



# **FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)**

## **RESILIENCE**

### **APPEAL DECISION**

*FEMA Flood Insurance Appeal Decision #D17*

## **SUMMARY**

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The policyholder appeals the flood insurance carrier's (hereinafter "insurer") denial of a claim under the Standard Flood Insurance Policy (SFIP)<sup>1</sup> for damages to their property arising in April 2023.

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.<sup>2</sup>

After reviewing the issues, evidence, and relevant authorities, FEMA affirms the insurer's decision.

## **BACKGROUND**

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### **COVERAGE**

The policyholder insures property under the SFIP Dwelling Form. At the time of loss, the policyholder had \$100,000 of building coverage and \$40,000 of personal property coverage.

### **EVENT AND CLAIM FACTS**

A severe storm produced torrential rain and localized flooding in Minnesota.

Following the flood event, the policyholder filed a claim for damages with the insurer and the insurer assigned an adjuster to inspect the property. The insured property is a single-family, one-story dwelling with an unfinished basement.

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<sup>1</sup> See 44 C.F.R. § 61.13 (2022); Dwelling Form available at 44 C.F.R. pt. 61 App. A(1) [hereinafter "SFIP"].

<sup>2</sup> The policyholder's appeal and related documents concerning the appeal, claim, or policy are on file with FEMA, Resilience, Federal Insurance Directorate, Policyholder Services Division, Appeals Branch [hereinafter "Appeal File"].

In May 2023, an adjuster inspected the property and confirmed a general and temporary condition of flood existed. The adjuster reported no waterlines on the exterior of the building and a two-inch waterline on the interior of the basement. The adjuster reported a river flooded near the insured property and caused water to enter the dwelling through the foundation slab and basement walls. The adjuster prepared an estimate with allowances for water extraction, flood loss cleanup, building dry-out, and cleaning and anti-microbial treatment of the foundation walls. The adjuster observed the foundation walls crumbled and requested the insurer retain a state-licensed engineer to investigate the property and determine the cause and extent of any structural damage.

In May 2023, an engineer inspected the insured property and reported the cracked and spalled surface of the basement foundation walls were caused by long-term seepage of groundwater. The engineer determined deteriorated caulking caused the gaps around the master bedroom window. The engineer concluded cracked interior finishes and the out of plumb foundation walls were caused by differential (earth) movement of the surrounding soils that pre-dated the flood event.<sup>3</sup>

In a letter dated June 2023, the insurer denied coverage for claimed damage to the foundation, basement walls, bedroom window, and cracked interior finishes citing no evidence of direct physical loss by or from flood.

The insurer issued the policyholder payment totaling \$3,199.98 for covered building damage.

The policyholder appeals the denial. In support of their appeal, the policyholder provides their Declarations Page, a signed proof of loss, the adjuster's estimate, and insurer's engineering report, and photographs.

## ISSUE

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The policyholder appeals the denial of coverage for the foundation, basement walls, window, and interior finishes.

## RULES

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For building items under Coverage A – Building Property, the SFIP insures against direct physical loss by or from flood.<sup>4</sup>

In case of loss or request for payment, the SFIP requires the policyholder to provide a signed and sworn-to proof of loss with the documentation that supports the loss and dollar amount requested.<sup>5</sup>

## ANALYSIS

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<sup>3</sup> See Appeal File, Engineer's Report.

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

<sup>5</sup> See SFIP (VII)(G)(3)-(5).

The policyholder appeals the insurer's denial of coverage for the foundation, basement walls, window, and interior finishes.

The SFIP insures against direct physical loss by or from flood. During the inspection, the adjuster reported floodwater did not enter the interior living space of the dwelling. The engineer determined the structure and foundation system were not damaged due to the subject flood event. The engineer reported the gaps around the frame of the master bedroom window were consistent with deterioration of the caulking. The foundation wall along the front side of the basement bowed inward and the left front corner was tilted inward slightly. The engineer concluded the cracked and spalled material throughout the basement concrete walls resulted from long term groundwater seepage that occurred prior to the subject flood event. Additionally, cracking of the interior finishes and the out of plumb foundation walls were consistent with long-term, ongoing differential (earth) movement of the surrounding soils over the life of the building and was not caused by a one-time flood event. Whether long term or short term, the SFIP does not insure this type of damage when the building or its foundation moves because of differential (earth) or soil movement, even if flood directly caused the earth to move.<sup>6</sup> For these reasons, FEMA's review finds the structural and foundation damage was not a direct physical loss by or from flood and excluded from coverage under the SFIP.

In case of loss or request for payment, the SFIP requires the policyholder to provide a signed and sworn-to proof of loss with the documentation that supports the loss and dollar amount requested. In support of their appeal, the policyholder provided photographs. FEMA's review of the policyholder's photographs finds the photographs show spalling and cracking of the basement walls that is indicative of advanced pre-existing damage and progressive deterioration that occurred prior to the flood event. Without physical evidence or a report from a comparable qualified professional that directly contradicts the findings of the engineer and provides proof that flood directly damaged the foundation, basement walls, window and interior finishes, there is no basis for FEMA to overturn the denial or to instruct the insurer to re-evaluate the claim.

## CONCLUSION

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Based on the facts and analysis above, FEMA concurs with the insurer's decision to deny coverage for the foundation, basement walls, windows, and the interior finishes due to no evidence of no direct physical loss by or from flood.

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<sup>6</sup> See SFIP (V)(C).