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CHAPTER 16 INFORMAL REVIEWS AND HEARINGS

16.1 CHAPTER OVERVIEW

Families seeking admission to or already participating in the housing choice voucher program have the right to receive an informal review or hearing in most circumstances in which a PHA makes a decision affecting their eligibility or amount of assistance. The purpose of an informal review or hearing is to resolve applicant or participant disputes with the PHA without legal action and to correct PHA errors that might have occurred in the decision-making process.

With the exception of decisions related to restrictions on non-citizens, an *informal review* is for program applicants and an *informal hearing* is for program participants. Decisions related to restrictions on assistance to non-citizens always require an *informal hearing* regardless of whether the family is an applicant or a participant.

16.2 NOTICE OF RIGHTS

Certain PHA actions or decisions require an offer of informal review or hearing. Following these actions or decisions, a PHA must give an applicant or participant prompt written notice of the family's right to ask for an informal review or an informal hearing to determine whether the PHA's decision is in accordance with the law, HUD regulations, and PHA policies. The notice must contain the following information:

- A brief statement of reasons for the decision;
- A statement that if the family does not agree with the decision, the family may request an informal review or informal hearing; and
- The deadline for the family to submit its request.

Upon receiving the family's request the PHA must proceed with the informal review or informal hearing in a reasonably expeditious manner.

The PHA has latitude in establishing reasonable timeframes for families to request a review or hearing.

16.3 CIRCUMSTANCES WHICH REQUIRE THE OFFER OF AN INFORMAL REVIEW OR HEARING

PHAs are not required to conduct an informal review or informal hearing to reconsider every PHA action or decision.

An informal review is not required for decisions concerning:

- Determination of unit size under the PHA's subsidy standards;

- Determination that a unit does not meet or comply with housing quality standards;
- Denial of a request to extend or suspend a voucher term;
- General policy issues or class grievances;
- Discretionary administrative determinations by the PHA; and
- A PHA refusal to grant approval of the tenancy.

In all other circumstances, a PHA must give a program applicant an opportunity for an *informal review* of a decision when the applicant requests it.

An informal hearing is not required for the following:

- Determination that a unit does not comply with housing quality standards;
- Refusal to extend or suspend a voucher term;
- Discretionary administrative determinations by the PHA;
- General policy issues or class grievances;
- How the PHA established its utility allowance schedule;
- PHA refusal to approve a unit or tenancy;
- Determination that a unit does not meet housing quality standards due to family size or change in composition; and
- A determination to exercise or not to exercise any rights or remedy against the owner.

PHA decisions regarding the following determinations require that a program participant be given an opportunity for an *informal hearing*:

- Determination of the family's annual or adjusted income;
- Calculation of total tenant payment;
- Determination of appropriate utility allowance from the PHA's utility allowance schedule;
- Termination of assistance;
- Determination of unit size for participants under the PHA's subsidy standards; and
- Denial of a hardship exemption to the minimum rent requirement;

Hearings to Consider a Determination of Ineligible Immigration Status

Whenever the PHA makes a determination of ineligible immigration status, the PHA must offer an applicant or participant family the opportunity to request an informal hearing. A family may request an informal hearing within 30 days of receipt of the ineligibility determination from the U.S. Immigration and Naturalization Service (INS), or the PHA's decision to delay, terminate, or deny assistance.

The PHA must keep all denial or termination of assistance documents related to immigration status for a minimum of five years. These include any applications for initial or continued assistance.

With good cause, PHAs may extend the period to request an informal hearing related to immigration status.

16.4 TIMING OF INFORMAL HEARINGS

In cases where the PHA decides to terminate or reduce a family's assistance, the PHA must send a notice which explains the reason for the decision and provides the family the opportunity to request an informal hearing prior to the PHA's terminating or reducing assistance.

A PHA may implement the following changes prior to an informal hearing:

- Changes in total tenant payment or family share;
- Denial of a new voucher for a family that wants to move; or
- Unit size determinations for a family that wants to move.

16.5 INFORMAL REVIEW OR HEARING PROCESS

A PHA's administrative plan must clearly state the procedures for conducting informal reviews for applicants and informal hearings for participants. In addition, the PHA's briefing packet, provided to all voucher holders, must include a description of the procedures for requesting informal reviews and informal hearings.

Informal Review Process

Any person or persons designated by the PHA may conduct an informal review, other than the person or a subordinate of that person who made or approved the decision under review.

The program applicant must be given an opportunity to present written or oral objections to the PHA decision.

The PHA must notify the applicant of its final decision after the informal review, including a brief written statement of the reasons for the final decision.

Informal Hearing Process

An informal hearing is conducted by a hearing officer or officers appointed as described in the PHA administrative plan. The hearing officer may be any person or persons designated by the PHA, with the exception of the person or a subordinate of the person who made or approved the decision under review. The person who conducts the hearing may regulate the conduct of the hearing according to the procedures described in the PHA administrative plan.

APPROACHES TO SELECTING AND APPOINTING HEARING OFFICERS

- Many PHAs appoint PHA staff members to serve as hearing officers. The staff members selected for the role vary significantly from one PHA to another. In some PHAs, the hearing officer is a staff member who has the same title but serves on a separate functional team as the person who made the decision under review.
- In other PHAs, the hearing officer may be a staff member in another department. A staff member in another department may have the ability to be more impartial in reviewing decisions made by PHA staff.
- Some PHAs appoint hearing officers from outside the PHA. Civic-minded individuals from the wider community may be willing to serve as hearing officers, especially if the term is limited. Often attorneys offer to serve although the role does not require any legal knowledge. When hearing officers from outside the PHA are used, it is important to ensure they know the rules and PHA policy related to decisions under dispute and are informed of the limits to decisions that can be made in an informal hearing.
- Some PHAs use panels of hearing officers for informal hearings. In some cases, the panel consists of a mix of housing choice voucher program participants, staff members and outside, impartial representatives. A PHA commissioner may serve as the chairperson of the informal hearing panel. Coordination of a panel may be more difficult. It generally works best if hearings are held according to a regular schedule—once a month or every other week. The advantage to a panel may be that it provides both impartiality and knowledge of program requirements.

Before the hearing the family must be given the opportunity to examine any PHA documents directly relevant to the hearing. The family must be allowed to copy any such documents at the family's expense. If the family requests a relevant document and the PHA does not make it available, the PHA may not rely on the document at the hearing.

Similarly, the PHA administrative plan may require that the PHA be given the opportunity to examine, at the PHA offices, any family documents that are directly relevant to the hearing. The PHA must be allowed to copy these relevant documents at its expense. If the family does not make such documents available after receiving the PHA's request, the family may not rely on the documents at the hearing.

Representation and Evidence

The family is entitled to representation by a lawyer or other spokesperson at its own expense. Both the PHA and the family must be given the opportunity to present evidence, and each may question any witnesses. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

The person who conducts the hearing must issue a written decision that briefly states the reasons for the decision. Factual determinations relating to the individual circumstances of the family shall be based on a “preponderance of the evidence” presented at the hearing. A copy of the hearing decision must be promptly furnished to the family.

The PHA is not always bound by a decision made at an informal hearing. The PHA is not bound when a decision is made:

- Concerning a matter for which the PHA is not required to provide an opportunity for an informal hearing;
- Concerning a matter that exceeds the authority of the person conducting the hearing under the PHA’s hearing procedures; or
- That is contrary to HUD regulations or requirements, or otherwise contrary to federal, state, or local law.

If the PHA determines that it is not bound by a hearing decision, it must notify the family and inform the family of the reasons the PHA has determined that the decision is not binding.

INFORMAL HEARING DECISIONS: UNDERSTANDING THE BOUNDARIES

Occasionally, hearing officers express opinions or make decisions that exceed the issue put before the hearing officer. On some occasions, hearing officers have made decisions that are contrary to program rules or even relevant law. The following examples are types of situations that may arise:

- A family may request an informal hearing when it believes its total tenant payment has been incorrectly calculated. In such an instance, the hearing officer may look to see if annual income has been determined according to program regulations and that calculations are correct based on information verified by income sources and program rules. The hearing officer may determine in favor of the family, if, for example, he or she finds that staff mistakenly calculated family income by multiplying an hourly wage by 40 hours for a family member who is working only 20 hours a week. The hearing officer could not, however, decide that it was inappropriate or unfair to include the amount of child support paid out to another household in annual income.
- In an informal hearing requested to review a notice of intent to terminate assistance due to family absence from the unit, the hearing officer may decide that the evidence, presenting that the family was not absent and in violation of the PHA’s stated policy, is convincing. However, the officer may not decide that the PHA’s policy is too restrictive and that the family should not be made to abide by it.