

## CHAPTER 19

### **COMPLAINTS AND APPEALS**

#### **INTRODUCTION:**

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

#### A. **COMPLAINTS TO THE NBHA:**

The NBHA will respond promptly to complaints from families, owners, employees, and members of the public. All complaints will be documented. The NBHA requires that all complaints be put in writing. HQS complaints may be submitted in writing.

The NBHA hearing procedures will be distributed to families, in their briefing packets.

#### **Complaints from Families:**

If a family disagrees with an action or inaction of the NBHA, they may request an informal hearing in writing.

#### **Complaints from Owners:**

If an owner disagrees with an action or inaction of the NBHA or a family, complaints from owners will be referred to the Supervisor. Owners must put their complaints in writing to the Supervisor or the Executive Director.

#### **Complaints from Staff:**

If a staff person reports an owner or family either violating or not complying with program rules, the complaint will be referred to the Supervisor. The complaint must be in writing.

### **Complaints from the General Public:**

Complaints or referrals from persons in the community in regard to the NBHA, a family or an owner:

- Complaints from the general public will be referred to the Supervisor
- If a complaint is not resolved, it will be referred to the Executive Director.
- All complaints must be made in writing to the NBHA.

### **B. PREFERENCE DENIALS:**

When the NBHA 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 NBHA staff to discuss the reasons for the denial and to dispute the NBHA's decision. The family will have ten (10) business days to request the informal review in writing.

The person who conducts the meeting will be an employee of the NBHA who is at or above the level of Tenant Interviewer, but not the employee who made the decision. If employees of the NBHA were involved or aware of the situation then an independent party will conduct the Informal Hearing.

### **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 NBHA 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 NBHA 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 unless information was contained in the credit report which the applicant must obtain on his own.

The NBHA must provide applicants with the opportunity for an informal review of decisions denying:

- Qualification for preference
- Listing on the NBHA's waiting list
- Issuance of a voucher
- Participation in the program
- Assistance under portability procedures
- Non-citizen Eligibility

Informal reviews are not required for established policies and procedures and NBHA determinations such as:

- Discretionary administrative determinations by the NBHA
- General policy issues or class grievances
- A determination of the family unit size under the NBHA subsidy standards
- Refusal to extend or suspend a voucher
- A NBHA determination not to approve a request for tenancy
- Determination that unit is not in compliance with HQS
- Determination that unit is not in accordance with occupancy standards due to family size or composition

### **Procedures for Review:**

A request for an informal review must be received in writing by the close of the business day, no later than ten (10) business working days from the date of the NBHA's notification of denial. The informal review will be held within ten (10) business working days from the date the request is received.

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

The review may be conducted by telephone if acceptable to both parties.

A notice of the review findings will be provided in writing to the applicant within ten (10) business days after the review. It shall include the decision of the review, 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 NBHA makes a decision regarding the eligibility and/or the amount of assistance, applicants and participants must be notified in writing. The NBHA will give the family prompt notice of such determinations, which will include:

- The proposed action or decision of the NBHA;
- The family's right to an explanation of the basis for the NBHA's decision;
- The procedures for requesting a hearing if the family disputes the action or decision;
- The time limit for requesting the hearing;
- To whom the hearing request should be addressed;
- A copy of the NBHA's hearing procedures

The NBHA must provide participants with the opportunity for an informal hearing for decisions related to any of the following NBHA 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 NBHA subsidy standards
- Determination to terminate assistance for any reason
- Determinations to terminate a family's FSS contract, withhold supportive services, or propose forfeiture of the family's escrow account.

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

Informal hearings are not required for established policies and procedures and NBHA determinations such as:

- Discretionary administrative determinations by the NBHA
- General policy issues or class grievances
- Establishment of the NBHA schedule of utility allowances for families in the program
- A NBHA determination not to approve an extension or suspension of a voucher term
- A NBHA determination not to approve a unit or lease
- A NBHA determination that an assisted unit is not in compliance with HQS (NBHA must provide hearing for family breach of HQS because that is a family obligation determination)
- A NBHA determination that the unit is not in accordance with HQS because of the family size
- A NBHA determination to exercise, or not exercise any right or remedy against the owner under a HAP contract

**Failure to Request an Informal Hearing:**

If the complainant does not request an informal hearing within ten (10) business days of the date of written notice, he/she waives his/her right to a hearing, and the NBHA's proposed disposition of the grievance will become final.

This section in no way constitutes a waiver of the complainant's right to contest the Authority's disposition in an appropriate judicial proceeding.

**Notification of Hearing:**

It is the NBHA's objective to resolve disputes at the lowest possible level. The NBHA will ensure that applicants and participants will receive all of the protections and rights afforded by the law and the regulations.

When the NBHA receives a request for an informal hearing, a hearing shall be held within ten (10) business days. The notification of hearing will contain:

- The date and time of the hearing

- The location where the hearing will be held
- The right to view any document or evidence in the possession of the NBHA upon which the NBHA 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 (5) business days before the hearing date.

**The NBHA's Hearing Process:**

After a hearing date is scheduled, 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.

Families have the rights to:

- Present written or oral objections to the NBHA's determination;
- Examine the documents in the file which are the basis for the NBHA's action, and all documents submitted to the Hearing Officer;
- Copy any relevant documents at their expense as posted by the NBHA;
- Present any information or witnesses pertinent to the issue of the hearing;
- Request that NBHA 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.

In no case will the family be allowed to remove the file from the NBHA's office.

In addition to other rights contained in this Chapter, the NBHA 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 NBHA who is neither the person who made or approved the decision, nor a subordinate of that person. The NBHA appoints only qualified Hearing Officers.

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" include records and regulations. The Hearing Officer(s) 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 without good cause or deadline ordered by the Hearing Officer(s), the action of the NBHA shall take effect and another hearing will not be granted.

The Hearing Officer(s) will determine whether the action, inaction or decision of the NBHA 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 NBHA and the family within ten (10) business days and shall include:

- A clear summary of the decision and reasons for the decision;
- If the decision involves money owed, the amount owed and documentation of the calculation of monies owed;
- The date the decision goes into effect;
- If the NBHA is upheld by the hearing decision a notice of termination of subsidy will be sent effective 30-days from the date of the notice.

The NBHA is not bound by hearing decisions:

- Which concern matters in which the NBHA is not required to provide an opportunity for a hearing;
- Which conflict with or contradict 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 NBHA shall send a letter to the participant if it determines the NBHA is not bound by the Hearing Officer(s)'s determination within ten business days. The letter shall include the NBHA'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.

### **Expedited Hearing Procedures:**

The NBHA may expedite a hearing in its sole discretion. All of the rights and obligations of the family and the NBHA stated in this Chapter shall apply except as follows:

- Family will request a hearing within five ( 5) business days after receipt of notice of action or inaction of the NBHA;
- NBHA shall provide a hearing within five (5) business days after receipt of family's request for a hearing; and
- The Hearing Officer shall provide both the family and the NBHA a written decision within five (5) business days after the hearing.

### **Transcripts:**

Either party may arrange, in advance and at the expense of the party making the arrangement, for a transcript of the hearing. Any interested party may purchase a copy of such transcript.

### **Agreement:**

The parties may agree in writing to follow a different procedure in the resolution of a grievance.

### **E. HEARING AND APPEAL PROVISIONS FOR "RESTRICTIONS AND 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 appeals.

Assistance to a family may not be terminated or denied while the NBHA hearing is pending, but assistance to an applicant may be delayed pending the NBHA 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 NBHA notifies the applicant or participant within ten (10) business days of their right to appeal to the INS within thirty (30) days or to request an informal hearing with the NBHA either in lieu of, or subsequent to the INS appeal.

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

The request for a NBHA hearing must be made in writing within ten (10) business days of receipt of the notice offering the hearing or, if an appeal was made to the INS, within ten (10) working 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(s) decides that the individual is not eligible, and there are no other eligible family members the NBHA 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 NBHA 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 determination 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.