



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

March 12, 2026

CBCA 8350-FEMA

In the Matter of BOARD OF TRUSTEES OF BAY MEDICAL CENTER

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Caleb Keller, Senior Attorney, and Kelly Ann Kennedy, Senior Attorney, Florida Division of Emergency Management, Tallahassee, FL, counsel for Grantee; and Cassie Sykes, Appeals Officer, and Melody Cantrell, Recovery Legal Liaison, Florida Division of Emergency Management, Tallahassee, FL, appearing for Grantee.

Christiana Cooley, Office of Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, Washington, DC; and Emanuel Rier Soto, Office of Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, Guaynabo, PR, counsel for Federal Emergency Management Agency.

Before the Arbitration Panel consisting of Board Judges **LESTER**, **RUSSELL**, and **SHERIDAN**.

RUSSELL, Board Judge, writing for the Panel.

The applicant, Board of Trustees of Bay Medical Center (Bay Medical or applicant), seeks arbitration of the denial by the Federal Emergency Management Agency (FEMA) of Bay Medical's request for public assistance (PA) funding in the amount of approximately \$16 million for repair costs for five buildings on Bay Medical's hospital and medical campus following Hurricane Michael, which occurred in October 2018. FEMA denied the request for several reasons, among them that Bay Medical had failed to provide sufficient

documentation showing that the claimed damage was the direct result of the disaster. For the following reasons, we deny the request for PA funding.

Background

I. The Disaster

On October 10, 2018, Hurricane Michael made landfall in the Florida panhandle causing significant damage from high winds, rain, and storm surge.¹ The following day, the President declared the event a major disaster, designated as FEMA-4399-DR-FL, with an incident period of October 7 to 19, 2018. Around the time of, and shortly after, the incident period, Bay Medical, a governmental health care facility created by the Florida legislature in or around 1946 and located in Panama City, Florida, performed emergency protective measures under Grants Manager Project (GMP) 83202, between October 10 and November 24, 2018, and under GMP 83204, between November 25, 2018, and October 11, 2019. Request for Arbitration (RFA) at 6; FEMA Exhibits 1, 2.² The work, for which FEMA obligated approximately \$30 million, included, among other items, moisture removal and mold remediation; construction, demolition, and vegetative debris removal; engineering services for asbestos, moisture, and structural studies; medical care and transport; security; elevator electrical component repairs; and system repairs for heating, ventilation, and air conditioning, chiller towers, and fire alarm systems. *Id.*

II. Bay Medical's Initial Request for PA Funding and FEMA's Denial

Bay Medical, which has ten buildings comprising its core hospital facilities, initially sought approximately \$4 million for repair work for the damage to its buildings (i.e., for permanent restoration of the buildings, as opposed to the emergency protective measures previously approved and funded by FEMA as discussed above). Bay Medical subsequently increased its request to approximately \$16 million in PA funding. FEMA created GMP 91060 to document Bay Medical's claimed costs. FEMA Exhibit 3. Initially, the project included all ten structures that make up the core hospital facilities. However, Bay Medical requested that FEMA separate the facilities into Core Groups I and II for planning purposes. Exhibit 3 at 2-3. Core Group I, at issue in this arbitration, consists of Building 49 (Central Hospital), Building 67C (IT Classroom), Building 75 (Women and Children Pavilion), Building 80 (Wound Care Hyperbaric), and Building 81 (Covenant Hospice). *Id.*

¹ <https://www.weather.gov/tae/hurricanemichael2018> (last visited March 11, 2026).

² All exhibits are from the RFA unless, as here, otherwise noted.

at 3-4. The buildings are named according to the years they were constructed (1949, 1967, 1975, 1980, and 1981). FEMA's Response to Bay Medical's RFA (FEMA's Response) at 1. Bay Medical claimed that hurricane force winds and driving rain damaged the built-up roofs (i.e., roofs with water-proof membranes with gravel on top) and windows of the Core Group I buildings, which allowed water to migrate through ceilings and walls, causing damage to the buildings' interiors and exteriors. Exhibit 3 at 5. The roofs for each of the Core Group I buildings were installed in approximately 1999. Exhibit 35, Declaration of Sammy Sims (Feb. 6, 2025) ¶ 11.

By late summer 2019, approximately ten months after the hurricane, FEMA and Bay Medical had performed site inspections on three of the five Core Group I buildings – Buildings 49, 75, and 81. Exhibits 8, 10, 11. Photos taken during the inspections showed where hurricane-force, wind-driven rain had infiltrated various parts of the buildings resulting in damage to, among other items, ceiling tiles, carpets, wallpaper, wallboards, vinyl flooring, cove bases, and light troffers (recessed lighting fixtures designed for suspended grid ceilings). *Id.* Bay Medical submitted a damage inventory for Building 49 in December 2019. Exhibit 12. In April 2021, FEMA and Bay Medical performed site inspections of all five Core Group I buildings. Exhibits 14-18. Also, on or around April 2021, Bay Medical decided to demolish the Core Group I buildings. Exhibit 19. Between April and June 2021, Bay Medical submitted additional damage inventories for the Core Group I buildings. Exhibit 1 at 6; Exhibit 20.

In July 2021, FEMA uploaded Bay Medical's damage inventory information into a color-coded damage, description, and dimensions (DDD) spreadsheet for each Core Group I building. Exhibit 7a-e. In August 2021, FEMA issued a request for information (RFI) to Bay Medical asking for additional documentation to substantiate the damage in the spreadsheet, specifically referencing certain color-coded items. FEMA Exhibit 4. In response to FEMA's RFI, Bay Medical referred FEMA to photographs previously submitted for Building 75, although the color-coded DDD spreadsheets reflect that FEMA had questions on each of the Core Group I buildings. Exhibit 2 at 5-6; Exhibits 4, 7a-e.

In January 2023, FEMA issued a determination memorandum substantially denying Bay Medical's initial request for PA funding. Exhibit 2. After considering information and photographs from the site inspection and the information provided by Bay Medical in response to FEMA's RFI, FEMA found that Bay Medical had not substantiated that the vast majority of the claimed damage resulted from the hurricane. *Id.* at 7. FEMA determined that it was only able to validate approximately \$23,000 in repair costs that were directly tied to the performance of eligible work. *Id.* at 1.

III. Bay Medical's First Appeal and FEMA's Denial

In May 2023, Bay Medical submitted its first appeal through the recipient, the Florida Division of Emergency Management. In its appeal, Bay Medical increased the PA funding sought to approximately \$16 million. Exhibits 29, 33, 34. FEMA determined that the damage, including the additional claimed damage, remained ineligible because Bay Medical, again, had not demonstrated that the damage was the direct result of the disaster. Exhibit 1.

Bay Medical had also provided maintenance records from October 10, 2017, to October 8, 2018, to support its appeal. Exhibit 1 at 5. In its denial of Bay Medical's appeal, FEMA explained that the maintenance records reflect that:

In the days and weeks prior to the start of the incident period, there [were] work orders specifically related to ceiling leaks that demonstrate preexisting water infiltration at the [f]acilities prior to the incident. In the absence of inspection reports or photographs soon after the disaster, FEMA cannot discern between damage directly resulting from the disaster or damage resulting from preexisting conditions.

Id. FEMA also noted that, contrary to Bay Medical's assertions, the site inspection reports, notably the comments therein accompanying the photographs, did not reflect a finding by FEMA's site inspector regarding the cause of the claimed damage but, instead, reflected FEMA's record of Bay Medical's explanation of the cause of the damage. *Id.* at 5-6.

Although it substantially denied the appeal, FEMA increased Bay Medical's cost eligibility to about \$45,000 for additional downspouts and gutters at Building 49; additional gutters at Building 67C; additional cove base, drywall, vinyl wall covering, and carpet at Building 75; and additional dumpster, hauling, and crane rental. *Id.* at 6-8.

IV. The Request for Arbitration

A. Bay Medical's Documentation

After FEMA denied its first appeal, Bay Medical filed this request for arbitration. In its request, Bay Medical relied on documents (including the site inspection reports and pre-disaster maintenance records) and post-incident photographs (including those in the site inspection reports) presented to FEMA to support its initial PA funding request and first appeal, as well as declarations from a licensed architect and Bay Medical's maintenance manager. The panel also conducted an arbitration hearing.

The post-incident photos produced in this arbitration show the Core Group I roofs with missing gravel. *See, e.g.*, Exhibit 4, Declaration of Heath Evans (Feb. 7, 2025) ¶ 12 (Building 49); Exhibit 6 at 110 (Building 49); Exhibit 14 at 4 (Building 49). Certain photos also show pooling water on the roofs. Exhibit 6 at 110-11 (Building 49); Exhibit 15 at 2 (Building 67C); Exhibit 32, Declaration of Steve Jernigan (Feb. 6, 2025) ¶ 12 (photographs do not identify building). Other photos show post-disaster interior conditions of the buildings. *See* Exhibit 6 (Building 49); Exhibit 14 (Building 49); Exhibit 8 (Building 75); Exhibit 15 (Building 67C); Exhibit 16 (Building 75); Exhibit 17 (Building 80); and Exhibit 18 (Building 81).

The pre-disaster maintenance records for the period of October 10, 2017, to October 8, 2018, include approximately forty references to issues with ceiling and roof leaks. Exhibit 31. The records also include references to issues with windows (e.g., windows falling, leaking, or not closing, as well as broken window panes). *Id.* The records identify the repair of each of these issues as complete. *Id.*

In his declaration in support of Bay Medical in this arbitration, Steve Jernigan, an architect who took photographs of the buildings during a site visit on July 31, 2019, opined that “the damages [he] observed and photographed were a direct result of wind damage and the resultant water/moisture intrusion.” Exhibit 32, Jernigan Declaration ¶ 7. He added:

Two telltale signs of damage to a built up roof system like that of the Core Group I buildings are the presence of standing water and the absence of gravel. Standing water indicates that the moisture barrier was compromised, resulting in voids within the moisture barrier and rigid insulation that creates low spots where ponding of water occurs. The absence of gravel indicates that it was blown off of the roof which exposed the moisture barrier to damaging [ultraviolet (UV)] rays and other elements.

Id. ¶ 10.

At the hearing, Mr. Jernigan stated that gravel on a roof is there to protect the membrane of the roofing system and, if the gravel were to be removed, the roofing system would not work because the roof’s membrane would become quickly degraded by UV rays and weather. He noted that it is obvious when a window is damaged but not so with a roof unless core sampling of the roof and other testing are done. He opined that the Core Group I roofs, which were installed in 1999, were nearing the end of their useful lives and a significant amount of the water damage to the interior of the buildings (e.g., carpets, drywall, and suspended ceiling systems) came from the failing roof system.

In his declaration, also in support of Bay Medical's RFA, Sammy Sims, Bay Medical's maintenance manager, explained that Bay Medical had an annual budget dedicated to maintaining the buildings which was utilized "when repairs were needed or for routinely scheduled or needed preventative maintenance activities." Exhibit 35, Sims Declaration ¶ 8. Mr. Sims additionally noted that the maintenance department "was made aware of potential issues in need of repair through routine inspections performed by [the department's] technicians or through notification by other Bay Medical personnel." *Id.* ¶ 9. Repair issues were resolved through work orders, and when dealing with needed repairs, the maintenance technician would document the issue and, after completing the repair, document the method of repair. *Id.* Mr. Sims added that the maintenance records "reflect[ed] routine inspections and preventative maintenance performed at the various Bay Medical facilities." *Id.* He stated that the maintenance department "performed visual inspections of the campus roofs, including the Core Group I facilities, at least once a month" and that "[d]uring the inspection, the inspecting technician would clear any debris and note any issues that were identified." *Id.* at 10. However, "[i]f an inspection work order did not note any issues, and there was not a follow-up work order generated for repairs, this indicated that the roof was in good condition and did not require repairs." *Id.* He noted that Bay Medical had other maintenance records, but those were destroyed when the building in which the records were housed was damaged by Hurricane Michael. *Id.* ¶ 15.

B. FEMA's Response

FEMA urges the panel to reject Bay Medical's request for PA funding, arguing that Bay Medical failed to provide sufficient documentation showing that the damage to the Core Group I buildings was directly caused by Hurricane Michael. FEMA argues that, due to Bay Medical's failure to provide pre-disaster documentation of the buildings' conditions, the agency was unable to distinguish between damage directly related to the disaster and damage caused by deferred maintenance, long-term deterioration, or negligence. FEMA stated that, without probative, pre-disaster documentation, it was unable to determine which items were and were not eligible for PA funding. Heather Modenhauer, an architect with FEMA who served as a witness for the agency at the hearing, gave an example of the type of maintenance record that would be helpful – e.g., a record that identifies or shows that (1) gravel is missing and there is a leak; (2) repairs were completed; and (3) there have been no leaks since the repairs.

Discussion

I. Documentation Necessary to Support Claimed Damage

Public assistance eligibility consists of four basic components: (1) applicant, (2) facility, (3) work, and (4) cost. Public Assistance Program and Policy Guide (PAPPG) at 9 (Apr. 2018). “FEMA refers to these components as the building blocks of an eligibility pyramid . . . starting at the foundation (Applicant)” and moving up, in the order noted, toward cost. *Id.* FEMA provides PA funding to eligible applicants, among them state and local governments. 44 CFR 206.222(a) (2024). Here, as to the first base building block of the pyramid, there is no dispute that Bay Medical, a governmental health care facility established by the Florida legislature, is an eligible applicant. Exhibit 2 at 1; RFA at 6. Nor is there any dispute that the Core Group I buildings are eligible facilities for which PA funding can be used for eligible work. *See* 44 CFR 206.201(c) (defining “facility” which includes publicly owned buildings).

The issue before the panel is whether Bay Medical has provided sufficient documentation evidencing that the repair work to permanently restore the Core Group I buildings is eligible for PA funding (or the cost equivalent of the amount for the repairs)³ – the third building block on the eligibility pyramid. PAPPG at 9, 19. To be eligible for PA funding, the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. §§ 5121-5207 (2018), and FEMA’s implementing regulations require that an eligible facility must have been damaged or destroyed by a major disaster. 42 U.S.C. § 5172; 44 CFR 206.223(a)(1). The work for which an applicant is requesting funding must “(1) Be required as the result of the emergency or major disaster event; (2) Be located within the designated area of a major disaster or emergency declaration, except that sheltering and evacuation activities may be located outside the designated area; and (3) Be the legal responsibility of an eligible applicant.” 44 CFR 206.233(a).

FEMA and the recipient use a project worksheet (PW) “to document details of the [a]pplicant’s project, including a detailed description of the disaster-related damage and dimensions and the associated scope of work (SOW) and costs.” PAPPG at 133. Ultimately, however, it is “the [a]pplicant’s responsibility to substantiate its claim as eligible.” *Id.* The applicant does so by providing FEMA with documentation supporting eligibility for PA funding. *Id.* The documentation provided should describe the “who, what, when, where, why, and how much” for each item claimed. *Id.*

³ As noted previously, Bay Medical planned (or plans) to demolish the Core Group I buildings.

Documentation necessary to support a claim for PA funding includes, for example, photographs of the site, the overall facility, and specific damage; detailed descriptions of damage with specific dimensions; plans and specifications showing pre- and post-disaster-related damage; and documentation supporting the pre-disaster condition of the facility (e.g., facility maintenance records, inspection, and safety reports). PAPPG at 135. “If the [a]pplicant does not provide sufficient documentation to support its claim as eligible, FEMA cannot provide PA funding for the work.” *Id.* at 133.

Before making an eligibility determination on a building, FEMA considers each of the following: (1) the age of the building and its systems; (2) evidence of regular maintenance or pre-existing issues such as water damage from a leaky roof; and (3) the severity and impacts of the disaster. PAPPG at 118. FEMA recognizes that “[f]or buildings and building systems, distinguishing between damage caused by the incident and pre-existing damage may be difficult.” *Id.* FEMA does not provide PA funding for repair of damage caused by deterioration, deferred maintenance, an applicant’s failure to take measures to protect a facility from further damage, or negligence. *Id.* at 19-20.

II. Bay Medical’s Lack of Documentation

As previously mentioned, the dispute in this arbitration concerns whether the Core Group I buildings were damaged directly by Hurricane Michael, entitling Bay Medical to PA funding for the amount that it would cost for repairs or, instead, whether the damage to the buildings was caused or exacerbated by pre-existing conditions or a failure to mitigate the disaster damage, precluding PA funding. We determine this issue de novo. *See City of New Orleans*, CBCA 5684-FEMA, 18 1 BCA ¶ 37,005, at 180,199 (“Our standard of review of eligible items is de novo, meaning that we are not bound by prior determinations of FEMA.”).

According to Mr. Jernigan, Bay Medical’s declarant and hearing witness, a significant amount of damage to the interiors of the buildings was caused by water migrating from the roofs, each of which was near the end of its useful life. The photographs of the roofs taken post-disaster show pooling water and/or missing gravel on certain of the Core Group I roofs. Mr. Jernigan opined that these are tell-tale signs of damage to the roofing system. However, he also stated that, generally, without core sampling or similar measures, one cannot know the extent of water saturation or damage to the roofs. As indicated above, FEMA recognizes that proving disaster-related damage to a building is difficult. We do not determine that the absence of core sampling or similar type testing is a reason to deny Bay Medical’s request for PA funding. However, we conclude that the documentation that was otherwise submitted by Bay Medical in support of its PA funding request is insufficient to demonstrate that the damage was a result of the disaster.

Because the roofs were nearing their end of useful lives at the time of the disaster, pre-disaster photographs and other pre-disaster documentation would have been helpful in distinguishing damage caused by, for example, deterioration prior to Hurricane Michael and damage caused by the disaster. Yet, there are no photographs in the record showing the pre-disaster condition of the roofs including the amount, level, or state of the gravel on each of the roofs prior to (or a period reasonably before) the disaster. As Mr. Jernigan explained, the gravel protects the membrane of the roofing system and, if that is removed, the roofing system does not work because the membrane will become degraded by UV rays and weather. Without pre-disaster photographs showing that the roofing system was adequately maintained in the time period leading up to Hurricane Michael (e.g., the condition of the gravel covering or a lack of water pooling after a storm), we cannot determine the pre- versus post-disaster conditions of the roofs and, thus, cannot say whether there are any repairs eligible for funding (i.e., repairs for damage caused to the buildings by the disaster), as distinguished from repairs ineligible for PA funding (damage to the buildings that occurred pre-disaster from, e.g., deterioration, deferred maintenance, or negligence).

We recognize that Bay Medical provided various maintenance records, but those are ultimately unhelpful in showing causation. The records reflect specific problems that required repairs as well as, generally, that roof inspections were done. The pre-disaster maintenance records include approximately forty references to ceiling and roof leaks and references to issues with windows (e.g., windows falling, leaking, or not closing; broken window panes) suggesting that the buildings had a significant history of water infiltration prior to Hurricane Michael making landfall. Beyond noting that certain repairs were completed, the pre-disaster maintenance records provided by Bay Medical do not identify the types of repairs performed or indicate whether the repairs were successful in resolving the issues (e.g., leaks) such that we can eliminate the pre-existing conditions of the buildings as the cause of the damage or distinguish between damage related to the pre-existing condition of the building and damage caused by Hurricane Michael. Ms. Modenhauer, FEMA's witness, provided an example of the type of pre-disaster roof maintenance record that would have been helpful, along the lines of the following: the problem is identified (e.g., there is a leak in the roof), the cause is determined (e.g., missing gravel), a solution is identified (e.g., some type of repair along with a description of the repair), and the solution is successful in resolving the problem. Bay Medical's records do not provide this clarity.

The items in the record reflecting that roof inspections were done merely refer to roof inspection services for all campus buildings and energy plants. Without some detail regarding what the roof inspection services involved (e.g., what was found during the inspections, how any issues were resolved, and whether the issues were successfully resolved), the maintenance records are not helpful in identifying damage caused by the

disaster as compared to pre-disaster damage caused by other factors such as deterioration or deferred maintenance.

Mr. Sims explained that Bay Medical's maintenance department performed visual inspections of the campus roofs at least once a month and that, during the inspection, the inspecting technician would note any issues that were identified. He stated that, if no issues were identified requiring a work order for repairs, this was an indication that the roof was in good condition. Mr. Jernigan similarly used observation (and photographs) to opine that the damage to the buildings was caused by water and moisture intrusion from the disaster. Such visual observations are anecdotal and, accordingly, insufficient to support Bay Medical's request for PA funding without additional evidence of more probative value.

Thus, for the reasons discussed above, we conclude that Bay Medical has not provided sufficient evidentiary support for the panel to distinguish damage to the buildings due to pre-disaster building conditions from damage directly caused by the disaster. Without such evidence, we are unable to determine which repairs might be eligible for funding and which repairs are ineligible. Bay Medical failed to meet its evidentiary burden. We conclude that, aside from the funds approved by FEMA as detailed in the agency's decision on Bay Medical's first appeal, Bay Medical is otherwise ineligible for PA funding for the costs to repair the buildings.⁴

Decision

Bay Medical's request for PA funding to repair the Core Group I buildings is denied.

Beverly M. Russell

BEVERLY M. RUSSELL

Board Judge

Harold D. Lester, Jr.

HAROLD D. LESTER, JR.

Board Judge

⁴ Because we conclude that the repair work discussed herein is ineligible for PA funding, we need not reach the issue of cost eligibility briefed by the parties.

Patricia J. Sheridan
PATRICIA J. SHERIDAN
Board Judge