

Chapter 19

COMPLAINTS AND APPEALS

INTRODUCTION

The informal hearing requirements defined in HUD regulation are applicable to participating families who disagree with an action, decision, or inaction of the PHA. This Chapter describes the policies, procedures and standards to be used when families disagree with a PHA decision. The procedures and requirements are explained for preference denial meetings, informal reviews and hearings. It is the policy of the PHA to ensure that all families have the benefit of all protections due to them under the law.

A. COMPLAINTS TO THE PHA

The PHA will respond promptly to complaints from families, owners, employees, and members of the public. All complaints will be documented. The PHA may require that complaints other than HQS violations be put in writing. HQS complaints may be reported by telephone.

The PHA hearing procedures will be provided to families in the briefing packet.

B. PREFERENCE DENIALS [24 CFR 5.415]

If the PHA denies a preference to an applicant, and the applicant disagrees with the decision, the applicant is entitled to a meeting. This is different from an Informal Review or Hearing. The person who made the decision to deny the preference, or any other PHA representative, may conduct the meeting. The meeting is limited only to the circumstances pertaining to the preference denial.

When the PHA denies a preference to an applicant, the family will be notified in writing of the specific reason for the denial and offered the opportunity for a meeting with PHA staff to discuss the reasons for the denial and to dispute the PHA's decision.

The person who conducts the meeting will be:

Any officer or employee of the PHA including the person who made the decision.

C. INFORMAL REVIEW PROCEDURES FOR APPLICANTS [24 CFR 982.54(d)(12), 982.554]

Reviews are provided for applicants who are denied assistance before the effective date of the HAP Contract. The exception is that when an applicant is denied assistance for citizenship or eligible immigrant status, the applicant is entitled to an informal hearing.

When the PHA determines that an applicant is ineligible for the program, the family must be notified of their ineligibility in writing. The notice must contain:

The reason(s) they are ineligible,

The procedure for requesting a review if the applicant does not agree with the decision and

The time limit for requesting a review.

When denying admission for criminal activity as shown by a criminal record, the PHA will provide the subject of the record and the applicant with a copy of the criminal record upon which the decision to deny was based.

The PHA must provide applicants with the opportunity for an Informal Review of decisions denying:

Listing on the PHA's waiting list

Issuance of a Voucher

Participation in the program

Informal Reviews are not required for established policies and procedures and PHA determinations such as:

Discretionary administrative determinations by the PHA

General policy issues or class grievances

A determination of the family unit size under the PHA subsidy standards

Refusal to extend or suspend a Voucher

A PHA determination not to grant approval of the tenancy

Determination that unit is not in compliance with HQS

Determination that unit is not in accordance with HQS due to family size or composition

Procedure for Review

A request for an Informal Review must be received in accordance with the term of the notification. The informal review will then be scheduled.

The Informal Review may not be conducted by the person who made or approved the decision under review, nor a subordinate of such person.

The Review may be conducted by:

A staff person designated by the PHA who was not involved in the initial determination.

The applicant will be given the option of presenting oral or written objections to the decision. Both the PHA and the family may present evidence and witnesses. The family may use an attorney or other representative to assist them at their own expense.

A Notice of the Review findings will be provided in writing to the applicant within 14 calendar days after the review. It shall include the decision of the review officer, and an explanation of the reasons for the decision.

All requests for a review, supporting documentation, and a copy of the final decision will be retained in the family's file.

D. INFORMAL HEARING PROCEDURES [24 CFR 982.555(a-f), 982.54(d)(13)]

When the PHA makes a decision regarding the eligibility and/or the amount of assistance, applicants and participants must be notified in writing. The PHA will give the family prompt notice of such determinations which will include:

The proposed action or decision of the PHA;

The date the proposed action or decision will take place;

The family's right to an explanation of the basis for the PHA's decision.

The procedures for requesting a hearing if the family disputes the action or decision;

The time limit for requesting the hearing.

A copy of the PHA's Hearing Procedures

When terminating assistance for criminal activity as shown by a criminal record, the PHA will provide the subject of the record and tenant/participant with a copy of the criminal record upon which the decision to terminate was based.

The PHA must provide participants with the opportunity for an Informal Hearing for decisions related to any of the following PHA determinations:

Determination of the family's annual or adjusted income and the computation of the housing assistance payment

Appropriate utility allowance used from schedule

Family unit size determination under PHA subsidy standards

Determination that premerger Certificate program family is under occupied in their current unit and a request for exception is denied

Determination to terminate assistance for any reason.

Determination to pay an owner claim for damages, unpaid rent or vacancy loss.

The PHA must always provide the opportunity for an informal hearing before termination of assistance.

Informal Hearings are not required for established policies and procedures and PHA determinations such as:

Discretionary administrative determinations by the PHA

General policy issues or class grievances

Establishment of the PHA schedule of utility allowances for families in the program

A PHA determination not to approve an extension or suspension of a voucher term

A PHA determination not to approve a unit or lease

A PHA determination that an assisted unit is not in compliance with HQS (PHA must provide hearing for family breach of HQS because that is a family obligation determination)

A PHA determination that the unit is not in accordance with HQS because of the family size

A PHA determination to exercise or not exercise any right or remedy against the owner under a HAP contract

Notification of Hearing

It is the PHA's objective to resolve disputes at the lowest level possible, and to make every effort to avoid the most severe remedies. However, if this is not possible, the PHA will ensure that applicants and participants will receive all of the protections and rights afforded by the law and the regulations.

When the PHA receives a request for an informal hearing, a hearing shall be scheduled. The notification of hearing will contain:

The date and time of the hearing

The location where the hearing will be held

The family's right to bring evidence, witnesses, legal or other representation at the family's expense

The right to view any documents or evidence in the possession of the PHA upon which the PHA based the proposed action and, at the family's expense, to obtain a copy of such

documents prior to the hearing. Requests for such documents or evidence must be received no later than five days before the hearing date.

A notice to the family that the PHA will request a copy of any documents or evidence the family will use at the hearing. Requests for such documents or evidence must be received no later than five days before the hearing date.

The PHA's Hearing Procedures

After a hearing date is agreed to, the family may request to reschedule only upon showing "good cause," which is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family.

If a family does not appear at a scheduled hearing and has not rescheduled the hearing in advance, the family must contact the PHA within 24 hours, excluding weekends and holidays. The PHA will reschedule the hearing only if the family can show good cause for the failure to appear.

Families have the right to:

Present written or oral objections to the PHA's determination.

Examine the documents in the file that are the basis for the PHA's action, and all documents submitted to the Hearing Officer;

Copy any relevant documents at their expense;

Present any information or witnesses pertinent to the issue of the hearing;

Request that PHA staff be available or present at the hearing to answer questions pertinent to the case; and

Be represented by legal counsel, advocate, or other designated representative at their own expense.

If the family requests copies of documents relevant to the hearing, the PHA will make the copies for the family and assess a charge of 25 cents per sheet for any copies in excess of 25. In no case will the family be allowed to remove the file from the PHA's office.

In addition to other rights contained in this Chapter, the PHA has a right to:

Present evidence and any information pertinent to the issue of the hearing;

Be notified if the family intends to be represented by legal counsel, advocate, or another party;

Examine and copy any documents to be used by the family prior to the hearing;

Have its attorney present; and

Have staff persons and other witnesses familiar with the case present.

The Informal Hearing shall be conducted by the Hearing Officer appointed by the PHA who is neither the person who made or approved the decision, nor a subordinate of that person.

The hearing shall concern only the issues for which the family has received the opportunity for hearing. Evidence presented at the hearing may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

No documents may be presented which have not been provided to the other party before the hearing if requested by the other party. "Documents" includes records and regulations.

The Hearing Officer may ask the family for additional information and/or might adjourn the Hearing in order to reconvene at a later date, before reaching a decision.

If the family misses an appointment or deadline ordered by the Hearing Officer, the action of the PHA shall take effect and another hearing will not be granted.

The Hearing Officer will determine whether the action, inaction or decision of the PHA is legal in accordance with HUD regulations and this Administrative Plan based upon the evidence and testimony provided at the hearing. Factual determinations relating to the individual circumstances of the family will be based on a preponderance of the evidence presented at the hearing.

A notice of the Hearing Findings shall be provided in writing to the PHA and the family within 14 calendar days and shall include:

A clear summary of the decision and reasons for the decision;

If the decision involves money owed, the amount owed

The date the decision goes into effect.

The PHA is not bound by hearing decisions:

Which concern matters in which the PHA is not required to provide an opportunity for a hearing

Which conflict with or contradict to HUD regulations or requirements;

Which conflict with or contradict Federal, State or local laws; or

Which exceed the authority of the person conducting the hearing.

The PHA shall send a letter to the participant if it determines the PHA is not bound by the Hearing Officer's determination within 14 calendar days. The letter shall include the PHA's reasons for the decision.

All requests for a hearing, supporting documentation, and a copy of the final decision will be retained in the family's file.

E. HEARING AND APPEAL PROVISIONS FOR "RESTRICTIONS ON ASSISTANCE TO NON-CITIZENS" [24 CFR Part 5, Subpart E]

Assistance to the family may not be delayed, denied or terminated on the basis of immigration status at any time prior to the receipt of the decision on the INS appeal.

Assistance to a family may not be terminated or denied while the PHA hearing is pending but assistance to an applicant may be delayed pending the PHA hearing.

INS Determination of Ineligibility

If a family member claims to be an eligible immigrant and the INS SAVE system and manual search do not verify the claim, the PHA notifies the applicant or participant within ten days of their right to appeal to the INS within thirty days or to request an informal hearing with the PHA either in lieu of or subsequent to the INS appeal.

If the family appeals to the INS, they must give the PHA a copy of the appeal and proof of mailing or the PHA may proceed to deny or terminate. The time period to request an appeal may be extended by the PHA for good cause.

The request for a PHA hearing must be made within fourteen days of receipt of the notice offering the hearing or, if an appeal was made to the INS, within fourteen days of receipt of that notice.

After receipt of a request for an informal hearing, the hearing is conducted as described in this chapter for both applicants and participants. If the hearing officer decides that the individual is not eligible, and there are no other eligible family members the PHA will:

Deny the applicant family

Defer termination if the family is a participant and qualifies for deferral

Terminate the participant if the family does not qualify for deferral

If there are eligible members in the family, the PHA will offer to prorate assistance or give the family the option to remove the ineligible members.

All other complaints related to eligible citizen/immigrant status:

If any family member fails to provide documentation or certification as required by the regulation, that member is treated as ineligible. If all family members fail to provide, the family will be denied or terminated for failure to provide.

Participants whose termination is carried out after temporary deferral may not request a hearing since they had an opportunity for a hearing prior to the termination.

Participants whose assistance is pro-rated (either based on their statement that some members are ineligible or due to failure to verify eligible immigration status for some members after exercising their appeal and hearing rights described above) are entitled to a hearing based on the right to a hearing regarding determinations of tenant rent and Total Tenant Payment.

Families denied or terminated for fraud in connection with the non-citizens rule are entitled to a review or hearing in the same way as terminations for any other type of fraud.

F. MITIGATING CIRCUMSTANCES FOR APPLICANTS/PARTICIPANTS WITH DISABILITIES [24 CFR 982.204, 982.552(c)]

When applicants are denied placement on the waiting list, or the PHA is terminating assistance, the family will be informed that presence of a disability may be considered as a mitigating circumstance during the informal review process.

Examples of mitigating circumstances are: a) A person with a cognitive disorder may not have understood the requirement to report increases in income, b) A person may not understand the need to make regular repayments on a promissory note, c) Minor criminal records for public drunkenness may be due to medication; prior incarcerations for being disorderly may be emotional disorder.

Reserved