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This opinion shall not "constitute precedent or be binding upon any court."  
Although it is posted on the internet, this opinion is binding only on the  
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-3459-15T3

DAVID KOPECKY,

Petitioner-Appellant,

v.

DEPARTMENT OF COMMUNITY AFFAIRS,  
SANDY RECOVERY DIVISION,

Respondent-Respondent.

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Submitted September 12, 2017 — Decided September 21, 2017

Before Judges Leone and Mawla.

On appeal from the Department of Community  
Affairs, Docket No. LMI 0001468.

David Kopecky, appellant pro se.

Christopher S. Porrino, Attorney General,  
attorney for respondent (Melissa Dutton  
Schaffer, Assistant Attorney General, of  
counsel; Brian M. Kerr, Deputy Attorney  
General, on the brief).

PER CURIAM

Petitioner David Kopecky appeals from a January 19, 2016  
final decision by respondent, New Jersey Department of Community

Affairs (DCA), following a hearing denying him a grant under the Low-to-Moderate Income Program (LMIP) to repair his New Brunswick home. LMIP offers grants to eligible homeowners under the Sandy Recovery Program and is administered by the DCA. Petitioner's grant application was denied because he did not submit repair estimates from an LMIP approved source and could not link the damage to his home or its subsequent condemnation to Superstorm Sandy. Finding no error in the administrative law judge's (ALJ) findings, we affirm.

The following facts are taken from the record. In 2011, Hurricane Irene damaged the back wall of petitioner's home, causing it to rot and eventually develop a hole. Petitioner received \$10,832.46 in Federal Emergency Management Agency (FEMA) assistance to repair the damage caused by Irene. Petitioner did not remediate the damage and it existed in October 2012, when Superstorm Sandy struck New Jersey. Petitioner did not receive FEMA assistance and applied to the LMIP, but the DCA denied a grant because he did not have a verified loss of \$8000 or flooding greater than one foot on the first floor of his home caused by Sandy.

As a part of his LMIP application, petitioner presented an estimate dated more than one year before Superstorm Sandy. He presented a second estimate for repair dated after the storm

indicating the damage was "due to storm," but not indicating which storm. A third estimate provided by petitioner was for "repair [of the] rear exterior wall" – the same damage caused by Hurricane Irene. All estimates provided by petitioner were from private contractors.

The ALJ issued a written decision, adopted by the DCA, finding the contractor estimates failed to link the damage to Superstorm Sandy. The ALJ also found the contractor estimates were not "[t]he accepted and adequate examples of third-party verifications" under the LMIP.

On appeal, petitioner asserts he provided adequate proof the damage resulted from Superstorm Sandy. He argues even if his estimates were inadequate, the condemnation of his home was proof of damage totaling at least \$8000.

Our scope of review of an administrative agency's final decision is limited. In re Hermann, 192 N.J. 19, 27 (2007). The "final determination of an administrative agency . . . is entitled to substantial deference." In re Eastwick Coll. LPN-to RN Bridge Program, 225 N.J. 533, 541 (2016).

An appellate court will not reverse an agency's final decision unless the decision is "arbitrary, capricious, or unreasonable," the determination "violate[s] express or implied legislative policies," the agency's action offends the United States Constitution or the State Constitution, or "the findings

on which [the decision] was based were not supported by substantial, credible evidence in the record."

[Ibid. (quoting Univ. Cottage Club of Princeton N.J. Corp. v. N.J. Dep't of Env'tl. Prot., 191 N.J. 38, 48 (2007)).]

As noted by the ALJ, the LMIP provides as follows:

#### Level of Damage

The residence must have sustained damage as a result of Superstorm Sandy with a Full Verified Loss (FVL) of at least \$8,000 or at least one (1) foot of water on the first floor, as determined by FEMA, its sub-agencies, or affiliates. If FEMA records do not confirm the minimum level of damage, inspection data from the Small Business Administration (SBA) will be reviewed to determine if those records indicate an eligible level of damage. If data from these sources do not confirm the minimum level of damage, the applicant will be determined ineligible. The applicant will be notified in writing and offered an opportunity to submit acceptable third party documentation as noted below to verify the damage level. This review will follow the process in accordance with the appeals policy. The third party information that may be submitted as acceptable damage eligibility documentation include[s] the following:

- National Flood Insurance Program (NFIP);
- Insurance Adjuster Estimate (IAE);
- Insurance documents demonstrating \$8,000 or greater in damage to the dwelling; and
- Damage Letter from local township demonstrating \$8,000 or greater in damage

or excess of one (1) foot of flooding to the dwelling.

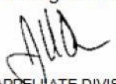
[N.J. Dep't of Cmty. Affairs, Low-to-Moderate (LMI) Program Policies and Procedures 1.3 (2017), <http://www.renewjerseystronger.org/wp-content/uploads/2017/04/2.10.79-LMI-Program-Policies-and-Procedures-Final-Signed.pdf>.]

Petitioner does not assert he had a foot of water on the first floor of his home. He does not challenge the LMIP's mandatory categories of third-party verification, but instead asserts the contractor estimates he provided were adequate. However, none of the three estimates he obtained quantified damages by documentation from the sources required by the LMIP. Also, none of the estimates tied the damage to petitioner's home to Superstorm Sandy. And no such tie was established between the subsequent condemnation of petitioner's home and Sandy. This was necessary considering he had not made the repairs resulting from the damage caused by Hurricane Irene.

The ALJ's determination, adopted by the DCA, was based on substantial and credible evidence in the record. It neither violated any constitutional or legislative policies nor was it arbitrary, capricious or unreasonable.

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.



CLERK OF THE APPELLATE DIVISION