



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 3, 2023

CBCA 7868-FEMA

In the Matter of HOLY NAME MEDICAL CENTER

Ryan Kennedy, Executive Vice President and Chief Financial Officer of Holy Name Medical Center, Teaneck, NJ, appearing for Applicant.

Lieutenant Colonel Christopher M. DeMaise, Governor's Authorized Representative, Recovery Bureau, New Jersey Division of State Police, West Trenton, NJ, appearing for Grantee.

Rebecca J. Otey and Shahnam Thompson, Office of Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, Washington, DC; and Charles Schexnaildre, Office of Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, Baton Rouge, LA, counsel for Federal Emergency Management Agency.

Before the Arbitration Panel consisting of Board Judges **VERGILIO**, **SULLIVAN**, and **O'ROURKE**.

SULLIVAN, Board Judge, writing for the Panel.

Holy Name Medical Center (HNMC) sought to arbitrate the decision of the Federal Emergency Management Agency (FEMA) denying its request for reimbursement of hazard and bonus pay that it paid to its employees during the COVID-19 pandemic, a declared disaster. Because HNMC does not meet FEMA's criteria for reimbursement of these types of pay, we deny the request for public assistance.

Background

HNMC is a private, non-profit provider of medical care in New Jersey. During and in response to the pandemic, HNMC paid a group of employees a one-time bonus totalling \$1,190,337.50. HNMC also increased the hourly rate paid to some employees by two dollars. HNMC seeks reimbursement of \$1,529,394.20.

HNMC paid these amounts pursuant to a 2013 policy regarding compensation during an emergency. The policy stated that additional compensation would be paid but that the amounts and the employees to be paid would be determined by HNMC management:

Policy:

It is the policy of Holy Name Medical Center that all adjustments to compensation are reviewed and approved by Human Resources. In recognition of employee health, safety, and dedication during a regional disaster or emergency period, additional compensation will be provided to employees on the front lines in order to help the community.

Procedures:

In case of emergency, which may affect normal scheduled hours, health, and safety of employees, management may decide to provide additional compensation in the form of bonuses and/or an increase in the employee's hourly rate a specific amount of time to cover services performed during the disaster or emergency period.

The Vice President of Human Resources will collaborate with other members of management and determine if there is a need for increased compensation based on the work performed during the disaster/emergency period. If it is determined that an increase to the hourly rate or a bonus for work performed is warranted, Human Resources will work with the departments affected to determine a fair rate and the additional compensation will be approved by the VP of Human Resources and the CFO.

Request for Arbitration, Attachment 2. In June 2022, HNMC issued a memorandum that documented who had been paid a bonus. HNMC acknowledged in the memo that the COVID pandemic was the first time that it had employed its 2013 emergency compensation policy.

FEMA denied the request for reimbursement, and HNMC filed a regional appeal. FEMA denied the regional appeal, finding that HNMC's policy did not set non-discretionary criteria for the payment of the bonuses and hazard pay. HNMC sought to arbitrate this decision to the Board.

Discussion

FEMA policy requires that, to be eligible for reimbursement, "overtime, premium pay, and compensatory time costs [be] based on the Applicant's pre-disaster written labor policy." Public Assistance Program and Policy Guide (Apr. 2018) at 23. That policy must, among other criteria, "set non-discretionary criteria for when the Applicant activates the various pay types." *Id.*

HNMC's policy did not satisfy these requirements. Although the policy stated that additional compensation would be provided during an emergency to employees "on the front lines," the policy did not set the criteria for who would be paid what amounts. Instead, the policy left those determinations to management, which constitutes an exercise of discretion that disqualifies the costs for reimbursement pursuant to FEMA's policy. Management decided in 2020 that those employees who cared directly for COVID-19 patients would be paid a bonus amount and provided an hourly rate increase. Those decisions were documented in the 2022 memorandum. These determinations are not sufficient to meet FEMA's policy requirements because they did not pre-date the disaster.

Decision

The request for public assistance funds is denied.

Marian E. Sullivan

MARIAN E. SULLIVAN
Board Judge

Joseph A. Vergilio

JOSEPH A. VERGILIO
Board Judge

Kathleen J. O'Rourke

KATHLEEN J. O'ROURKE
Board Judge