



# **FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) FEDERAL INSURANCE MITIGATION ADMINISTRATION (FIMA) APPEAL DECISION**

*FEMA Flood Insurance Appeal Decision #A7*

## **OVERVIEW**

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The policyholder filed an appeal in September 2020, alleging her flood insurance carrier (hereinafter “insurer”) improperly denied her claim under the Standard Flood Insurance Policy (SFIP)<sup>1</sup> for damages to covered property arising from a claimed loss event in July 2020.<sup>2</sup>

In its review, FEMA found the following facts relevant:

- At the time of loss, the policyholder had \$250,000 of building coverage and \$100,000 of personal property coverage.
- The policyholder filed a claim with the insurer and the insurer assigned an adjuster to inspect the property.
- In July 2020, the adjuster inspected the property and found no waterlines to the interior or exterior of the building. The policyholder provided the adjuster photographs of street and sidewalk flooding in the front of the insured building. The adjuster noted the building is five feet above street level.
- The adjuster determined the source of the water damage was from seepage when rain ponded against a small area of the slab. The adjuster did not speak to the owners of neighboring properties, but he submitted photographs showing no debris and damage to neighboring properties.
- The adjuster could not confirm a general and temporary condition of flooding existed on the claimed date of loss.
- In a letter dated July 2020, the insurer denied coverage for no general and temporary condition of flood.
- The policyholder appeals the insurer’s denial of coverage. The policyholder contends her street flooded and her neighbor’s property flooded. The policyholder contends the adjuster did not properly canvas the neighborhood, as her neighbor’s insurer covered their flood related damages. In support of her appeal, the policyholder submits an emailed statement from a neighbor, a repair estimate, and photographs. Because this information does not respond to the insurer’s reason for denial, FEMA’s decision is based on the documentation in the claim file.

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<sup>1</sup> See 44 C.F.R. § 61.13 (2019); Dwelling Form available at 44 C.F.R. pt. 61 App. A(1) [hereinafter “SFIP”].

<sup>2</sup> The policyholder files this appeal under 44 C.F.R. § 62.20. The appeals process is available after the insurer issues a written denial, in whole or in part, of the policyholder’s claim. The policyholder’s appeal and related documents concerning the appeal, claim, or policy are on file with FEMA, Federal Insurance and Mitigation Administration, Federal Insurance Directorate, Policyholder Services Division, Appeals Branch [hereinafter “Appeal File”].

## RULES

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The insurer agrees to pay the policyholder for direct physical loss by or from flood to covered property, provided the policyholder complies with all terms and conditions of the SFIP.<sup>3</sup>

The SFIP defines flood as a general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of two or more properties, one of which is the policyholder's property, from overflow of inland or tidal waters, unusual and rapid accumulation or runoff of surface waters from any source, or mudflow.<sup>4</sup>

The insurer does not cover direct physical loss caused directly or indirectly by water, moisture, mildew or mold damage that results primarily from any condition substantially confined to the building within the policyholder's control to include but not limited to design, structural, mechanical defects, or water or water-borne material that seeps or leaks on or through the covered property.<sup>5</sup>

## ANALYSIS

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The policyholder appeals the insurer's denial of coverage due to no general and temporary condition of flood.

The insurer agrees to pay the policyholder for direct physical loss by or from flood. The SFIP defines a flood as a general and temporary condition of partial or complete inundation of two or more acres of normally dry land or of two or more properties, one of which is the policyholder's property. The National Flood Insurance Program (NFIP) Claims Manual further explains the SFIP definition of flood and determines two or more properties or parcels of land must touch.<sup>6</sup> Here, the adjuster could not confirm a general and temporary condition of flood existed on the claimed date of loss. The adjuster noted there was flooding in the street in front of the policyholder's building; however, the policyholder's building sits five feet above street level. The policyholder contends the claimed flood event also caused damage to her neighbor's property. However, the adjuster documented no debris or damage to neighboring properties. The adjuster's research also determined the neighbor's property that sustained flood related damage on the claimed date of loss is located five houses down from the policyholder's property. FEMA's review notes this indicates the policyholder and the neighbor's property are not adjoining. Accordingly, FEMA's review finds the insurer properly determined no general and temporary condition of flood existed on the claimed date of loss.

The SFIP does not pay for damage caused directly or indirectly by water that results primarily from any condition substantially confined to the building that is within the policyholder's control, to include but not limited to water or water-borne material that seeps or leaks on or through the covered property. Here, the adjuster determined the building experienced non-flood seepage due to drainage and maintenance issues

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<sup>3</sup> See SFIP (I), (II)(B)(12).

<sup>4</sup> See SFIP (II)(A)(1).

<sup>5</sup> See SFIP (V)(D)(5).

<sup>6</sup> See NFIP Claims Manual - Definitions (May 1, 2020).

in the back yard. The policyholder provides no evidence showing the seepage was caused directly by or from flood as defined by the SFIP. Accordingly, FEMA's review finds the insurer properly denied coverage, as the damage sustained to the policyholder's building is not covered under the SFIP.

For these reasons, FEMA's review finds the insurer properly denied coverage.

## **CONCLUSION**

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Based on the facts and analysis above, FEMA agrees with the insurer's decision to deny coverage due to no general and temporary condition of flood.

If the policyholder still disagrees with the cause of loss and believes it was caused by a flood as defined by the SFIP, she should submit supporting documentation directly to the insurer for review.