



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

July 30, 2026

CBCA 8413-FEMA

In the Matter of PLAQUEMINES PARISH GOVERNMENT

Michael G. Gaffney and Christopher M. Gaffney of Gaffney & Gaffney, Metairie, LA, and Charles V. Cusimano, III of Cusimano Law Firm, PLC, Metairie, LA, counsel for Applicant.

Emanuel Rier Soto, Office of Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, Guaynabo, PR; and Andrew Bevacqua and 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 **VERGILIO**, **GOODMAN**, and **SULLIVAN**.

VERGILIO, Board Judge, writing for the Panel.

The applicant, Plaquemines Parish Government (Plaquemines), sought public assistance for its use of its employees—force account labor (FAL)—during a declared disaster. The Federal Emergency Management Agency (FEMA) determined that the applicant could receive funds for some, but not all, of the FAL costs incurred. The panel concludes that the record fails to establish eligibility for the additional funds that the applicant seeks.

Background

Request for Public Assistance

The President declared a disaster arising from Hurricane Ida, with an incident period of August 26 through September 3, 2021. The declaration enables eligible applicants to

receive public assistance in accordance with the applicable version of the Public Assistance Program and Policy Guide (PAPPG) (June 2020) and other laws and regulations.

Plaquemines sought \$1,772,192.62 in public assistance funds to cover costs incurred both to prepare for the effects of the hurricane and to deal with its arrival and aftermath. Only FAL costs are at issue here. Plaquemines utilized its own employees for these efforts. Plaquemines categorizes its employees into four groups: firefighters, ferries, ambulance, and other departments.

In its initial determination based upon the then-existing record, FEMA determined that Plaquemines had established eligibility for some of its FAL costs—\$574,252.50 eligible, \$1,197,940.10 not eligible, with two cents not addressed, but not here relevant. FEMA concluded that Plaquemines had established that it paid FAL overtime costs in the amount of \$574,252.50, pursuant to non-discretionary, uniformly applied pay rates for eligible emergency protective measures (emergency operations center operations, emergency pumping, sandbag operations, and work to clear emergency access routes). The denial portion of FEMA’s determination was based upon two findings: (1) due to inadequate documentation, the record failed to establish eligibility for portions of the work; and (2) FAL overtime under the applicant’s special overtime provisions in its pay policy (hazard duty pay) was not eligible because the costs were not incurred pursuant to non-discretionary, uniformly applied rates.

First Appeal

Plaquemines submitted a first appeal. Plaquemines stated that it had “abandoned its efforts to secure reimbursement for its Premium Pay policy rates and threshold triggers.” FEMA Exhibit 9 at 8. In its appeal, Plaquemines only sought reimbursement for \$335,524.32 in FAL overtime costs that it said were unbudgeted and for eligible work.

In resolving the first appeal, with an expanded record, FEMA determined that the applicant was eligible to receive an additional \$27,239.64 for FAL costs incurred for emergency work. FEMA determined that the remaining amount, \$308,284.68, was ineligible for public assistance because the documentation that Plaquemines submitted failed to demonstrate that activities were associated with eligible emergency work. FEMA also noted that Plaquemines failed to separate the claimed emergency protective measures (EPMs) from the normal job functions the employees usually performed. Without that information, FEMA could not verify eligibility—that is, the hours associated with EPMs that addressed an immediate threat resulting from the declared disaster.

Request for Arbitration

The applicant filed a request for arbitration (RFA), seeking a determination by the Board regarding the amount of public assistance it should receive. In its initial submission, Plaquemines sought additional public assistance in the amount of \$308,284.68, plus \$862,467.42 for additional hazard duty pay. When questioned by the panel regarding the hazard pay request—which was outside of the scope of the first appeal and FEMA’s first appeal determination—Plaquemines revised its RFA and removed hazard duty pay from its RFA.

In its reply to FEMA’s response, however, Plaquemines again contended that it should receive public assistance for hazard duty pay. Further, without mentioning that it had removed its request for hazard pay from its arbitration request, it stated that the math is best left to the parties to calculate. FEMA objected to this reassertion of the request, arguing that (1) FEMA initially had declined to provide public assistance for the hazard duty pay at issue; (2) the applicant did not appeal that determination; and (3) the determination became final when not appealed.

For this record, Plaquemines submitted additional documentation addressing the FAL here at issue (in excess of 100 employees), including the dates of work and general descriptions of the work performed. Plaquemines also submitted affidavits of various Plaquemines personnel who oversaw the operations and departments at issue and the affidavit of a consultant to Plaquemines. The personnel attested to their beliefs that the employees performed emergency work eligible for public assistance. Further, Plaquemines contends that it had followed past practices and guidance offered by a FEMA employee. Plaquemines did not provide sufficient further information to address FEMA’s conclusion that employees were performing work within the scope of their normal job functions (albeit during the disaster period or its aftermath). Similarly, Plaquemines did not address FEMA’s concerns that eligible FAL work and hours had not been segregated from ineligible activities to permit a calculation of eligible public assistance.

FEMA does not dispute that the applicant qualifies as a “rural area” with the lower dollar threshold for seeking arbitration. The grantee, the Louisiana Governor’s Office of Homeland Security and Emergency Preparedness, did not participate in the arbitration.

Discussion

The applicant’s request for hazard pay is not properly before the panel. Under FEMA regulations, a determination by FEMA becomes final, absent a timely appeal or request for arbitration. 44 CFR 206.206 (2021). “Final decisions are not subject to further

administrative review.” *Id.* 206.206(c). In its first appeal, Plaquemines did not challenge FEMA’s determination disallowing hazard pay. FEMA’s decision not to provide public assistance at the hazard pay rates is final and not subject to review by the panel. Further, the applicant withdrew the request for reimbursement of hazard pay from its RFA and only asserted this request for payment in its reply to FEMA’s response. In its reply, the applicant did not address the finality of FEMA’s initial, and unappealed, denial or the applicant’s removal of the request for reimbursement of hazard pay from its RFA. The applicant’s simple reassertion of a withdrawn request is not well taken.

FEMA may provide public “assistance essential to meeting immediate threats to life and property resulting from a major disaster.” 42 U.S.C. § 5170b(a) (2024). Assistance can be provided for costs incurred relating to emergency work and EPMs deemed to reduce “immediate threats to life, property, and public health and safety.” *Id.* § 5170b(a)(3)(I). FEMA defines an EPM as “[a]n action taken by a community before, during, and after an incident to save lives, protect public health and safety, and prevent damage to improved public and private property.” PAPPG at 214. A specified work eligibility requirement is that the work must be required as a result of the declared disaster. *Id.* at 51.

In fashioning its case, the applicant asserts that FEMA failed both to review documentation and to conduct proper sampling. The applicant has failed to establish how the documentation it provided demonstrates that the costs it seeks are eligible. FEMA sought, through requests for information (RFIs), documentation from the applicant, which FEMA states that it considered. In this arbitration proceeding, FEMA contends that it has considered both the earlier record and the expanded record. A conclusion by FEMA not to provide public assistance does not mean that it failed to consider the record. FEMA has provided some specifics on shortcomings in the record. Moreover, the applicant has not adequately established improprieties by FEMA in its consideration and sampling of the data.

An applicant does not receive public assistance through the arbitration process simply because FEMA failed to consider documentation. Rather, the applicant has the burden to establish that it should receive public assistance based upon the record. Plaquemines’s various references to the voluminous documentation presented is not helpful—the volume of materials is not a factor to be considered in determining if a burden of proof is satisfied. One would expect many documents to be submitted in support of a request for public assistance for FAL when a large labor pool and associated costs need to be considered, in particular, the “who, what, when, where, why, and how much” underlying public assistance analysis. *See* PAPPG at 63. While the documentation all may be necessary, what the applicant must do is marshal the record to support its case. Here, that means demonstrating that the hours and work underlying the request were incurred as a direct result of the disaster.

The affidavits by department heads and individuals overseeing groups of employees attest to actions before, during, and in response to the hurricane. But the affidavits do not provide sufficient specifics for each employee involved or a representative sample (at least as a starting point) to help the panel determine what actions qualify for public assistance. Not every action undertaken while preparing for or responding to a declared disaster need be work required as a result of the disaster. The applicant could have elicited responses from FEMA regarding bases for its denials on particular individuals. Similarly, the statements of the consultant offer little assistance to the panel. The attestations may be helpful, to some degree, to demonstrate that the applicant believes in its position of eligibility and recovery, but these individuals are not the determiners of eligibility for public assistance. It is expected that the applicant believes its claim for public assistance and would not be seeking relief otherwise. General, broad-brush assertions by the parties are not helpful.

The applicant seeks overtime pay for FAL for all such hours of the individuals in question. What is lacking in the arguments of the applicant is a demonstration that the work involved was required as a result of the disaster. That is, work may occur during a disaster period that is not required as a result of the disaster. FEMA provided some examples, such as medical teams, firefighters, and ferry personnel tending to people and equipment, who appear to be performing their routine duties. The panel does not presume that work is required as a result of the disaster simply because the work occurs during the time frame of anticipation and response.

Plaquemines did not elicit sufficient specific information on any or each of the FAL employees whose work was deemed ineligible for public assistance to address FEMA's concerns. For example, employees in the fire, ambulance, and ferry departments performed various tasks in the time frame surrounding the disaster that are seemingly routine activities (dealing with fires, patients or those in need of medical treatment or care, docking/undocking, and caring for ferries and docks). The panel does not presume that work is the result of the declared disaster. Additionally, documentation shows that at least one FAL employee worked six straight days of twenty-four hours, all claimed as reimbursable. This example brings into question the reliability of the submissions. Plaquemines has not provided adequate specific information, supported by record references, to rebut FEMA's assertions that it properly considered the information for each of the individuals and concluded that public assistance was not warranted. Plaquemines has not met its burden.

Decision

We conclude that the applicant is ineligible for the requested public assistance.

Joseph A. Vergilio
JOSEPH A. VERGILIO
Board Judge

Allan H. Goodman
ALLAN H. GOODMAN
Board Judge

Marian E. Sullivan
MARIAN E. SULLIVAN
Board Judge