

## PART III: INFORMAL REVIEWS AND HEARINGS

### 16-III.A. OVERVIEW

When MHA makes a decision that has a negative impact on a family, the family is often entitled to appeal the decision. For applicants, the appeal takes the form of an informal review; for participants, or for applicants denied admission because of citizenship issues, the appeal takes the form of an informal hearing.

PHAs are required to include in their administrative plans, informal review procedures for applicants, and informal hearing procedures for participants [24 CFR 982.54(d) (12) and (13)].

### 16-III.B. INFORMAL REVIEWS

Informal reviews are provided for program applicants. An applicant is someone who has applied for admission to the program, but is not yet a participant in the program. Informal reviews are intended to provide a “minimum hearing requirement” [24 CFR 982.554], and need not be as elaborate as the informal hearing requirements. (Federal Register 60, no. 127 (3 July 1995): 34690).

#### Decisions Subject to Informal Review

MHA must give an applicant the opportunity for an informal review of a decision denying assistance [24 CFR 982.554(a)]. Denial of assistance may include any or all of the following [24 CFR 982.552(a)(2)]:

- Denying listing on MHA waiting list
- Denying or withdrawing a voucher
- Refusing to enter into a HAP contract or approve a lease
- Refusing to process or provide assistance under portability procedures

Informal reviews are *not* required for the following reasons [24 CFR 982.554(c)]:

- Discretionary administrative determinations by MHA
- General policy issues or class grievances
- A determination of the family unit size under MHA subsidy standards
- MHA determination not to grant approval of the tenancy
- MHA determination that the unit is not in compliance with the HQS
- MHA determination that the unit is not in accordance with the HQS due to family size or composition

#### MHA Policy

MHA will only offer an informal review to applicants for whom assistance is being denied. Denial of assistance includes: denying listing on MHA waiting list; denying or withdrawing a voucher; refusing to enter into a HAP contract or approve a lease; refusing to process or provide assistance under portability procedures.

#### Notice to the Applicant [24 CFR 982.554(a)]

MHA must give an applicant prompt notice of a decision denying assistance. The notice must contain a brief statement of the reasons for MHA decision, and must also state that the applicant may request an informal review of the decision. The notice must describe how to obtain the informal review.

## **Scheduling an Informal Review**

### MHA Policy

A request for an informal review must be made in writing and delivered to MHA either in person or by first class mail, by the close of the business day, no later than 14 calendar days from the date of MHA's denial of assistance.

MHA must schedule and send written notice of the informal review within 15 calendar days of the family's request.

## **Informal Review Procedures [24 CFR 982.554(b)]**

The informal review must be conducted by a person other than the one who made or approved the decision under review, or a subordinate of this person.

The applicant must be provided an opportunity to present written or oral objections to the decision of MHA.

## **Informal Review Decision [24 CFR 982.554(b)]**

MHA must notify the applicant of MHA's final decision, including a brief statement of the reasons for the final decision.

### MHA Policy

In rendering a decision, MHA will evaluate the following matters:

Whether or not the grounds for denial were stated factually in the Notice.

The validity of grounds for denial of assistance. If the grounds for denial are not specified in the regulations, then the decision to deny assistance will be overturned.

The validity of the evidence. MHA will evaluate whether the facts presented prove the grounds for denial of assistance. If the facts prove that there are grounds for denial, and the denial is required by HUD, MHA will uphold the decision to deny assistance.

If the facts prove the grounds for denial, and the denial is discretionary, MHA will consider the recommendation of the person conducting the informal review in making the final decision whether to deny assistance.

MHA will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. The notice will be mailed within 15 calendar days of the informal review, to the applicant and his or her representative, if any, along with proof of mailing.

If the decision to deny is overturned as a result of the informal review, processing for admission will resume.

If the family fails to appear for their informal review, the denial of admission will stand and the family will be so notified.

### **16-III.C. INFORMAL HEARINGS FOR PARTICIPANTS [24 CFR 982.555]**

PHAs must offer an informal hearing for certain MHA determinations relating to the individual circumstances of a participant family. A participant is defined as a family that has been admitted to MHA's HCV program and is currently assisted in the program. The purpose of the informal hearing is to consider whether MHA's decisions related to the family's circumstances are in accordance with the law, HUD regulations and MHA policies.

MHA is not permitted to terminate a family's assistance until the time allowed for the family to request an informal hearing has elapsed, and any requested hearing has been completed. 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
- Refusing to process or provide assistance under portability procedures

#### **Decisions Subject to Informal Hearing**

Circumstances for which MHA must give a participant family an opportunity for an informal hearing are as follows:

- A determination of the family's annual or adjusted income, and the use of such income to compute the housing assistance payment
- A determination of the appropriate utility allowance (if any) for tenant-paid utilities from MHA utility allowance schedule
- A determination of the family unit size under MHA's subsidy standards
- A determination to terminate assistance for a participant family because of the family's actions or failure to act
- A determination to terminate assistance because the participant has been absent from the assisted unit for longer than the maximum period permitted under MHA policy and HUD rules
- A determination to terminate a family's Family Self Sufficiency contract, withhold supportive services, or propose forfeiture of the family's escrow account [24 CFR 984.303(i)]
- A determination to deny admission based on an unfavorable history that may be the result of domestic violence, dating violence, or stalking.

Circumstances for which an informal hearing is not required are as follows:

- Discretionary administrative determinations by MHA
- General policy issues or class grievances
- Establishment of MHA schedule of utility allowances for families in the program
- A MHA determination not to approve an extension or suspension of a voucher term
- A MHA determination not to approve a unit or tenancy
- A MHA determination that a unit selected by the applicant is not in compliance with the HQS
- A MHA determination that the unit is not in accordance with HQS because of family size
- A determination by MHA to exercise or not to exercise any right or remedy against an owner under a HAP contract

### MHA Policy

MHA will only offer participants the opportunity for an informal hearing when required to by the regulations.

Housing Assistance Payments will continue until decision is made by Hearing Officer and termination is final.

### **Informal Hearing Procedures**

#### ***Notice to the Family [24 CFR 982.555(c)]***

When MHA makes a decision that is subject to informal hearing procedures, MHA must inform the family of its right to an informal hearing at the same time that it informs the family of the decision.

For decisions related to the family's annual or adjusted income, the determination of the appropriate utility allowance, and the determination of the family unit size, MHA must notify the family that they may ask for an explanation of the basis of the determination, and that if they do not agree with the decision, they may request an informal hearing on the decision.

For decisions related to the termination of the family's assistance, or the denial of a family's request for an exception to MHA's subsidy standards, the notice must contain a brief statement of the reasons for the decision, a statement that if the family does not agree with the decision, the family may request an informal hearing on the decision, and a statement of the deadline for the family to request an informal hearing.

### MHA Policy

In cases where MHA makes a decision for which an informal hearing must be offered, the notice to the family will include all of the following:

The proposed action or decision of MHA.

A brief statement of the reasons for the decision including the regulatory reference.

The date the proposed action will take place.

A statement of the family's right to an explanation of the basis for MHA's decision.

A statement that if the family does not agree with the decision the family may request an informal hearing of the decision.

A deadline for the family to request the informal hearing.

To whom the hearing request should be addressed.

A copy of MHA's hearing procedures.

#### ***Scheduling an Informal Hearing [24 CFR 982.555(d)]***

When an informal hearing is required, MHA must proceed with the hearing in a reasonably expeditious manner upon the request of the family.

### MHA Policy

A request for an informal hearing must be made in writing and delivered to MHA either in person or by first class mail, by the close of the business day, no later than 14 calendar days from the date of MHA's decision or notice to terminate assistance.

MHA must schedule and send written notice of the informal hearing to the family within 15 calendar days of the family's request.

The family may request to reschedule a hearing for good cause, or if it is needed as a reasonable accommodation for a person with disabilities. Good cause is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family. Requests to reschedule a hearing must be made orally or in writing prior to the hearing date. At its discretion, MHA may request documentation of the "good cause" prior to rescheduling the hearing.

If the family does not appear at the scheduled time, and was unable to reschedule the hearing in advance due to the nature of the conflict, the family must contact MHA within 24 hours of the scheduled hearing date, excluding weekends and holidays. MHA will reschedule the hearing only if the family can show good cause for the failure to appear, or if it is needed as a reasonable accommodation for a person with disabilities.

***Pre-Hearing Right to Discovery [24 CFR 982.555(e)]***

Participants and MHA are permitted pre-hearing discovery rights. The family must be given the opportunity to examine before the hearing any MHA documents that are directly relevant to the hearing. The family must be allowed to copy any such documents at their own expense. If MHA does not make the document available for examination on request of the family, MHA may not rely on the document at the hearing.

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

For the purpose of informal hearings, *documents* include records and regulations.

**MHA Policy**

The family will be allowed to copy any documents related to the hearing at a cost of \$.25 per page. The family must request discovery of MHA documents no later than 12:00 p.m. on the business day prior to the scheduled hearing date

MHA must be given an opportunity to examine at MHA offices before the hearing any family documents that are directly relevant to the hearing. Whenever a participant requests an informal hearing, MHA will automatically mail a letter to the participant requesting a copy of all documents that the participant intends to present or utilize at the hearing. The participant must make the documents available no later than 12:00 pm on the business day prior to the scheduled hearing date.

***Participant's Right to Bring Counsel [24 CFR 982.555(e)(3)]***

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

### ***Informal Hearing Officer [24 CFR 982.555(e)(4)]***

Informal hearings will be conducted by a person or persons approved by MHA, other than the person who made or approved the decision or a subordinate of the person who made or approved the decision.

#### MHA Policy

The hearing officer may be any current employee other than the person who made or approved the decision or a subordinate of the person who made or approved the decision, or any MHA Management Staff, Legal Consultant or a Contractor from other PHA.

- Staff

### ***Attendance at the Informal Hearing***

#### MHA Policy

Hearings may be attended by a hearing officer and the following applicable persons:

MHA representative(s) and any witnesses for MHA

The participant and any witnesses for the participant

The participant's counsel or other representative

Any other person approved by MHA as a reasonable accommodation for a person with a disability

### ***Conduct at Hearings***

The person who conducts the hearing may regulate the conduct of the hearing in accordance with MHA's hearing procedures [24 CFR 982.555(4)(ii)].

#### MHA Policy

The hearing officer is responsible to manage the order of business and to ensure that hearings are conducted in a professional and businesslike manner. Attendees are expected to comply with all hearing procedures established by the hearing officer and guidelines for conduct. Any person demonstrating disruptive, abusive or otherwise inappropriate behavior will be excused from the hearing at the discretion of the hearing officer.

***Evidence [24 CFR 982.555(e)(5)]*** MHA and the family must be given the opportunity to present evidence and question any witnesses. In general, all evidence is admissible at an informal hearing. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

#### MHA Policy

Any evidence to be considered by the hearing officer must be presented at the time of the hearing. There are four categories of evidence.

**Oral evidence:** the testimony of witnesses

**Documentary evidence:** a writing which is relevant to the case, for example, a letter written to MHA. Writings include all forms of recorded communication or representation, including letters, words, pictures, sounds, videotapes or symbols or combinations thereof.

**Demonstrative evidence:** Evidence created specifically for the hearing and presented as an illustrative aid to assist the hearing officer, such as a model, a chart or other diagram.

**Real evidence:** A tangible item relating directly to the case.

*Hearsay Evidence* is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter. Even though evidence, including hearsay, is generally admissible, hearsay evidence alone cannot be used as the sole basis for the hearing officer's decision.

If either MHA or the family fail to comply with the discovery requirements described above, the hearing officer will refuse to admit such evidence.

Other than the failure of a party to comply with discovery, the hearing officer has the authority to overrule any objections to evidence.

### ***Hearing Officer's Decision [24 CFR 982.555(e)(6)]***

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

#### MHA Policy

In rendering a decision, the hearing officer will consider the following matters:

**MHA Notice to the Family:** The hearing officer will determine if the reasons for MHA's decision are factually stated in the Notice.

**Discovery:** The hearing officer will determine if MHA and the family were given the opportunity to examine any relevant documents in accordance with MHA policy.

**PHA Evidence to Support MHA Decision:** The evidence consists of the facts presented. Evidence is not conclusion and it is not argument. The hearing officer will evaluate the facts to determine if they support MHA's conclusion.

**Validity of Grounds for Termination of Assistance (when applicable):** The hearing officer will determine if the termination of assistance is for one of the grounds specified in the HUD regulations and MHA policies. If the grounds for termination are not specified in the regulations or in compliance with MHA policies, then the decision of MHA will be overturned.

The hearing officer will issue a written decision to the family and MHA no later than 15 calendar days after the hearing. The report will contain the following information:

#### **Hearing information:**

Name of the participant;

Date, time and place of the hearing;

Name of the hearing officer;

Name of MHA representative; and

Name of family representative (if any).

**Background:** A brief, impartial statement of the reason for the hearing.

**Summary of the Evidence:** The hearing officer will summarize the testimony of each witness and identify any documents that a witness produced in support of his/her testimony and that are admitted into evidence.

**Findings of Fact:** The hearing officer will include all findings of fact, based on a preponderance of the evidence. *Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole show that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

**Conclusions:** The hearing officer will render a conclusion derived from the facts that were found to be true by a preponderance of the evidence. The conclusion will result in a determination of whether these facts uphold MHA's decision.

**Order:** The hearing report will include a statement of whether MHA's decision is upheld or overturned. If it is overturned, the hearing officer will instruct MHA to change the decision in accordance with the hearing officer's determination. In the case of termination of assistance, the hearing officer will instruct MHA to restore the participant's program status.

### ***Procedures for Rehearing or Further Hearing*** (Appeal)

#### MHA Policy

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 MHA will take effect and another hearing will not be granted.

In addition, within 15 calendar days after the date the hearing officer's report is mailed to MHA and the participant, MHA or the participant may request a rehearing or a further hearing. Such request must be made in writing and postmarked or hand-delivered to the hearing officer and to the other party within the 10 business day period. The request must demonstrate cause, supported by specific references to the hearing officer's report, why the request should be granted.

A rehearing or a further hearing may be requested for the purpose of rectifying any obvious mistake of law made during the hearing or any obvious injustice not known at the time of the hearing. The only grounds on which an appeal will be granted are;

- There was a violation of the process outlined in this procedure, or
- The decision is not supported by the findings, or
- The findings are not supported by the evidence

It shall be within the sole discretion of MHA to grant or deny the request for further hearing or rehearing. A further hearing may be limited to written submissions by the parties, in the manner specified by the hearing officer. The following evidence will be considered:

- The tape recording or written notes of the grievance procedure,
- All documents that were presented at the hearing,

- Either or both parties may present a written brief to the Appellate Officer outlining why the decision should or should not be overturned.
- All documents and briefs must be presented to the officer within 14 calendar days of notification that the case will be reviewed.

The Appellate Officer will have 15 calendar days to review the case and render a written decision, which shall consist of the following:

- The name of the parties, and
- A brief description of the issues on appeal,
- The decision of the Appellate Officer, and
- The reason for the decision, and
- A description of the Participant's right to seek other legal remedies.

The results of the hearing on the appeal do not in any way preclude the Participant from proceeding with any other legal remedies that may be open to him/her.

### ***MHA Notice of Final Decision [24 CFR 982.555(f)]***

MHA is not bound by the decision of the hearing officer for matters in which MHA is not required to provide an opportunity for a hearing, decisions that exceed the authority of the hearing officer, decisions that conflict with or contradict HUD regulations, requirements, or are otherwise contrary to Federal, State or local laws.

If MHA determines it is not bound by the hearing officer's decision in accordance with HUD regulations, MHA must promptly notify the family of the determination and the reason for the determination.

#### MHA Policy

MHA will mail a "Notice of Final Decision" including the hearing officer's report, to the participant and their representative. This Notice will be sent by first-class mail, postage pre-paid with an affidavit of mailing enclosed. The participant will be mailed the original "Notice of Final Decision" and a copy of the proof of mailing. A copy of the "Notice of Final Decision" along with the original proof mailing will be maintained in MHA's file.

### **16-III.D. HEARING AND APPEAL PROVISIONS FOR NON-CITIZENS [24 CFR 5.514]**

Denial or termination of assistance based on immigration status is subject to special hearing and notice rules. Applicants who are denied assistance due to immigration status are entitled to an informal hearing, not an informal review.

Assistance to a family may not be delayed, denied, or terminated on the basis of immigration status at any time prior to a decision under the United States Citizenship and Immigration Services (USCIS) appeal process. Assistance to a family may not be terminated or denied while MHA hearing is pending, but assistance to an applicant may be delayed pending the completion of the informal hearing.

A decision against a family member, issued in accordance with the USCIS appeal process or MHA informal hearing process, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

### **Notice of Denial or Termination of Assistance [24 CFR 5.514(d)]**

The notice of denial or termination of assistance for noncitizens must advise the family:

- That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance.
- The family may be eligible for proration of assistance.
- In the case of a participant, the criteria and procedures for obtaining relief under the provisions for preservation of families [24 CFR 5.514 and 5.518].
- That the family has a right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or explanation in support of the appeal.
- That the family has a right to request an informal hearing with MHA either upon completion of the USCIS appeal or in lieu of the USCIS appeal.
- For applicants, assistance may not be delayed until the conclusion of the USCIS appeal process, but assistance may be delayed during the period of the informal hearing process.

### **USCIS Appeal Process [24 CFR 5.514(e)]**

When MHA receives notification that the USCIS secondary verification failed to confirm eligible immigration status, MHA must notify the family of the results of the USCIS verification. The family will have 14 calendar days from the date of the notification to request an appeal of the USCIS results. The request for appeal must be made by the family in writing directly to the USCIS. The family must provide MHA with a copy of the written request for appeal and the proof of mailing.

#### MHA Policy

MHA will notify the family in writing of the results of the USCIS secondary verification within 15 calendar days of receiving the results.

The family must provide MHA with a copy of the written request for appeal and proof of mailing within 14 calendar days of sending the request to the USCIS.

The family must forward to the designated USCIS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the USCIS document verification request (used to process the secondary request) or such other form specified by the USCIS, and a letter indicating that the family is requesting an appeal of the USCIS immigration status verification results.

The USCIS will notify the family, with a copy to MHA, of its decision. When the USCIS notifies MHA of the decision, MHA must notify the family of its right to request an informal hearing.

#### MHA Policy

MHA will send written notice to the family of its right to request an informal hearing within 14 calendar days of receiving notice of the USCIS decision regarding the family's immigration status.

## **Informal Hearing Procedures for Applicants [24 CFR 5.514(f)]**

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, the family may request that MHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of MHA notice of denial, or within 30 days of receipt of the USCIS appeal decision.

The informal hearing procedures for applicant families are described below.

### ***Informal Hearing Officer***

MHA must provide an informal hearing before an impartial individual, other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision. See Section 16-III.C. for a listing of positions that serve as informal hearing officers.

### ***Evidence***

The family must be provided the opportunity to examine and copy at the family's expense, at a reasonable time in advance of the hearing, any documents in the possession of MHA pertaining to the family's eligibility status, or in the possession of the USCIS (as permitted by USCIS requirements), including any records and regulations that may be relevant to the hearing.

#### MHA Policy

The family will be allowed to copy any documents related to the hearing at a cost of \$.25 per page. The family must request discovery of MHA documents no later than 12:00 p.m. on the business day prior to the hearing.

The family must be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

The family must also be provided the opportunity to refute evidence relied upon by MHA, and to confront and cross-examine all witnesses on whose testimony or information MHA relies.

### ***Representation and Interpretive Services***

The family is entitled to be represented by an attorney or other designee, at the family's expense, and to have such person make statements on the family's behalf.

The family is entitled to arrange for an interpreter to attend the hearing, at the expense of the family, or MHA, as may be agreed upon by the two parties.

### ***Recording of the Hearing***

The family is entitled to have the hearing recorded by audiotape. MHA may, but is not required to provide a transcript of the hearing.

#### PHA Policy

MHA will not provide a transcript of an audio taped hearing.

### ***Hearing Decision***

MHA must provide the family with a written final decision, based solely on the facts presented at the hearing, within 15 calendar days of the date of the informal hearing. The decision must state the basis for the decision.

### **Informal Hearing Procedures for Residents [24 CFR 5.514(f)]**

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, the family may request that MHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of MHA notice of termination, or within 30 days of receipt of the USCIS appeal decision.

For the informal hearing procedures that apply to participant families whose assistance is being terminated based on immigration status, see Section 16-III.C.

### **Retention of Documents [24 CFR 5.514(h)]**

MHA must retain for a minimum of 5 years the following documents that may have been submitted to MHA by the family, or provided to MHA as part of the USCIS appeal or MHA informal hearing process:

- The application for assistance
- The form completed by the family for income reexamination
- Photocopies of any original documents, including original USCIS documents
- The signed verification consent form
- The USCIS verification results
- The request for a USCIS appeal
- The final USCIS determination
- The request for an informal hearing
- The final informal hearing decision