

## **Section 14.0 INFORMAL HEARING PROCEDURES FOR PARTICIPANTS**

### **14.01 Consideration of Circumstances**

In deciding whether to terminate assistance because of action or inaction by members of the family, the LA must consider all of the circumstances in each case, including the seriousness of the case, the extent of participation or culpability of individual family members, and the effects of denial or termination of assistance on other family members who were not involved in the action or failure.

The LA may impose, as a condition of continued assistance for other family members, a requirement that family members who participated in or were culpable for the action or failure to act will not reside in the unit. The LA may permit the other members of a participant family to continue receiving assistance.

If the LA seeks to terminate assistance because of illegal use, or possession for personal use, of a controlled substance, or pattern of abuse of alcohol, such use or possession or pattern of abuse must have occurred within one year before the date that the LA determines and notifies the participant of the decision to deny or terminate assistance. In determining whether to terminate assistance for these reasons the LA will consider evidence of whether the household member:

- has successfully completed a supervised drug or alcohol rehabilitation program (as applicable) and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol;
- has otherwise been rehabilitated successfully and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol; or
- is participating in a supervised drug or alcohol rehabilitation program and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol.

### **14.02 When a Hearing is Required**

LA hearing procedures will be provided to families in the briefing packet. The LA will give a participant family an opportunity for an informal hearing to consider whether the following LA decisions relating to the individual circumstances of a participant family are in accordance with the law, HUD regulations and LA policies:

1. determination of the family's annual or adjusted income, and the use of such income to compute the housing assistance payment;
2. determination of the appropriate utility allowance (if any) for tenant-paid utilities from the LA utility allowance schedule;

3. determination of the family unit size under the LA subsidy standards;
4. determination to terminate assistance for a participant family because of the family's action or failure to act; or
5. determination to terminate assistance because the participant family has been absent from the assisted unit for longer than the maximum period permitted under the LA policy and HUD rules.

In cases described in items 4 and 5 above, the LA will provide the opportunity for an informal hearing before the LA terminates housing assistance payments for the family under an outstanding HAP contract.

#### **14.03 When a Hearing is Not Required**

The LA will not provide a participant family an opportunity for an informal hearing for any of the following reasons:

1. discretionary administrative determinations by the LA;
2. general policy issues or class grievances;
3. establishment of the LA schedule of utility allowances;
4. LA determination not to approve an extension or suspension of a certificate or voucher term;
5. LA determination not to approve a unit or lease;
6. LA determination that an assisted unit is not in compliance with HQS. However, the LA will provide the opportunity for an informal hearing for a decision to terminate assistance for a breach of the HQS caused by the family;
7. LA determination that the unit is not in accordance with HQS because of the family size; or
8. a determination by the LA to exercise or not exercise any right or remedy against the owner under a HAP contract.

#### **14.04 Notice to the Family**

In the cases described in items 4 and 5 of Section 14.03 entitled "When a Hearing is Not Required," the LA will notify the family that the family may ask for an explanation of the basis of the LA's determination, and that, if the family does not agree with the determination, the family may request an informal hearing on the decision.

In the following cases described in items 4 and 5 of Section 14.02 entitled “When a Hearing is Required,” the LA will give the participant prompt written notice that the family may request a hearing within ten (10) business days the final date for the participant to respond **must** be stated of the notification. The LA hearing procedures will be provided to families in the briefing packet. The participant should be given the opportunity to submit a written request to reschedule an informal hearing. The participant will be granted only one opportunity to reschedule an informal hearing.

The notice will contain a brief statement of the reasons for the decision and state that, if the family does not agree with the decision, the family may request an informal hearing on the decision within ten business days of the notification. The informal hearing must be conducted within 60 days from the date of the notice.

#### **14.05 Hearing Procedures**

The LA and participants will adhere to the following policies and procedures:

##### **1. Method**

Informal hearings must be held in a manner which meets the requirements set forth by HUD and this Administrative Plan. They may be conducted in person, remotely via videoconferencing, or through other virtual platforms. To conduct a hearing remotely, it is incumbent on the LA to ensure the same equal opportunity and nondiscrimination requirements for individuals with disabilities and limited English proficient (LEP) persons under Section 504 of the Rehabilitation Act of 1973 (Section 504), the Americans with Disabilities Act of 1990 (ADA), Title VI of the Civil Rights Act of 1964, and the Fair Housing Act are followed.

If no method of conducting a remote hearing is available that appropriately accommodates an individual’s disability, the LA may not hold against the individual his or her inability to participate remotely. The LA should consider whether postponing the hearing or remote briefing to a later date is appropriate or whether there is a suitable alternative to meet the LA and participant’s needs.

In addition to adhering to the guidance set forth in Section 14 of this Administrative Plan, an informal hearing conducted virtually must also consider the following:

- a.) The LA must survey the family to identify and resolve any technology barriers prior to conducting hearing/briefing remotely. Should a barrier exist (i.e., no access to internet, phone, community services) that the LA or family can not reasonably resolve then any scheduled remote hearing/briefing should be postponed, or an in-person alternative must be provided. The LA must provide the family the option to request an alternative virtual platform or hearing option as a reasonable accommodation.

- b.) Pre-hearing notification must be distributed to all parties. Notification must include the scope of the hearing, date, time and platform in which it will be held, and include the method and timeframe in which documentary evidence and the witness/representative list must be received and to the extent required, distributed prior to the meeting.
- c.) The hearing must allow for full interaction and questions in real time.
- d.) The LA is responsible for safeguarding each remote session to minimize exposure or misuse of the data collected, used and shared prior to and during the remote hearing/briefing.

## **2. Discovery**

- a. The family will be given the opportunity to examine before the hearing any LA documents that are directly relevant to the hearing. The family will be allowed to copy any such document at the family's expense. If the LA does not make the document(s) available for examination on request of the family, the LA may not rely on the document at the hearing.
- b. The LA will be given the opportunity to examine, at the LA's offices before the hearing, any family documents that are directly relevant to the hearing. The LA will be allowed to copy any such document at the LA's expense. If the family does not make the document(s) available for examination on request of the LA, the family may not rely on the document(s) at the hearing.

## **3. Representation of the Family**

At the family's own expense, a lawyer or other representative may represent the family.

## **4. Hearing Officer**

The hearing will be conducted by any qualified person or persons designated by the LA, other than a person who made or approved the decision under review or a subordinate of this person;

The person who conducts the hearing will regulate the conduct of the hearing in accordance with LA hearing procedures.

## **5. Evidence**

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

## **6. Issuance of Decision**

The person who conducts the hearing must issue a written decision within 14 calendar days from the date of the hearing, stating briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the family will be based on a preponderance of the evidence presented at the hearing.

#### **14.06 Effect of the Decision**

The LA is not bound by a hearing decision:

- concerning a matter for which the LA 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 LA hearing procedures; or
- contrary to HUD regulations or requirements, or otherwise contrary to Federal, State or local law.

The LA is ultimately responsible for deciding and communicating the decision to uphold or amend the original outcome. If the LA determines that it is not bound by a hearing decision, the LA will notify the family within 14 calendar days of the determination and of the reasons for the determination. Once the outcome and communication to uphold or amend the original decision has been finalized and issued, the matter is considered resolved and no further review or hearings will be permitted.

#### **14.07 Mitigating Circumstances for Participants with Disabilities**

When the LA is terminating assistance, the family will be informed that presence of a disability may be considered as a mitigating circumstance during the informal hearing process.

Examples of mitigating circumstances are:

- a person with a cognitive disorder may not have understood the requirement to report increases in income;
- a person may not understand the need to make regular repayments on a promissory note; or
- minor criminal records for public drunkenness may be due to medication; prior incarcerations for being disorderly may be emotional disorder.

#### **14.08 Hearing Provisions for Restrictions on Assistance to Non-Citizens**

Assistance to a participant will not be terminated:

1. on the basis of immigration status if the participant, within all requirements and/or dates specified by Section 5.508 of program regulations, takes all necessary steps to provide required documentation;
2. if the LA has not completed primary and secondary verification of immigration documents submitted by the participant in a timely manner;
3. if the USCIS appeals process under Section 5.514 has not been completed;
4. if the ineligible family member has left the household;
5. if assistance to the participant will be prorated;
6. if assistance for a mixed family is continued in accordance with Sections 5.514 and 5.518 of program regulations;
7. if the LA has deferred termination of assistance in accordance with Sections 5.516 and 5.518 of program regulations.

Assistance to a participant will be terminated if:

1. a declaration of citizenship and eligible immigration status is not submitted by the date specified;
2. USCIS primary and secondary verification does not support eligible immigration status of a family member;
3. the participant family does not pursue USCIS appeal or informal hearing rights; or
4. USCIS appeal or informal hearing decisions are decided against the participant or an individual family member.

#### **14.09 USCIS Determination of Ineligibility**

If a family member claims to be an eligible immigrant and the USCIS SAVE system and manual search do not verify the claim, the LA will notify the participant within ten days of his/her right to appeal to the USCIS within 30 days or to request an informal hearing with the LA, either in lieu of or subsequent to the USCIS appeal.

If the family appeals to the USCIS, it must give the LA a copy of the appeal and proof of mailing or the LA may proceed to deny assistance. The time period to request an appeal may be extended by the LA for good cause.

#### **14.10 USCIS General Requirements**

The request for an LA hearing must be made within 14 days of receipt of the notice offering opportunity for the hearing or, if an appeal was made to the USCIS, within 14 days of receipt of that notice. The participant will be notified that assistance will not be terminated until the USCIS appeal process concludes.

After receipt of a request for an informal hearing, the hearing is conducted as previously described in this section. If the hearing officer decides that the individual is not eligible and there are no other eligible family members, the LA will:

- defer termination if the participant family qualifies for deferral; or
- terminate the participant if the family does not qualify for deferral.

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 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 determinations of tenant rent and Total Tenant Payment.

Families 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.