

THE HOUSING AUTHORITY OF THE COUNTY OF JACKSON

Effective: April 1, 2016

Informal Hearing Procedure

982.555 Informal hearing for participant.

1. *When hearing is required.*

A PHA must give a participant family an opportunity for an informal hearing to consider whether the following PHA decisions relating to the individual circumstances of a participant family are in accordance with the law, HUD regulations and PHA policies:

- 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 the PHA utility allowance schedule.
- A determination of the family unit size under the PHA subsidy standards.
- A determination that a voucher program family is residing in a unit with a larger number of bedrooms than appropriate for the family unit size under the PHA subsidy standards, or the PHA determination to deny the family's request for an exception from the standards.
- A determination to terminate assistance for a participant family because of the family's action or failure to act (see § [982.552](#)).
- A determination to terminate assistance because the participant family has been absent from the assisted unit for longer than the maximum period permitted under PHA policy and HUD rules.

In the cases described, the PHA must give the opportunity for an informal hearing before the PHA terminates housing assistance payments for the family under an outstanding HAP contract.

2. *When hearing is not required.*

The PHA is not required to provide a participant family an opportunity for an informal hearing for any of the following:

- Discretionary administrative determinations by the PHA.
- General policy issues or class grievances.
- Establishment of the PHA schedule of utility allowances for families in the program.
- a PHA determination not to approve an extension or suspension of a voucher term.
- a PHA determination not to approve a unit or tenancy.
- a PHA determination that an assisted unit is not in compliance with HQS. (However, the PHA must provide the opportunity for an informal hearing for a decision to terminate assistance for a breach of the HQS caused by the family as described in § [982.551\(c\)](#).)

- (7) a PHA determination that the unit is not in accordance with HQS because of the family size.
- (8) A determination by the PHA to exercise or not to exercise any right or remedy against the owner under a HAP contract.

3. *Notice to family.*

In the some cases, the PHA must notify the family that the family may ask for an explanation of the basis of the PHA determination, and that if the family does not agree with the determination, the family may request an informal hearing on the decision. The notice must:

- Contain a brief statement of reasons for the decision,
- State that if the family does not agree with the decision, the family may request an informal hearing on the decision in writing, and
- State the deadline for the family to request an informal hearing.

4. *Expeditious hearing process.*

Where a hearing for a participant family is required under this section, the PHA must proceed with the hearing in a reasonably expeditious manner upon the request of the family.

5. *Hearing procedures*

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.

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 the PHA. 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 the PHA 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.

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

- PHA Notice to the Family: The hearing officer will determine if the reasons for the PHA's decision are factually stated in the Notice.
- Discovery: The hearing officer will determine if the PHA and the family were given the opportunity to examine any relevant documents in accordance with PHA policy.
- PHA Evidence to Support the PHA 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 the PHA'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 PHA policies. If the grounds for termination are not specified in the regulations or in compliance with PHA policies, then the decision of the PHA will be overturned.

The hearing officer will issue a written decision to the family and the PHA no later than 10 business 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 the PHA 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 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 the PHA's decision.
- Order: The hearing report will include a statement of whether the PHA's decision is upheld or overturned. If it is overturned, the hearing officer will instruct the PHA to change the decision in accordance with the hearing officer's determination. In the case of termination of assistance, the hearing officer will instruct the PHA to restore the participant's program status.

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 the PHA will take effect and another hearing will not be granted.

In addition, within 10 business days after the date the hearing officer's report is mailed to the PHA and the participant, the PHA 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.

It shall be within the sole discretion of the PHA 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.

6. *By family.*

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

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

7. *By PHA.*

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

8. *Hearing officer: Appointment and authority.*

The hearing may be conducted by any person or persons designated by the PHA, other than a person who made or approved the decision under review or a subordinate of this person.

9. *Evidence.*

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

10. *Issuance of decision.*

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 shall be based on a preponderance of the evidence presented at the hearing. A copy of the hearing decision shall be furnished promptly to the family.

11. *Effect of decision.*

The PHA is not bound by a hearing decision:

- Concerning a matter for which the PHA 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 the PHA hearing procedures.
- Contrary to HUD regulations or requirements, or otherwise contrary to federal, State, or local law.

- If the PHA determines that it is not bound by a hearing decision, the PHA must promptly notify the family of the determination, and of the reasons for the determination.