

XXIII. INFORMAL HEARINGS AND REVIEWS

A. DEFINITIONS

1. Informal Review. A review of the CDC's decision on an applicant's application for participation in the Housing Choice Voucher Housing Choice Voucher Program in accordance with the procedures outlined below.
2. Informal Hearing. A hearing regarding a decision affecting a participating family in the Housing Choice Voucher Housing Choice Voucher Program in accordance with the procedures outlined below.
3. Informal Review Officer. A person designated to informally review a decision concerning an application for participation and give his/her decision.
4. Informal Hearing Officer. A person designated to conduct an informal hearing concerning a participant and gives his/her decision.

B. PROCEDURES FOR INFORMAL REVIEW

1. The CDC shall give an applicant written notice of a decision denying assistance or a decision denying listing on the waiting list within ten (10) calendar days from the date of the decision.
2. The notice shall contain a brief statement of the reason(s) for the decision, that the applicant may submit a signed written request for an informal review of the decision if he/she disagrees with the decision, and that the request must be made within ten (10) calendar days from the date of the notice, and that the applicant should keep proof of making the request.

The informal review will be scheduled within 2 weeks from the date the request is received by the CDC.

3. The CDC may or may not conduct an informal review if the applicant fails to submit his/her request within the time stipulated. If the request is not submitted timely, it shall mean that the applicant waived his/her right to request an informal review.
4. Reasonable accommodations shall be made for applicants who are disabled.

5. The CDC shall conduct an informal review, provided the applicant submits a proper request for an informal review within the time allowed.
6. Informal Review Officer
 - a. The CDC shall designate any person or persons as the review officer(s). The power to designate any person or persons as review officer or review officers shall rest with the CDC.
 - b. The person or persons designated as the review officers shall not be the person who made or approved the decision under review or a subordinate of such person.
7. The Informal Review
 - a. The proceedings of the review shall be informal and confined to factors relating to program eligibility and a determination of whether the decision of denying assistance to the applicant is justified or not.
 - b. The CDC shall notify the applicant of the date, time and place of conducting the informal review at least a week prior to the date of the review.
 - c. The applicant shall have the right to present his objections either orally or in writing.
 - d. A representative of the Housing Choice Voucher Department may be present.
8. The Decision
 - a. The review officer or officers shall decide whether the decision denying assistance to the applicant was justified and according to the Federal regulations and rules of the CDC. This final decision shall be given within seven (7) calendar days from the date of the review.
 - b. The CDC shall promptly notify the applicant in writing of the final decision, and a brief statement of the reasons for the final decision.
9. Informal Reviews are not required for established policies and procedures and determinations such as:
 - a. Discretionary administrative determinations;
 - b. General policy issues or class grievances;

- c. A determination of the family unit size under the subsidy standards;
- d. Refusal to extend or suspend a Voucher;
- e. Disapproval of a lease;
- f. Determination that a unit is not in compliance with HQS; and
- g. Determination that a unit is not in accordance with HQS due to family size or composition.

C. PROCEDURES FOR INFORMAL HEARING

1. The CDC will provide participants with the opportunity for an Informal Hearing for decisions related to any of the following determinations:
 - a. Termination of assistance;
 - b. Determination of the family's annual or adjusted income and the calculation of the housing assistance payment;
 - c. Family unit size determination under the subsidy standards;
 - d. Determination to terminate assistance for any reason; and
 - e. Notice of Determination to pay an owner/landlord claim for damages, unpaid rent or vacancy loss.

2. Informal Hearings are not required for established policies and procedures such as:
 - a. Discretionary administrative determinations;
 - b. General policy issues or class grievances;
 - c. Establishment of the schedule of utility allowances;
 - d. Determination not to approve an extension or suspension of a voucher term;
 - e. Determination not to approve a unit or lease;
 - f. Determination that an assisted unit is not in compliance with HQS (the CDC must provide a hearing for family breach of HQS because that is a family obligation determination);
 - g. Determination that the unit is not in accordance with HQS because of the family size; or
 - h. Determination to exercise or not exercise any right or remedy against the owner/landlord under a HAP contract.

3. Notice to Participant
 - a. When decisions are made, the CDC shall give the participant prompt written notice of the decision made.
 - b. The written notice shall contain a brief statement of the reasons for the decision, and a statement that if the participant does not agree with the decision, she/he may request an informal hearing

on the decision within ten (10) calendar days from receipt of the notice.

- c. When the CDC receives a request for an informal hearing, a hearing shall be scheduled within 2 weeks of the date the request is received. The CDC shall send the participant notification of the scheduled hearing. The notification of hearing will contain:
 - The date and time of the hearing;
 - The location where the hearing will be held;
 - The family's right to bring evidence, witnesses, legal or other representation at the family's expense
 - The right to review any documents or evidence in the possession of the CDC upon which the CDC based the proposed action and, at the family's expense to obtain a copy of such documents prior to the hearing. Request for such documents or evidence must be received no later than 3 business day before the hearing date.
 - A notice to the family that the CDC will request a copy of any documents or evidence the family will use at the hearing.
- d. The CDC may or may not conduct an informal hearing if the participant does not request an informal hearing within the time fixed herein to do so. If the request is not submitted timely, it shall mean that the participant waived his/her right to request an informal hearing.

4. The Hearing Officer

- a. The CDC will designate any person or persons as hearing officer or hearing officers to conduct the informal hearing. The power to designate a hearing officer shall rest solely with the CDC.
- b. The hearing officer can be any person other than a person who made or approved the decision under review, or a subordinate of such person.

5. Rights of the Participant

- a. The participant can either appear in person at the hearing, or can be represented by a lawyer or other representative at his/her own expense.
- b. The participant shall have the right to present evidence, both oral and documentary, without regard to admissibility under the rules of evidence applicable to judicial proceedings.

- c. The client shall have the right to arrange for an interpreter to attend the hearing, at the client's expense.
- 6. Rights of the CDC
 - a. The CDC can be represented by a lawyer, or any other representative in the informal hearing.
 - b. The CDC can introduce evidence, both oral and documentary, without regard to admissibility under the rules of evidence applicable to judicial proceedings.
 - c. The CDC shall have the right to question any witness examined in the informal hearing and to make final submissions.
- 7. The Informal Hearing
 - a. The hearing officer will regulate the conduct of the hearing in accordance with hearing procedures commonly accepted and followed.
 - b. If the participant who requested the informal hearing fails to appear at the hearing on the date set for the hearing without any request for an adjournment on strong grounds, the matter will be decided by the parties that are present, or dismissed immediately with no right for its restoration. The hearing officer may or may not allow an application for adjournment.
 - c. The participant will begin his/her case by introducing documents it relies on and by taking oral testimony of witnesses in support of his/her contention.
 - d. The CDC will then begin its defense by introducing documents it relies on and by taking oral statements from witnesses, if necessary, in justification of its decision.
 - e. The participant and the CDC will then close their cases and make final submissions, if they choose to, prior to the decision.
- 8. The Decision
 - a. The hearing officer will consider the evidence introduced by the parties and give such evidence due weight.
 - b. Factual determinations relating to the individual circumstances of the participant shall be based on the evidence presented at the hearing.
 - c. The decision shall be in writing and based on the facts established, HUD regulations, CDC policy, and the applicable law.
 - d. The decision shall clearly state the reason on which the decision is arrived.

- e. A copy of the decision shall be furnished promptly to the participant.

D. HEARING AND APPEAL PROVISIONS FOR RESTRICTIONS ON ASSISTANCE TO NON-CITIZENS

1. Assistance to the family may not be delayed, denied or terminated on the basis of immigration status at any time prior to the receipt of the decisions on the CIS appeal.
2. Assistance to a family may not be terminated or denied while the CDC hearing is pending but assistance to an applicant may be delayed pending the CDC hearing.
3. CIS Determination
 - a. If a family member claims to be an eligible immigrant and the CIS SAVE system and manual search do not verify the claim, the CDC notifies the applicant or participant within ten (10) days of their right to appeal to the CIS within thirty (30) days or to request an informal hearing with the CDC either in lieu of or subsequent to the CIS appeal.
 - b. If the family appeals to the CIS, they must give the CDC a copy of the appeal and proof of mailing or the CDC may proceed to deny or terminate. The time period to request an appeal may be extended by the CDC for good cause.
 - c. The request for a CDC hearing must be made within fourteen (14) days of receipt of the notice offering the hearing or, if an appeal was made to the CIS, within fourteen (14) days of receipt of that notice.
4. After receipt of a request for an informal review/hearing, the review/hearing is conducted as described in section D. of this chapter for both applicants and participants. If the hearing officer decides that the individual is not eligible, and there are no other eligible family member(s) the CDC will:
 - a. Deny the applicant family;
 - b. Defer termination if the family is a participant and qualifies for deferral; and
 - c. Terminate the participant if the family does not qualify for deferral.
5. If there are eligible members in the family, the CDC will offer to prorate assistance or give the family the option to remove the ineligible member(s).

6. All other complaints related to eligible citizen/immigrant status:
 - a. If any family member fails to provide documentation of certification as required by the regulation, that member is treated as ineligible. If all family members fail to provide, the family will be denied or terminated for failure to provide.
 - b. 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.
 - c. 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.
 - d. Families denied or terminated for fraud in connection with the non-citizen rule are entitled to a review or hearing in the same way as terminations for any other type of fraud.

E. MITIGATING CIRCUMSTANCES FOR APPLICANTS/PARTICIPANTS WITH DISABILITIES

1. When applicants are denied placement on the waiting list, or the CDC is terminating assistance, the family will be informed that presence of a disability may be considered as a mitigating circumstance during the informal review process.
2. Examples of mitigating circumstances are:
 - a. A person with a cognitive disorder may not have understood the requirement to report increases in income;
 - b. A person may not understand the need to make regular repayments on a promissory note; and
 - c. Minor criminal records for public drunkenness may be due to medication; prior incarcerations for being disorderly may be emotional disorder.

