



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 4, 2025

CBCA 8307-FEMA

In the Matter of CITY OF CHICAGO, ILLINOIS

Chloe Belczak, Deputy Budget Director, Office of Budget and Management, City of Chicago, Chicago, IL, appearing for Applicant.

Christiana Cooley, 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 **BEARDSLEY** (Chair), **KULLBERG**, and **CHADWICK**.

CHADWICK, Board Judge, writing for the Panel.

Applicant, the City of Chicago, sought arbitration under 42 U.S.C. § 5189a(d) (2018) after the Federal Emergency Management Agency (FEMA) denied, as untimely filed, applicant's first administrative appeal of FEMA's denial of public assistance for costs related to the COVID-19 pandemic. Like FEMA, the panel denies the disputed assistance because applicant did not preserve its application by meeting FEMA's appeal deadline. We emphasize our disapproval, however, of FEMA's assertion that the untimeliness of the first appeal left applicant ineligible to obtain any arbitration decision from the panel at all.

Background

Applicant submitted a streamlined application in December 2022 for approximately \$2.7 million of itemized costs of various emergency protective measures in response to the pandemic. FEMA denied \$975,430.68 of that amount on grounds of work eligibility. It is undisputed that applicant received the determination on May 2, 2024, and submitted a first

appeal to the grantee on July 2, 2024 (which we note was a Tuesday), the sixty-first day after receipt. Applicant's Reply at 1 (citing "administrative delays").

FEMA denied the appeal on November 1, 2024. The Regional Administrator wrote that he was "denying the appeal" because applicant submitted it "after the 60-day timeframe required by FEMA's regulations," 44 CFR 206.206(b)(1)(ii) (2024), "making the Applicant's first appeal untimely. . . . Unfortunately, Federal regulations afford no allowance of time extension for filing appeals under the Public Assistance program." FEMA Exhibit 10 at 1. FEMA advised applicant of its right to pursue a second appeal or arbitration. *Id.* at 1–2.

Applicant timely sought arbitration and asked the panel to address, among other issues, the timeliness issue on which the appeal decision rested.

Discussion

Applicant acknowledges that the grantee received the first appeal "one day past the 60-day deadline." Applicant's Reply at 1. An applicant "perfects its appeal by filing it within sixty days after receiving notice of the funding denial." *City of Beaumont, Texas*, CBCA 7222-FEMA, 22-1 BCA ¶ 38,018, at 184,632; *see* 42 U.S.C. § 5189a(a) ("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."). "We do not set policy for FEMA," *New York Society for the Relief of the Ruptured and Crippled Maintaining the Hospital for Special Surgery*, CBCA 7543-FEMA, 23-1 BCA ¶ 38,268, at 185,810, and *see* no obligation on FEMA's part to have treated the appeal as viable after the statutory deadline. Thus, we agree with the reasoning of panels that have decided that untimeliness of an appeal is a sufficient reason for FEMA to deny public assistance. *See Putnam County, Tennessee*, CBCA 8221-FEMA, 25-1 BCA ¶ 38,764, at 188,407–08; *U.S. Virgin Islands Department of Public Works*, CBCA 7345-FEMA, 22-1 BCA ¶ 38,132, at 185,231.

Applicant states that it "would like FEMA to recognize their own lack of timeliness when it comes to responding to the City's appeals." Applicant's Reply at 1. We do not find this remark to be relevant. FEMA met its own regulatory deadlines in issuing the determination memorandum and the appeal decision. *See* FEMA Surreply at 2. In any event, applicant suggests no theory under which FEMA's timeliness would have any bearing on applicant's. Applicant's arguments about cost eligibility are not viable for arbitration because applicant failed to preserve them by timely pursuing the first appeal.

FEMA Relies on a “Fact” About Arbitration Eligibility That Is Not Factual

It is worth emphasizing under a separate heading what we are *not* saying. The panel takes this opportunity to disapprove specifically of an argument we have seen FEMA make repeatedly and which it repeats here—namely, that applicants who do not file timely first appeals are categorically “not eligible for arbitration.” FEMA Response at 8 (quoting Public Assistance Appeals & Arbitration under the Disaster Recovery Reform Act (Fact Sheet) (Feb. 2020) at 1). This is incorrect as a matter of law and cannot be made correct by including it as an erroneous “fact” in a fact sheet.

Eligibility for arbitration is statutory and not a matter of agency policy or discretion. An applicant may seek arbitration (1) “after the completion of the first appeal” or (2) after waiting 180 days for a decision and “before [FEMA] has issued a final agency determination.” 42 U.S.C. § 5189a(d)(5)(B). An applicant that requests arbitration within that time period is statutorily entitled to arbitration. *E.g., Monroe County Sheriff’s Office*, CBCA 8147-FEMA, 24-1 BCA ¶ 38,703, at 188,182–83. Contrary to FEMA’s fact sheet, neither the statute nor any regulation requires that the “complet[ed]” first appeal must, itself, have been timely filed in order for the applicant to qualify for arbitration.

FEMA’s regulation implementing the statute states that an applicant may seek arbitration once FEMA “has denied a first appeal” (apparently equating the term “completion” in the statute with denial) or has “not rendered a decision” after 180 days. 44 CFR 206.206(b)(3)(C). The former happened here. FEMA advised applicant that it was “denying the appeal” and that applicant could “appeal this determination” at the second level or else avail itself of the “arbitration process.” FEMA Exhibit 10 at 1–2. By statute and regulation, applicant became eligible at that point to request arbitration as it did.

Decision

Applicant is eligible for arbitration, but the costs in dispute are ineligible for public assistance because applicant’s first appeal was untimely.

Kyle Chadwick
KYLE CHADWICK
Board Judge

Erica S. Beardsley
ERICA S. BEARDSLEY
Board Judge

H. Chuck Kullberg
H. CHUCK KULLBERG
Board Judge