

Housing Choice Voucher Technical Assistance on Informal and Formal Review and Hearing Process

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Objectives

- Roles and Functions of the Hearing Officer
- HUD regulations and guidance
- Rights of Applicants and Participants
- Common Issues and Cases
- Special situations
 - Reasonable accommodation
 - VAWA
 - LEP
 - Etc.

Special Conditions

- Advocacy groups
- Legal Services
- Orderly Hearings
- Documentation and Rules of Evidence
- Administrative Plan
- Sample cases
- Exercises/learning activities

Conditions When Process is Specified

- Regulations
 - CFR 982.554 Informal Review for Applicant
 - CFR 982.555 Informal Hearing for Participant
- Statutory Provisions
 - ACC and Housing Act
- Due Process and rights to due process
- Code of Federal Regulations

Housing Choice Voucher Informal Reviews and Hearings

Due Process

- Statutory hearing specified in the regulation
- Administrative Action
- Fair Hearing and based on the facts presented at time
- Administrative Plan includes local provisions

Principles of Due Process

- Adequate notice- must specify/state the reasons for the decisions
- Opportunity to defend one's actions or question the decision
- Contain provisions on which the PHA is relying to reach the decision
- Hearing given prior to final determination
- Decision based on the evidence
- Non-bias hearing officer

Informal Reviews and Hearings

- The purpose of the informal review or hearing is to resolve disputes with applicants or participants
 - Without legal action
 - Correct PHA errors that have occurred in the decision process

Basic Purpose

- PHA can correct actions and reverse previous actions
- PHA can uphold previous decisions if based on current regulation, policies and/or notices

Actions

- Do things right
- Don't try to take short cuts or skip steps
- Provide for an open hearing to review facts and documentation
- Provide for a written decision

Hearing Officer

- The official appointed by the PHA to conduct the administrative hearing or review

Hearing Officer's Knowledge

- Knowledge of the regulations, policies, and precedent decisions
- Conducts the hearing
- Questions witnesses, analyzes evidence, laws and regulations
- Prepares the written decision

Hearing Officer- duties

- Depends on the size and complexity of the PHA
 - May use officials in PHA
 - May use outside officers
 - May use a panel

Hearing Officer Qualities

- Able to make decisions
- Ability to listen
- Provide written outcomes in a timely fashion
- Be consistent in the decision process

Informal Reviews and Hearings - continued

- Informal Review
 - Program Applicants
 - Exception is for non-citizen applicant,
 - Entitled to an informal hearing
- Informal Hearing
 - Program participants
- Both processes have restrictions on items that will be reviewed or heard

Notice of Rights

- Certain actions require offer of informal review or hearing
- PHA must give applicant or participant prompt written notice of right to request review or hearing
- Notice must contain
 - Brief statement of the reason
 - Statement that if family does not agree, they may request a hearing
 - The deadline for the family to submit a request
 - Right to reasonable accommodation

Notice of Rights - continued

- Upon receiving request for hearing, PHA must proceed in reasonable expeditious manner
- PHA has latitude in establishing reasonable
 - Most PHAs use between 7-30 days to request a hearing and use 15 to 30 days to proceed with the action

Review Due Process

- Conducted by a person or persons designated by the PHA other than the person who made or approved the decision, or is subordinate to the person making the decision
- Applicant can present written or oral objections
- PHA must provide final decision in writing

Circumstances That Do Not Require An Offer For **Review**

- Determination of unit size
- Determination that unit does not comply with HQS
- Denial of request to extend or suspend voucher term
- General policies
- Class grievances
- Discretionary administrative determinations
- Refusal to grant approval of tenancy

Circumstances the Require a Review

- Denial for Criminal
- Denial for Over-income
- Denial for Student Provisions
- Denial of Other Eligibility
- Denial of a Preference
- Denying or withdrawing the Voucher
- Refusing Portability
- Etc.

Circumstances That Do Not Require An Offer For **Hearing**

- Determination that unit does not comply with HQS
- Refusal to extend or suspend a voucher term
- Discretionary administrative determinations
- General policy issues
- Class grievances
- How PHA established the utility allowance schedule
- PHA refusal to approve tenancy
- Unit size does not meet HQS standard for family
- A PHA action or remedy against the owner
 - HAP has a third party exclusionary clause

Require Hearing for Participant

- Determination of annual income or adjusted income
- Calculation of TTP
- Determination of appropriate utility allowance schedule
- Termination of assistance
- Termination of ineligible students
- Determination of unit size for subsidy standard
- Denial of hardship exemption for minimum rent
- Determination for ineligible immigration status
 - Applies both to applicant and participant
- Denial of victim of VAWA
- VASH- failure to comply with case-managers requirements

Timing of Informal Hearings

- PHA can implement the following changes prior to an informal hearing:
 - Change in TTP
 - Change in family share
 - Denial of new voucher so family can move
 - Unit size determination for family that wants to move

Informal Review Process

- Stated in the Administrative Plan
- Contained in the briefing packet
- Provided to the applicant
- Person designated by PHA can conduct the hearing
 - Cannot be subordinate to the one making decision
- Applicant given opportunity to present
 - Verbally
 - Written
- PHA notifies of decision including a brief written statement of final decision

Informal Hearing Process - continued

- Hearing and conduct is regulated by officer in accordance with Administrative Plan
 - Can stop/deny the process if parties cannot conduct themselves in orderly fashion

Approaches for Selecting and Appointing Officers

- Appoint staff
 - Senior staff
- Civic minded individuals outside the PHA
 - Wider community
 - Must know the rules
- Hearing Panel

Hearing Process

- Family must be given opportunity to examine documents directly relevant to hearing
- Family allowed to copy at own expense
- **If family requests document and PHA does not produce, PHA cannot use the document**
 - **VAWA documents may be used during the hearing process**

Hearing Process - continued

- PHA can include policy in Administrative Plan
 - PHA has opportunity to review family documents prior to the hearing
 - PHA can copy document at its own cost
 - If family fails to provide, family cannot use the document at the hearing

Hearing Representation

- Family entitled to
 - Spokesperson or Lawyer
- Family must cover expense of representative

Hearing Evidence

- PHA and family present evidence
- PHA and family question witnesses
- Evidence considered without regard to rules of evidence applicable to judicial proceeding
 - Allows for hearsay
- Person/panel reviews the evidence
 - Renders decision in writing
 - Factual determination based on “preponderance of evidence”
 - Copy of decision sent to the family

Preponderance of Evidence

- *Preponderance of the evidence* is defined as greater weight of the evidence; that is, evidence that you believe because it outweighs or overbalances in your mind the evidence opposed to it.
- A preponderance means evidence that is more probable, more persuasive, or of greater probative value. It is the quality of the evidence that must be weighed.
- Quality may, or may not, be identical with quantity (the greater number of witnesses).

Consideration of Evidence

- Oral
- Documentary
- Demonstrative
- Real
- Hearsay- generally admissible in informal reviews and hearings
 - Not bound by the court of law standards

Ex-Parte Communications

- Contact between the hearing officer and parties regarding matter under review is prohibited, without notice and opportunity for all parties to participate
 - No special influence
 - No additional discovery of facts
 - All parties have the opportunity to rebut
- Hearing Officer must avoid even the appearance of ex-parte communications before during and after hearing

Hearing Decision

- PHA not bound by decisions that are:
 - Concerning matters for which the PHA is not required to grant a hearing
 - Concerning matters that exceeds the authority of the person conducting the hearing
 - Contrary to HUD regulation or requirements
 - Contrary to other federal, state or local law
- If PHA determines they are not bound, must notify the family and inform family of the reason

Hearing Officers

- Must understand the program
- Must understand the limits of their authority
- Must keep personal opinions that have no bearing on the decision, out of the decision
- Example
 - Cannot decide to exclude income that is regulatory
 - Cannot decide that a PHA optional policy is too harsh and unfair, therefore not enforceable

Reasonable Accommodation

- PHA has an obligation to inform applicants and participants of the right to request
- PHA governed by Section 504 and other Fair Housing Requirements
- If requested- PHA will grant- unless it creates an undue financial or administrative burden or fundamentally alters the program

Reasonable Accommodation

- Should not inquire about the nature or extent of the disability
- No need to verify the disability if the disability is obvious
- PHA may establish the nexus

Common Accommodations

- Home visits
- Exceptions to discretionary policies
- Physical modifications
- Service/companion animals
- Live-in aides
- Limited English Proficiency
- Special notice requirements

Common Accommodations

- Moves to Another Unit
- Portability
- VAWA
- Special Needs of Family Member

Hearing Process

- Start on time
- Call to order
- Identify parties
- Brief description of process
- Allow for opening statement and brief on the case
- State the ground rules
- No interruptions

Hearing Process

- Explain consequences of disruptive behavior
- Limit side chatter
- Keep the process calm- issues can become emotional
- If tempers short- allow for a recess
- Allow for cross examinations
- Let everyone know decision will be provided in writing and when to expect it

Process

- In reviewing evidence- consider
 - Bias of individuals
 - Whether statements are supported or contradicted by other evidence
 - Credibility of individual making the statement
 - If hearsay is supported by other evidence

Process

- Protect the evidence
 - Protect the file and written documents
 - Date all correspondence
 - Notes of contact fully documented
 - Use documents that are for the violation
- Hearing Officer should take notes
- Hearing Officer will close the hearing and when decision can be expected

Complex Issues

- Narrow the issues
- State what will be heard and don't get into tangents
- Allow for breaks if hearing drags on

Written Decision

- Decision must be based solely on the facts presented at the hearing
- Decision must be clear, reasoned and complete- follows the facts and regulations

Written Decision

- Do not issue oral decision- give yourself time to think about the case and facts
- May need to consult polices or regulations
- Use a form to make sure you do not violate the minimum notice requirements
- Did the PHA follow the process correctly

Written Decision

- Treat all written decisions as if they will be reviewed in a court of law
- Exclude personal opinions and stay with the facts
- Based on the preponderance of evidence
- Dated and Signed

PHAs Action

- If Participant- cannot stop HAP if tenant is still in the unit until written decision is rendered

Voucher Obligations and Program Obligations

Voucher Family Obligations

- Family Obligations include
 - Supplying information necessary to administer the program and other information to determine eligibility
 - Disclose and verify SSNs and sign and submit consent forms for obtaining information
 - Supply information requested by PHA to verify family is living in unit
 - Promptly notify PHA in writing when away for extended time
 - Allow the PHA to inspect

Family Obligations - continued

- Family Obligations (continued)
 - Notify the PHA in writing before moving out
 - Residing in the dwelling unit- only residence
 - Promptly notify PHA in writing of birth, adoption, court award custody
 - Request written approval to add new family members
 - Promptly notify PHA of any member moving out

Family Obligations- continued

Family Obligations (continued)

- Provide PHA a copy of the eviction notice
- Provide utility bills and maintain appliances that owner is not required to provide
- All information supplied must be true and correct
- Not have ownership rights to the unit
 - Exceptions- HCV Homeownership, co-operatives, manufactured home

Family Obligations- continued

- Family Obligations- continued
 - Commit any serious or repeated violation
 - Commit fraud, bribery, or other corrupt act in connection with the program
 - Not receiving duplicate subsidy
 - Not engage in drug related criminal activity or violent criminal activity or other criminal activity that threatens health, safety, or right to peaceful enjoyment
 - Sublease, let, assign, or transfer unit
 - Damage the unit

Family Obligations- continued

- Receive HCV Assistance while residing in a unit owned by parent, child,not withstanding reasonable accommodation
- Engage in abuse of alcohol in a way that threatens the health, safety or right to peaceful enjoyment.....

Ineligibility due to Criminal Activity 24

CFR 982.553

- Initial screening and continued eligibility based on continuing to meet certain non-criminal activity
- Must meet the federal behavioral test

Terminations for Criminal Activity

- Before an individual or family member is terminated from the program for drug-related or violent criminal activity, PHA staff considers the individual circumstances of the household. In evaluating evidence, PHA gives fair consideration to:
 - The seriousness of the activity with respect to how it would affect other residents;
 - The likelihood of favorable conduct in the future due to evidence of rehabilitation;
 - Any mitigating circumstances related to a disability. (An example of a mitigating circumstance is a family member who is an Alzheimer's disease patient who becomes verbally abusive.)- may involve reasonable accommodation

PHA's Discretion to Consider Circumstances

- Reviewed on case by case
 - Seriousness of the offense
 - Extent of participation again
 - Individual family member and relationship
 - Effects on other family members
 - Actions of other family members
- Level of actions on previous cases
- Additional obligations or stipulations on the family

Termination for Family Obligations

- Failure of the family to supply true and complete information needed by PHA or HUD to administer the HCV program. Information includes documentation related to the verification of Social Security numbers, citizenship and eligible immigration status, calculation of income, family composition, or signatures on consent forms. 24 CFR 982.551

Termination for Family Obligations

- Failure of the family to supply information requested by PHA or HUD for use in a regularly scheduled re-examination, or interim re-examination, of family income and family composition in accordance with HUD requirements. 24 CFR 982.551(b)(2)

Termination for Family Obligations

- Failure to allow PHA or HUD to inspect the unit at reasonable times and after reasonable notice. In most instances, it is reasonable to initiate denial/termination procedures after two unsuccessful attempts to schedule an inspection. 24 CFR 982.551(d)

Termination for Family Obligations

- Failure to simultaneously notify PHA and the owner in writing before moving from the assisted unit or terminating the lease (notification to the owner and PHA must occur at the same time). See 24 CFR 982.551(f) and 24 CFR 982.314(d)
- The family owns or has an interest in the unit. 24 CFR 982.551(j) – except HCV Homeownership

Termination for Family Obligations

- The family subleases or lets the unit, assigns the lease, or transfers the unit. 24 CFR 982.551(n)(6)&(7)
- Any member of the assisted family receives HCV tenant-based assistance while receiving another housing subsidy, for the same unit or a different unit, under any other federal, state, or local housing assistance program. 24 CFR 982.551(n)

Termination for Family Obligations

- The family must use the assisted unit for residence by the family. The unit must be the only residence. 24 CFR 982.551(h)(1)

Termination for Family Obligations

- Failure to promptly notify PHA in writing when the family is absent from the unit. 24 CFR 982.551(i). **The family cannot be absent for more than 180 consecutive days for any reason. CFR 982.312**
 - Families must notify PHA and the landlord if they will be absent for more than 3 weeks- or as stated in the Admin Plan

Termination for Family Obligations

- Failure to promptly notify PHA in writing of the birth, adoption, or court-awarded custody of a child. 24 CFR 982.51(h)(2)
- Failure to request PHA approval to add another family member as an occupant of the unit. 24 CFR 982.551(h)(2)

Termination for Family Obligations

- Failure to promptly notify PHA in writing if a family member no longer resides in the unit. 24 CFR 982.551(h)(3)
- Failure to give PHA a copy of any owner eviction notice. 24 CFR 982.551(g)

Termination for Family Obligations

- Failure to supply any information requested by PHA to verify that the family is living in the unit. If any member of the family has ever been evicted from federally-assisted housing in the last **five** years. 24 CFR 982.552(c)(ii)
- If any PHA has ever terminated assistance under the program to any member of the family. 24 CFR 982.552(c)(iii)

Termination for Family Obligations

- If any member of the family commits fraud (including income fraud), bribery, or any other corrupt or criminal act in connection with any federal housing program (24 CFR 982.552(c)(iv)); OR, if any member of the family has committed fraud in connection with any federal or state funded benefit program, e.g., TANF, Social Security Administration programs.

Termination for Family Obligations

- If the family owes rent or other amounts to the PHA, or to another PHA, in connection with HCV or public housing assistance under the 1937 Act. 24 CFR 982.552(c)(v)
- 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. 24 CFR 982.552(c)(vi)

Termination for Family Obligations

- If the family breaches an agreement with a PHA to pay amounts owed to a PHA, or amounts paid to an owner by a PHA. PHA may offer the family the opportunity to enter into a Repayment Agreement at its discretion. 24 CFR 982.552(c)(vii)

Termination for Family Obligations

VAWA

- If the participant or a lawful occupant engages in criminal acts of violence against family members or others (VAWA of 2013). (Perpetrator would be terminated.)
- In determining whether to terminate assistance for domestic violence, dating violence, sexual assault, or stalking, the HA should verify the victim's status by receipt of a Certification of Domestic Violence, Dating Violence, or Stalking.
- The form attests the incident in question is a bona fide incident of abuse.

VAWA- continued

- The participant documentation must be completed by the victim's service provider, attorney, or medical professional, and be signed by the victim within 14 business days of the incident, and name the perpetrator if known and no fear of retaliatory action. (The victim may also produce police or court records as an acceptable form of Certification.)

VAWA-continued

- However, PHA will terminate assistance of a victim if the termination is for a lease violation premised on something other than an act of domestic violence, dating violence, sexual assault, or stalking against the victim.
- Termination will also occur if it can be demonstrated that an actual or imminent threat to other tenants, or those employed at or providing service to the property, exists if the tenancy of the victim is not terminated.

VAWA- continued

- Information provided to the HA or PHA staff regarding domestic violence, dating violence, or stalking must be kept in a secure confidential manner and must not be released to others unless a signed consent is obtained, except if release is required by law.

When Remaining Person is the Live-In Aide

- If the HOH dies and last person residing in the unit is live-in aide
 - Live-in aide is not entitled or eligible for continued assistance
 - PHA may **NOT** designate the live-in aide as the new HOH or
 - Change the relationship code to make them a household member or
 - Pay HAP on behalf of the live-in aide for any month after the HOH died

Automatic Terminations

- Any member of the household is subject to a lifetime registration requirement under a state sex offender registration program. 24 CFR 982.553(a)(2)(i) – See PIH Notice
- The participant, or any member of the household, has been convicted of drug-related criminal activity for manufacture or the production of methamphetamine on the premises of federally-assisted housing. 24 CFR 982.553(b)(B)(ii)(C)

Terminations

- The family has engaged in, or threatened abusive or violent behavior toward PHA staff or contracted agents.
 - This includes verbal as well as physical abuse or violence. Threatening behavior includes oral or written threats or physical gestures that communicate an intent to abuse or commit violence. Use of expletives that are generally considered insulting, racial epithets, or other language, written or oral, that is customarily used to insult or intimidate may also be considered grounds for termination. 24 CFR 982.552(c)(ix)

Terminations

- Any household member is currently engaged in the illegal use of a drug. 24 CFR 982.553(b)(A)
- There is reasonable cause to believe that a household member's illegal drug use, or pattern of illegal drug use, may threaten or interfere with the health, safety, or right of peaceful enjoyment of the neighborhood by other residents.
- PHA may define a pattern of abuse as two or more occurrences of alcohol-related or drug-related offenses within the previous 12 months. 24 CFR 982.553(b)(3) and 24 CFR 982.553(b)(B)

Terminations

- The participant, or any member of the household, is currently engaged in or has engaged in *violent* criminal activity .
- PHA considers a person “currently engaged in violent criminal activity” if the person has engaged in the behavior recently enough to justify a reasonable belief that the behavior is current (i.e., within the most recent two years). 24 CFR 982.553(b)(1)(B)(iii)

Terminations

- Information is provided that shows the participant has been evicted from a unit assisted under any federally-assisted housing program for drug-related or violent criminal activity within the last three years. 24 CFR 982.553(a)(1)
- PHA determines that any household member has violated the family's obligation under 24 CFR 982.551 not to engage in violent criminal activity. 24 CFR 982.553(b)(1)(B)(2)

Terminations of Assistance and HAP Contracts

- Essential that families comply with obligations and lease
- Essential that owners comply with HAP

HAP Contract Purpose

- Contract to provide assistance for family
- Only applies to the household and contract unit specified in the HAP contract
- PHA will make payments in accordance with the HAP
- Family will reside in the contract unit

HAP Contract Terminations

- Automatic terminations
 - The family moves out of the unit
 - The PHA terminates program assistance for the family
 - The owner or family terminates the lease
 - The owner evicts the family
 - 180 days elapses since the last HAP to the owner
- If HAP terminates for any reason- lease terminates

Terminations of HAP

- Can terminate HAP if
 - Determines unit does not meet HQS space requirements
 - Family breaks up; unless PHA decides to continue assistance to residuals that remain in this unit
 - Fails to meet HQS
 - Owner has breached the HAP
 - Insufficient funds to continue assistance

Conditions on Repayment Agreements

Participant Repayment Agreement

- All agreements must be in writing, signed and dated by PHA and participant and it should also include:
 - Amount owed
 - Amount of lump sum, if applicable
 - Monthly payment amount

Contents of Participant Repayment Agreements- Continued

- Reference to the paragraphs in the Section 8 information packet whereby the participant is in non-compliance and may be subject to termination of tenancy or assistance, or both.
- The monthly retroactive rent repayment amount is in addition to the family's regular rent contribution and is payable to the PHA.
- The terms of the agreement may be renegotiated if there is a decrease or increase in the family's income.
- Late and missed payments constitute default of the repayment agreement and may result in termination of tenancy and/or assistance.

Repayment Agreements- calculations

- PHAs are **required** to determine retroactive amount as far back as the PHA has documentation of family reported income
- Information should be maintained in the file
- Repayment terms is determined by the PHA
- PHA has great latitude
 - Lump sum/Down-payment
 - Time
 - Monthly amount

Actions by PHA

- If participant refuses to enter into agreement or fails to pay- then PHA **must** terminate the families tenancy or assistance- or both
- **HUD does not authorize PHA a sponsored amnesty or debt forgiveness program**
- **HUD will require repayment from the PHA- should they allow an amnesty program**