

## CHAPTER 14: GRIEVANCES AND APPEALS

### INTRODUCTION

This chapter discusses grievances and appeals pertaining to OHA actions or failures to act that adversely affect public housing applicants or residents. The policies are discussed in the following three parts:

Part I: Informal Hearings for Public Housing Applicants. This part outlines the requirements and procedures for informal hearings for public housing applicants.

Part II: Informal Hearings with Regard to Non-citizens. This part discusses informal hearings regarding citizenship status and where they differ from the requirements for general applicant and resident grievances.

Part III: Grievance Policy for Public Housing Residents. This part outlines the requirements and policy for handling grievances for public housing residents.

Note that this chapter is not OHA's grievance procedure. The grievance procedure is a document separate from the ACOP. This chapter of the ACOP provides the policies that govern the grievance procedure.

## **PART I: INFORMAL HEARINGS FOR PUBLIC HOUSING APPLICANTS**

### **14-I.A. OVERVIEW**

When OHA makes a decision that has a negative impact on an applicant family, the family is often entitled to appeal the decision. For applicants, the appeal takes the form of an informal hearing. HUD regulations do not provide a structure for or requirements regarding informal hearings for applicants (except with regard to citizenship status, to be covered in Part II). This part discusses OHA policies necessary to respond to applicant appeals through the informal hearing process.

#### **14-I.B. INFORMAL HEARING PROCESS [24 CFR 960.208(a) and PH Occ GB, p. 58]**

Informal hearings are provided for public housing applicants. An applicant is someone who has applied for admission to the public housing program, but is not yet a resident in the program. Informal hearings are intended to provide a means for an applicant to dispute a determination of ineligibility for admission to a project [24 CFR 960.208(a)]. Applicants to public housing are not entitled to the same hearing process afforded to OHA residents. [24 CFR 966.53(a) and PH Occ GB, p. 58].

Informal hearings provide the applicant a means to hear the details of the reasons for rejection, and an opportunity to present evidence to the contrary if available, and to claim mitigating circumstances if possible.

#### **Use of Informal Hearing Process**

OHA will offer the opportunity of an informal hearing to applicants who have been determined as ineligible for admission.

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

- Discretionary administrative determinations by OHA
- General policy issues or class grievances
- A determination of the family unit size under OHA subsidy standards
- Failure to respond to waiting lists update requests in writing within the specified timeframes

#### **Notice of Denial [24 CFR 960.208(a)]**

OHA must give an applicant prompt notice of a decision denying eligibility for admission. The notice must contain a brief statement of the reasons for OHA decision, and must also state that the applicant may request an informal hearing to dispute the decision. The notice must describe how to obtain the informal hearing.

When denying eligibility for admission, OHA must provide the family a notice of VAWA rights as well as the HUD VAWA self-certification form (form HUD-50066) in accordance with the Violence against Women Reauthorization Act of 2013, and as outlined in 16-VII.C. The notice and self-certification form must accompany the written notification of the denial of eligibility determination.

Prior to notification of denial based on information obtained from criminal or sex offender registration records, the family, in some cases, must be given the opportunity to dispute the information in those records which would be the basis of the denial. See Section 3-III.F. for details concerning this requirement.



## **Scheduling an Informal Hearing**

### OHA Policy

A request for an informal hearing must be made in writing and delivered to OHA either in person or by first class mail, by the close of the business day, no later than 10 business days from the date of OHA's notification of denial of admission.

OHA must schedule and send written notice of the informal hearing within 10 business days of the family's request.

## **Conducting an Informal Hearing [PH Occ GB, p. 58]**

### OHA Policy

The informal hearing will be conducted by a person or persons designated by the Department Director. The designee must be a person other than the person who made the decision under review, or a subordinate of this person.

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

The person conducting the hearing will make the determination whether the admission should be granted or denied.

The person conducting the informal hearing will make a recommendation to grant or deny admission and for denials OHA may elect to have the recommendation reviewed by the Executive Director or a designee for final determination on admission.

## **Informal Hearing Decision [PH Occ GB, p. 58]**

### OHA Policy

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

In rendering a decision, OHA 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 admission. If the grounds for denial are not specified in the regulations or in OHA policy, then the decision to deny assistance will be overturned. (See Chapter 3 for a detailed discussion of the grounds for applicant denial.)
- The validity of the evidence that OHA will evaluate whether the facts presented prove the grounds for denial of admission. If the facts prove that there are grounds for denial, and the denial is required by HUD, OHA will uphold the decision to deny admission.

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

OHA will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. The notice will be mailed, with return receipt requested, within

10 business days of the informal hearing, to the applicant and his or her representative, if any.

If the informal hearing decision overturns the denial, processing for admission will resume. If the family fails to appear for their informal hearing, the denial of admission will stand and the family will be so notified.

### **Reasonable Accommodation for Persons with Disabilities [24 CFR 966.7]**

Persons with disabilities may request reasonable accommodations to participate in the informal hearing process and OHA must consider such accommodations. OHA must also consider reasonable accommodation requests pertaining to the reasons for denial if related to the person's disability. (See Chapter 2 for more detail pertaining to reasonable accommodation requests.)

## **PART II: INFORMAL HEARINGS WITH REGARD TO NON-CITIZENS**

### **14-II.A. 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. These special hearings are referred to in the regulations as informal hearings, but the requirements for such hearings are different from the informal hearings used to deny applicants for reasons other than immigration status.

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 OHA 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 OHA 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)]**

As discussed in Chapters 3 and 13, the notice of denial or termination of assistance for non-citizens must advise the family of any of the following that apply:

- 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 resident, 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 OHA 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.

## **United States Citizenship and Immigration Services Appeal Process [24 CFR 5.514(e)]**

When OHA receives notification that the USCIS secondary verification failed to confirm eligible immigration status, OHA must notify the family of the results of the USCIS verification. The family will have 30 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 OHA with a copy of the written request for appeal and proof of mailing.

### OHA Policy

OHA will notify the family in writing of the results of the USCIS secondary verification within 10 business days of receiving the results.

The family must provide OHA with a copy of the written request for appeal and proof of mailing within 10 business 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 OHA, of its decision. When the USCIS notifies OHA of the decision, OHA must notify the family of its right to request an informal hearing.

### OHA Policy

OHA will send written notice to the family of its right to request an informal hearing within 10 business 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, an applicant family may request that OHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of OHA 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**

OHA 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.

#### **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 OHA 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.

##### OHA Policy

The family must request discovery of OHA documents no later than 48 hours prior to the Informal 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 OHA, and to confront and cross-examine all witnesses on whose testimony or information OHA 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 OHA, as may be agreed upon by the two parties. If the family does not arrange for their own interpreter, OHA is still obligated to provide oral translation services in accordance with its LEP Plan.

### **Recording of the Hearing**

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

#### OHA Policy

OHA will not provide a transcript of an audio taped informal hearing.

## **Hearing Decision**

OHA must provide the family with a written notice of the final decision, based solely on the facts presented at the hearing, within 14 calendar days of the date of the informal hearing. The notice must state the basis for the decision.

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

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

## **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, a resident family may request that OHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of OHA notice of termination, or within 30 days of receipt of the USCIS appeal decision.

The informal hearing procedures for resident families whose tenancy is being terminated based on immigration status is the same as for any grievance under the grievance procedures for resident families found in Part III below.

## **PART III: GRIEVANCE PROCEDURES FOR PUBLIC HOUSING RESIDENTS**

### **14-III.A. REQUIREMENTS [24 CFR 966.52]**

OHA must have a grievance procedure in place through which residents of public housing are provided an opportunity to grieve any OHA action or failure to act involving the lease or OHA policies which adversely affect their rights, duties, welfare, or status. OHA may establish an expedited grievance procedure as defined in 24 CFR 966.53. OHA must not only meet the minimal procedural due process requirements provided under the regulations, but must also meet any additional requirements imposed by local, state or federal law.

OHA grievance procedure must be included in, or incorporated by reference in, the lease.

#### OHA Policy

OHA grievance procedure will be incorporated by reference in the resident lease. OHA must provide at least 30 days' notice to residents and the Resident Advisory Board setting forth proposed changes to OHA grievance procedure, and providing an opportunity to present written comments. Comments submitted must be considered by OHA before adoption of any grievance procedure changes by OHA.

Residents and the Resident Advisory Board will have 30 calendar days from the date they are notified by OHA of any proposed changes in OHA grievance procedure, to submit written comments to OHA.

OHA must furnish a copy of the grievance procedure to each resident and to the Resident Advisory Board.

## 14-III.B. DEFINITIONS [24 CFR 966.53; 24 CFR 966.51(a)(2)(i)] Section 15.0

### Grievance Policy

There are several terms used by HUD with regard to public housing grievance procedures, which take on specific meanings different from their common usage. These terms are as follows:

- **Grievance** – any dispute which a resident may have with respect to OHA action or failure to act in accordance with the individual resident’s lease or OHA regulations which adversely affect the individual resident’s rights, duties, welfare or status
- **Complainant** – any resident whose grievance is presented to OHA or at the project management office
- **Due Process Determination** – a determination by HUD that law of the jurisdiction requires that the resident must be given the opportunity for a hearing in court which provides the basic elements of due process before eviction from the dwelling unit
- **Elements of Due Process** – an eviction action or a termination of tenancy in a state or local court in which the following procedural safeguards are required:
  - a. Adequate notice to the resident of the grounds for terminating the tenancy and for eviction
  - b. Right of the resident to be represented by counsel
  - c. Opportunity for the resident to refute the evidence presented by OHA including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense which the resident may have
  - d. A decision on the merits
- **Expedited grievance** – a procedure established by OHA for any grievance concerning a termination of tenancy or eviction that involves:
  - 1) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of OHA’s public housing premises by other residents or employees of OHA; or
  - 2) Any drug-related or violent criminal activity on or off such premises.
- **Hearing Officer**– an impartial person or persons selected by OHA, other than the person who made or approved the decision under review, or a subordinate of that person. Such individual or individuals do not need legal training.
- **Resident** – the adult person (or persons) (other than a live-in aide)
  - a. Who resides in the unit, and who executed the lease with OHA as lessee of the dwelling unit, or, if no such person now resides in the unit,
  - b. Who resides in the unit, and who is the remaining head of household of the resident family residing in the dwelling unit
- **Resident Organization** – includes a resident management corporation

### **14-III.C. APPLICABILITY [24 CFR 966.51]**

Potential grievances could address most aspects of OHA's operation. However, there are some situations for which the grievance procedure is not applicable.

The grievance procedure is applicable only to individual resident issues relating to OHA. It is not applicable to disputes between residents not involving OHA. Class grievances are not subject to the grievance procedure nor is said grievance procedure to be used as a forum for initiating or negotiating policy changes of OHA.

If HUD has issued a due process determination, OHA may exclude from OHA grievance procedure any grievance concerning a termination of tenancy or eviction that involves:

- Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises of other residents or employees of OHA
- Any violent or drug-related criminal activity on or off such premises

OHA may evict through the local judicial eviction procedures. In this case, OHA is not required to provide the opportunity for a hearing under OHA's grievance procedure as described above.

#### OHA Policy

OHA is located in a HUD-declared due process state. Therefore, OHA will not offer grievance hearings for lease terminations involving criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or employees of OHA, or for violent or drug-related criminal activity on or off the premises, or criminal activity.

#### **14-III.D. INFORMAL SETTLEMENT OF GRIEVANCE [24 CFR 966.54]**

Any grievance shall be personally presented within the time specified by written notice from OHA, or, if no such time is specified, within thirty (30) days of an OHA action or failure to act giving rise to the dispute. The grievance must be presented in writing on a pre-printed form supplied by OHA, or in any other written form chosen by the resident, or orally. The presentation of the grievance shall be made to OHA district office with jurisdiction for the apartment in which the grievant resides. An attempt will be made to settle the grievance informally, by discussion and without a hearing. A summary of the discussion shall be prepared within five (5) work days. One copy shall be given to the grievant and one retained in OHA's resident file. The summary shall specify:

- The names of the participants
- Dates of meeting
- The nature of the proposed disposition of the complaint and the specific reasons,
- The procedures by which a grievant can obtain a hearing if the grievant is not satisfied with the informal settlement of grievance..

#### OHA Policy

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

If a resident fails to attend the scheduled meeting, and was unable to reschedule the hearing in advance due to the nature of the conflict, the tenant must contact OHA within 24 hours of the scheduled hearing date, excluding weekends and holidays. OHA will reschedule the appointment only if the tenant can show good cause for failing to appear, or if it is needed as a reasonable accommodation for a person with disabilities.

## 14-III.E. PROCEDURES TO OBTAIN A HEARING

### Requests for Hearing and Failure to Request

#### OHA Policy

The resident must submit a written request for a grievance hearing to OHA within 10 business days of the resident's receipt of the summary of the informal settlement.

If the complainant does not request a hearing, OHA's disposition of the grievance under the informal settlement process will become final. However, failure to request a hearing does not constitute a waiver by the complainant of the right to contest OHA's action in disposing of the complaint in an appropriate judicial proceeding.

#### **Scheduling of Hearings [24 CFR 966.56(a)]**

If the complainant has complied with all requirements for requesting a hearing as described above, a hearing must be scheduled promptly for a time and place reasonably convenient to both the complainant and OHA and held before a hearing officer. A written notification specifying the time, place and the procedures governing the hearing must be delivered to the complainant and the appropriate OHA official.

#### OHA Policy

Within 10 business days of receiving a written request for a hearing, the hearing officer will schedule and send written notice of the hearing to both the complainant and OHA.

OHA may wish to permit the resident to request to reschedule a hearing for good cause.

The resident 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, OHA may request documentation of the "good cause" prior to rescheduling the hearing.



#### **14-III.F. SELECTION OF HEARING OFFICER [24 CFR 966.53(e)]**

The grievance hearing must be conducted by an impartial person appointed by the Executive Director or designee, other than the person who made or approved OHA action under review, or a subordinate of such person. OHA must describe their policies for selection of a hearing officer in their lease.

##### OHA Policy

OHA grievance hearings will be conducted by a single hearing officer and not a panel. A Hearing Officer will be designated by the Executive Director or the Deputy Executive Director for Public Housing. Eligible OHA Hearing Officers will include qualified current staff persons, former OHA employees, professional arbitrators, or personnel from other OHA who have received training on hearing procedures.

Efforts will be made to assure that the person selected is not a friend, nor enemy, of the complainant and that they do not have a personal stake in the matter under dispute or will otherwise have an appearance of a lack of impartiality.

OHA must include their policies regarding the hearing officer selection process in the tenant lease form. [24 CFR 966.4].

## **14-III.G. PROCEDURES GOVERNING THE HEARING [24 CFR 966.56]**

### **Rights of Complainant [24 CFR 966.56(b)]**

The complainant will be afforded a fair hearing. This includes:

- The opportunity to examine before the grievance hearing any OHA documents, including records and regulations that are directly relevant to the hearing. The resident must be allowed to copy any such documents. If OHA does not make the document available for examination upon request by the complainant, OHA may not rely on such document at the grievance hearing.

#### OHA Policy

The family must request discovery of OHA documents no later than 48 hours prior to the grievance hearing.

- The right to be represented by counsel or other person chosen as the resident's representative and to have such person make statements on the resident's behalf.

Hearings may be attended by the following applicable persons: OHA representative(s) and any witnesses for OHA, the resident, and any witnesses for the resident; the resident's counsel or other representative, and; any other person approved by OHA as a reasonable accommodation for a person with a disability

- The right to a private hearing unless the complainant requests a public hearing.
- The right to present evidence and arguments in support of the resident's complaint, to controvert evidence relied on by OHA or project management, and to confront and cross-examine all witnesses upon whose testimony or information OHA or project management relies.
- A decision based solely and exclusively upon the facts presented at the hearing.

### **Failure to Appear [24 CFR 966.56(c)]**

If the complainant or OHA fails to appear at a scheduled hearing, the hearing officer may make a determination to postpone the hearing for a period no more than five business days or may make a determination that the party has waived his/her right to a hearing. Both the complainant and OHA must be notified of the determination by the hearing officer, provided that a determination that the complainant has waived his/her right to a hearing will not constitute a waiver of any right the complainant may have to contest OHA's disposition of the grievance in an appropriate judicial proceeding.

There may be times when a complainant does not appear due to unforeseen circumstances which are out of their control and are no fault of their own.

OHA Policy

If the resident does not appear at the scheduled time of the hearing, the hearing officer will wait up to 30 minutes. If the resident appears within 30 minutes of the scheduled time, the hearing will be held. If the resident does not arrive within 30 minutes of the scheduled time, they will be considered to have failed to appear.

If the resident fails to appear and was unable to reschedule the hearing in advance, the resident must contact OHA within 24 hours of the scheduled hearing date, excluding weekends and holidays. The hearing officer will reschedule the hearing only if the resident can show good cause for the failure to appear, or 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.

## **General Procedures [24 CFR 966.56(d) (e)]**

At the hearing, the complainant must first make a showing of an entitlement to the relief sought and thereafter OHA must sustain the burden of justifying OHA action or failure to act against which the complaint is directed [24 CFR 966.56(d)].

The hearing is conducted informally by the hearing officer/panel. OHA and the tenant must be given the opportunity to present oral or documentary evidence pertinent to the facts and issues raised by the complaint, and to question any witnesses.

### OHA 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 OHA. Writings include all forms of recorded communication or representation, including letters, emails, 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 OHA fails to comply with the discovery requirements (providing the resident with the opportunity to examine OHA documents prior to the grievance hearing), the hearing officer will refuse to admit such evidence.

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

The complainant or OHA may arrange, in advance and at the expense of the party making the arrangement, for a transcript of the hearing. Any interested party may purchase a copy of such transcript [24 CFR 966.56(e)].

OHA Policy

OHA will record all Informal Hearings. The audio tape is available upon request.

**Accommodations of Persons with Disabilities [24 CFR 966.56(f)]**

OHA must provide reasonable accommodation for persons with disabilities to participate in the hearing. Reasonable accommodation may include qualified sign language interpreters, readers, accessible locations, or attendants.

If the resident is visually impaired, any notice to the resident that is required in the grievance process must be in an accessible format.

See Chapter 2 for a thorough discussion of OHA's responsibilities pertaining to reasonable accommodation.

**Limited English Proficiency (24 CFR 966.56(g))**

OHA must comply with HUD's LEP Final Rule in providing language services throughout the grievance process.

#### 14-III.H. DECISION OF THE HEARING OFFICER [24 CFR 966.57]

The hearing officer must issue a written decision, stating the reasons for the decision, within a reasonable time after the hearing. 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 decision must be sent to the complainant and OHA. OHA must retain a copy of the decision in the resident's folder. OHA must maintain a log of all hearing officer decisions and make that log available upon request of a prospective complainant, his/her representative, or the hearing officer [24 CFR 966.57(a)].

##### OHA Policy

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

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

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

**OHA Evidence to Support OHA 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 OHA's conclusion.

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

The hearing officer will issue a written decision to the family and OHA no later than 10 business days after the hearing. The report will contain the following information:

##### **Hearing information:**

Name of the complainant

Date, time and place of the

hearing Name of the

hearing officer

Name of OHA

representative(s) Name of

family representative (if any)

Names of witnesses (if any)

**Background:** A brief, impartial statement of the reason for the hearing and the date(s) on which the informal settlement was held, who held it, and a summary

of the results of the informal settlement. Also includes the date the complainant requested the grievance 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 shows 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 OHA's decision.

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

## **Procedures for Further Hearing**

### OHA 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 OHA will take effect and another hearing will not be granted.



### **Final Decision [24 CFR 966.57(b)]**

The decision of the hearing officer shall be binding on OHA which shall take all actions, or refrain from any actions, necessary to carry out the decision unless OHA Board of Commissioners determines, that:

- The grievance does not concern OHA action or failure to act in accordance with or involving the complainant's lease on OHA regulations, which adversely affect the complainant's rights, duties, welfare or status;
- The decision of the hearing officer is contrary to applicable Federal, State, or local law, HUD regulations or requirements of the annual contributions contract between HUD and OHA;

#### OHA Policy

When OHA considers the decision of the hearing officer to be invalid due to the reasons stated above, it will present the matter to the Executive Director or his or her designee within 10 business days of the date of the hearing officer's decision. If the Executive Director or his or her designee decides to reverse the hearing officer's decision, it must notify the complainant within 10 business days of this decision.

A decision by the hearing officer, or the Executive Director or his or her designee in favor of OHA or which denies the relief requested by the complainant in whole or in part must not constitute a waiver of any rights, nor effect in any manner whatever, any rights the complainant may have to a subsequent trial or judicial review in court. [24 CFR 966.57(c)].