium to receiving such pay.

*Patricia J. Sheridan*  
PATRICIA J. SHERIDAN  
Board Judge