DEEPWATER HORIZON
CLAIMS CENTER
ECONOMIC & PROPERTY DAMAGE CLAIMS

# Appeal Panel Decision Form

## I. Claimant and Claim Information

| | Last/Name of Business | First | Middle |
|---|---|---|---|
| **Claimant Name** | [redacted] | | |
| **Claimant ID** | [redacted] | **Claim ID** | [redacted] |
| **Claim Type** | Business Economic Loss | | |
| **Law Firm** | [redacted] | | |

## II. Decision

☐ **Denial Upheld**

☐ **Denial Overturned**

☒ **Remand to Claims Administrator**

## III. Primary Basis for Panelist Decision

Please select the primary basis for your decision. You may also write a comment describing the basis for your decision.

☐ **Claim should have been excluded.**

☐ **Claim should have been denied.**

☐ **Claim should not have been excluded.**

☒ **Claim should not have been denied.**

☐ **No error.**

**Comment** *(optional)*:

**[redacted] - Claim ID [redacted]**

The Claims Administrator denied the BEL claim of this non-profit healthcare provider in [redacted] (Zone B). Claimant appeals, contending that the Administrator erroneously excluded income from grants in the revenue calculation which resulted in the Claimant being unable to establish causation .

Claimant is a non-profit corporation that provides healthcare services in [redacted]. As a non-profit, Claimant depends on grants as its primary source of revenue. The Calculation Notes reflect that the program accountant excluded revenue from four grants received by the Claimant. These grants were for the purchase of a mobile dental unit and for building expansion projects. The accountant determined that these funds represented capital expenditures and therefore excluded them from revenue. In arguing that the grant income should not have been excluded, Claimant points to Policy 307 v.2. That policy provides that for non-profit entities, income from grants "shall typically be treated as revenue" for the purpose of calculating a BEL claim. Claimant also cites prior appeal panel decisions in which the inclusion of grant monies as revenue has been frequently upheld.

BP offers the argument that Policy 328 v.2 is the applicable policy and that it excludes capital assessments from revenue. Because the grants at issue were intended to be used in connection with capital purchases, BP asserts that this grant income should not be treated as revenue because it was not earned in the normal course of Claimant's operations. BP also makes the argument that Claimant's normal business activity is the provision of healthcare services, not engaging in capital improvement projects.

In promulgating Policy 307 v.2, the Claims Administrator provided a needed clarification of the Settlement Agreement with regard to non-profit entities whose income is often derived from non-traditional sources such as grants. But the Administrator is not the only authority on the subject.

As early as December 12, 2012, the District Court likewise held that grant monies received by non-profit entities should, in fact, be included in the calculations required under the Settlement Agreement.

If there was any reasonable doubt, it was laid to rest by the Fifth Circuit which specifically upheld the December 12, 2012 ruling, confirming that grant income of non-profits must be treated as revenue. The Fifth Circuit made it abundantly clear that non-profit entities do not earn grant funds. Further, Policy 307 v.2 makes no distinction regarding the purpose for which grant funds are utilized. As endorsed by the courts, such income must typically be treated as revenue. There is therefore no authority supporting BP's argument that grant funds utilized for capital purposes must be excluded from revenue.

In concluding that the grants should have been excluded, the program accountant deviated from clear judicial pronouncements to the contrary. Accordingly, this claim is remanded to the Claims Administrator with instructions to calculate the claim with the grant monies included in the revenue calculation and issue an appropriate notice.