



INFORMAL HEARING PROCEDURES FOR PARTICIPANTS

As a participant you have the right to request an informal hearing in certain situations if you disagree with the decisions made by the Office of Housing and Community Development (OHCD). An Informal Hearing is a session where a Hearing Officer reviews the case and each party is given the opportunity to present evidence and question witnesses. There are also situations in which you cannot request an Informal Hearing. The following information is the general procedures and circumstances regarding Informal Hearings.

YOU MAY ASK FOR AN INFORMAL HEARING IN THE FOLLOWING SITUATIONS:

- 1) A determination of the family's annual or adjusted income, and the use of such income to compute the housing assistance payment.
- 2) A determination of the appropriate Utility Allowance (if any) for family-paid utilities from the Utility Allowance Schedule.
- 3) A determination of the family unit size under the Subsidy Standards.
- 4) A determination that a Certificate program family is residing in a unit with a larger number of bedrooms than appropriate for the family unit size under the Subsidy Standards, or the Administrative Agent determination to deny the family's request for an exception from the Subsidy Standards.
- 5) A determination to terminate assistance for a participant family because of the family's action or failure to act.
- 6) A determination to terminate assistance because the participant family has been absent from the assisted unit for longer than the maximum period permitted under OHCD policy and HUD regulations.

In cases described in paragraphs 4, 5 and 6 above, OHCD must give the opportunity for an Informal Hearing before OHCD terminates housing assistance for the family under an outstanding Housing Assistance Payments Contract.

NOTICE TO FAMILY:

In the cases described in paragraphs 1, 2 and 3 above, OHCD must notify the family that the family may ask for an explanation of the basis of OHCD determination, and that if the family does not agree with the determination, the family may request an Informal Hearing on the decision.

In the cases described in paragraphs 4, 5 and 6 above, OHCD must give the family prompt written notice that the family may request an Informal Hearing. The notice must:

- Contain a brief statement of reasons for the decision
- Cite the applicable law, regulation, police that was violated
- State that if the family does not agree with the decision, the family may request an informal hearing on the decision, and
- State the family has ten days from the date of the letter to request an informal hearing in writing.

YOU MAY NOT ASK FOR AN INFORMAL HEARING IN THE FOLLOWING SITUATIONS:

- a. Discretionary administrative determinations by OHCD.
- b. General policy issues or class grievances.
- c. Establishment of the Schedule of Utility Allowances for families in the Program.
- d. A determination not to approve an extension or suspension of a Voucher term.
- e. A determination not to approve a unit or tenancy.
- f. A determination that an assisted unit is not in compliance with HQS. (However, OHCD must provide the opportunity for an informal hearing for a decision to terminate assistance for a breach of the Housing Quality Standards caused by the family such as:
 1. Family Obligations. (1) the family is responsible for a breach of the HQS that is caused by any of the following:
 - i. The family fails to pay for any utilities the family is responsible to pay;
 - ii. The family fails to provide and maintain any appliances that the owner is not required to provide, but which are provided by the tenant; or
 - iii. Any member of the household or guest of the household damages the dwelling unit or premises (damages beyond ordinary wear and tear).
- g. A determination that the unit is not in accordance with Housing Quality Standards because of the family size.
- h. A determination to exercise or not to exercise any right or remedy against the owner under a Housing Assistance Payments Contract.

EXPEDITIOUS HEARING PROCESS:

When a hearing for a participant is requested OHCD must proceed with the hearing in a reasonably expeditious manner.

DISCOVERY (EXAMINATION OF DOCUMENTS):

By Family. The family must be given the opportunity to examine before the hearing any OHCD documents that are directly relevant to the hearing. The family must be allowed to copy any such document at the family's expense. If OHCD does not make the document available for examination on request of the family, OHCD may not rely on the document at the hearing.

By OHCD. OHCD must be given the opportunity to examine at OHCD offices before the hearing any family documents that are directly relevant to the hearing. OHCD must be allowed to copy any such document at OHCD's expense. If the family does not make the document available for examination on request of OHCD, the family may not rely on the document at the hearing.

REPRESENTATION OF FAMILY:

At its own expense, the family may be represented by a lawyer or other representative.

HEARING OFFICER:

The hearing may be conducted by any person or persons designated by OHCD, other than a person who made or approved the decision under review or a subordinate of this person. The person who conducts the hearing may regulate the conduct of the hearing in accordance with OHCD hearing policy.

EVIDENCE:

OHCD and the family must be given the opportunity to present evidence, and may question any witnesses. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

ISSUANCE OF DECISION:

The hearing officer must issue a written decision, stating briefly 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 furnished to the family within fourteen days of the hearings. The Hearing Officer’s decision is final with no further recourse through OHCD.

EFFECT OF DECISION:

OHCD is not bound by a hearing decision:

- Concerning a matter for which OHCD is not required to provide an opportunity for an informal hearing under this section, or that otherwise exceeds the authority of the person conducting the hearing under the PHA hearing procedures.
- Contrary to HUD regulation or requirements, or otherwise contrary to federal, State, or local law.
- If OHCD determines that it is not bound by a hearing decision, OHCD must promptly notify the family of the determination, and of the reasons for the determination.

RESTRICTION OF ASSISTANCE FOR NON-CITIZENS:

The informal hearing provisions for the denial of assistance on the basis of ineligible immigration status are contained in 24CFR part 5 subpart E which says:

1. The notice of denial or termination of assistance shall advise the family:
 - a. That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance;
 - b. That the family may be eligible for proration of assistance as provided under 5.520;
 - c. In the case of a tenant, the criteria and procedures for obtaining relief under the provisions for preservation of families;
 - d. That the family had a right to request an appeal to the INS of the results of secondary verification of immigration status and to submit additional documentation or a written explanation in support of the appeal
 - e. That the family has a right to request an informal hearing with the responsible entity either upon completion of the INS appeal or in lieu of the INS appeal
 - f. For applicants, the notice shall advise that assistance may not be delayed until the conclusion of the INS appeal process, but assistance may be delayed during the pendency of the informal hearing process.

GENERAL PROCEDURES:

- Families must request the hearing in writing. The request for the hearing is made directly to the person signing the termination letter.
- Participants who allow the 10 day period to pass and have not requested a hearing waive all rights to hold a hearing.
- The Hearing Officer reserves the right to cancel the hearing before the scheduled time if circumstances warrant such a cancellation. The Hearing Officer can decide to reschedule for a later date depending on the reasons for the cancellation.
- Participants that schedule a hearing and fail to be present waive all rights to schedule another hearing.
- If the family does not arrive within 30 minutes of the scheduled appointment time, the hearing shall be canceled and the record noted accordingly.
- Each person in attendance will be recorded on the Informal Hearing Attendance Record.
- Witnesses will not be present except when called to the hearing at the appropriate time to present their information.
- The Hearing Officer will decide the case based on a preponderance of evidence.
- The hearing will be taped to assist in the final disposition of the case.

GROUNDINGS FOR TERMINATION OF ASSISTANCE FOR A PARTICIPANT

OHCD must terminate assistance for a participant under the program because of the family's action or failure to act as described below:

- Eviction from a housing assisted unit for serious violation of the lease.
- Failure to provide signed consent forms for obtaining information for every adult (18 years and older) member of the family/household.

OHCD may terminate assistance for a participant under the program because of the family's action or failure to act as described below:

- If the family violates any family obligations under the program as listed on the voucher and in CFR982.551
- If any member of the family has been evicted from federally assisted housing in the last five years;
- If a PHA has ever terminated assistance under the program for any member of the family
- If any member of the family has committed fraud, bribery, or any other corrupt or criminal act in connection with any Federal housing program
- If the family currently owes rent or other amounts to the PHA or to another PHA in connection with Section 8 or public housing assistance under the 1937Act.
- If the family has not reimbursed any PHA for amounts paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease
- If the family breaches an agreement with the PHA to pay amounts owed to a PHA or amounts paid to an owner by a PHA
- If a family participating in the FSS program fails to comply, without good cause, with the family's FSS contract of participation
- If the family has engaged in or threatened Abusive or violent behavior toward PHA personnel
- If a welfare-to-work (WTW) family fails, willfully and persistently, to fulfill its obligations under the welfare-to-work voucher program.
- If the family has been engaged in criminal activity or alcohol abuse as described in 982.553.

Termination of assistance for a participant may include any or all of the following:

- Refusing to enter into a HAP contract or approve a lease,
- terminating housing assistance payments under an outstanding HAP contract, and
- Refusing to process or provide assistance under portability procedures.