Chapter 13

COMPLAINTS, GRIEVANCES AND APPEALS

[24 CFR 966.50-966.57; Hawaii Administrative Rule 15-183 & 15-190]

INTRODUCTION

The informal hearing requirements defined in HUD regulations are applicable to participating families who disagree with an action, decision, or inaction of the PHA. This Chapter describes the policies to be used when families disagree with a PHA decision. It is the policy of the PHA to ensure that all families have the benefit of all protections due to them under the law.

Grievances shall be handled in accordance with the PHA's approved Grievance Procedures. The written grievance procedure is incorporated into this document by reference and is the guideline to be used for grievances and appeals.

A. COMPLAINTS

The PHA will respond promptly to all complaints.

Each complaint regarding physical condition of the units may be reported by phone to the Housing Manager. Anonymous complaints are checked whenever possible. The PHA does require that complaints be put in writing.

Complaints from families. If a family disagrees with an action or inaction of the PHA, complaints will be referred to the Manager. Complaints regarding physical condition of the units may be reported by phone to the Unit Manager.

Complaints from staff. If a staff person reports a family is violating or has violated a lease provision or is not complying with program rules, the complaints will be referred to the Unit Manager.

Complaints from the general public. Complaints or referrals from persons in the community in regard to the PHA or a family will be referred to the Housing Manager.

Anonymous complaints will be checked whenever possible.

B. APPEALS BY APPLICANTS

Applicants who are determined ineligible, who do not meet the PHA's admission standards, or where the PHA does not have an appropriate size and type of unit in its inventory will be given written notification promptly, including the reason for the determination.

Ineligible applicants will be promptly provided with a letter detailing their individual status, stating the reason for their ineligibility, and offering them an opportunity for an informal hearing.

Applicants must submit their request for an informal hearing in writing to the PHA within fourteen (14) working days from the date of the notification of their ineligibility.

If the applicant requests an informal hearing, the PHA will provide an informal hearing within twenty one (21) working days of receiving the request. The PHA will notify the applicant of the place, date, and time.

Informal hearings will be conducted by an impartial hearing officer. The person who is designated as the hearing officer cannot be the person who made the determination of ineligibility or a subordinate of that person.

The applicant may bring to the hearing any documentation or evidence s/he wishes and the evidence along with the data compiled by the PHA will be considered by the hearing officer.

The hearing officer will make a determination based upon the merits of the evidence presented by both sides. Within twenty one (21) working days of the date of the hearing, the hearing officer will mail a written decision to the applicant and place a copy of the decision in the applicant's file.

The grievance procedures for Public Housing tenants do not apply to PHA determinations that affect applicants.

C. APPEALS BY TENANTS

Grievances or appeals concerning the obligations of the tenant or the PHA under the provisions of the lease shall be processed and resolved in accordance with the Grievance Procedure of the PHA, which is in effect at the time such grievance or appeal arises.

(See the PHA's Grievance Procedure contained in this chapter.)

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

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 decision on the INS appeal.

Assistance to a family may not be terminated or denied while the PHA hearing is pending but assistance to an applicant may be delayed pending the PHA hearing.

INS Determination of Ineligibility

If a family member claims to be an eligible immigrant and the INS SAVE system and manual search do not verify the claim, the PHA notifies the applicant or tenant within ten days of their right to appeal to the INS within thirty days or to request an informal hearing with the PHA either in lieu of or subsequent to the INS appeal.

If the family appeals to the INS, they must give the PHA a copy of the appeal and proof of mailing or the PHA may proceed to deny or terminate. The time period to request an appeal may be extended by the PHA for good cause.

The request for a PHA hearing must be made within fourteen days of receipt of the notice offering the hearing or, if an appeal was made to the INS, within fourteen days of receipt of that notice.

After receipt of a request for an informal hearing, the hearing is conducted as described in the "Grievance Procedures" section 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 members the PHA will:

- Deny the applicant family.
- Terminate the participant if the family does not qualify for deferral.

If there are eligible members in the family, the PHA will offer to prorate assistance or give the family the option to remove the ineligible members.

All other complaints related to eligible citizen/immigrant status:

- 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 denied or 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 denied or 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.

E. GRIEVANCE PROCEDURES

Residents of Public Housing may contact the PHA administrative office, project office, Hearing office, or Property Management office to initiate grievance process.

Definitions

Grievance. Any dispute which a tenant may have with respect to a Housing Authority action or failure to act in accordance with the individual tenant's lease or PHA regulations which adversely affect the individual tenant's rights, duties, welfare, or status.

Complainant. Any tenant whose grievance is presented to the PHA or at the site/management office informally or as part of the informal hearing process.

Hearing Officer/Hearing Panel. A person or persons selected in accordance with this grievance procedure to hear grievances and render a decision with respect thereto.

Tenant. A lessee or the remaining head of household of any tenant family residing in housing accommodations owned or leased by the PHA.

Elements of Due Process. An eviction action or a termination of tenancy by a Hearing Board in which the following procedural safeguards are required.

- Adequate notice to the tenant of the grounds for terminating the tenancy and for eviction:
- Opportunity for the tenant to examine all relevant documents, records, and regulations of the PHA prior to the trial for the purpose of preparing a defense;
- Right of the tenant to be represented by counsel;
- Opportunity for the tenant to refute the evidence presented by the PHA including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense which the tenant may have;
- A decision on the merits of the case.

Applicability

This Grievance Procedure applies to all individual grievances, except any grievance concerning a termination of tenancy or eviction that involves:

- Any activity, not just criminal activity, that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or PHA employees, or
- Any drug-related criminal activity *on* or *off* such premises.

Pre-Hearing Procedures

Informal Conference Procedures

Any grievance shall be presented orally or in writing to the PHA main administrative office. or the Property management office who sent the notice on which the grievance is based. Written grievances must be signed by the complainant. The grievance must be presented within a reasonable time. not past the first working day after the day of the action or failure to act which is the basis for the grievance. It may be simply stated. but shall specify:

- The particular grounds upon which it is based.
- The action requested; and
- The name. address. and telephone number of the complainant, and similar information about the complainant's representative, if any.

The purpose of the initial discussion is to discuss and to resolve the grievance without the necessity of a formal hearing.

Within seven business days. a summary of this discussion will be given to the complainant by a PHA representative. One copy will be filed in the tenant's file.

The summary will include: names of participants. the date of the meeting. the nature of the proposed disposition. and the specific reasons for the disposition. The summary will also specify the steps by which an formal hearing can be obtained.

Dissatisfaction with Informal Conference

If the complainant is dissatisfied with the proposed disposition of the grievance. s/he shall submit a written request for a hearing within fifteen (15) business days of the receipt of the summary of the informal meeting.

The request for a hearing may be turned in at the Project Office or at the PHA's Hearings Office. If received at the Project Office. the manager will forward it to the Hearings Office.

The request must specify the reason for the grievance request and the relief sought.

Failure to Request a Formal Hearing

If the complainant does not request a formal hearing within fifteen (15) business days. s/he waives his/her right to a hearing. and the PHA's proposed disposition of the grievance will become final. This section in no way constitutes a waiver of the complainant's right to contest the PHA's disposition in an appropriate judicial proceeding.

Right to a Hearing

After exhausting the informal conference procedures outlined above, a complainant shall be entitled to a hearing before a hearing officer.

- The head of household or other adult household member must attend the hearing.
- If the complainant fails to appear within fifteen (15) minutes of the scheduled time, the complainant waives his/her right to a hearing.

The PHA will provide reasonable accommodation for persons with disabilities to participate in the hearing. The PHA must be notified at least five (5) business days prior to the scheduled time if special accommodations are required.

Selection of Hearing Officer

A grievance hearing shall be conducted by an impartial person or persons appointed by the PHA other than the person who made or approved the PHA action under review, or a subordinate of such person.

Procedures to Obtain a Hearing

Informal Prerequisite

All grievances must be informally presented as a prerequisite to a formal hearing.

The hearing officer may waive the prerequisite informal conference if, and only if, the complainant can show good cause why s/he failed to proceed informally.

Escrow Deposit

Before a hearing is scheduled in any grievance involving an amount of rent the PHA claims is due, the complainant shall pay to the PHA all rent due and payable as of the month preceding the month in which the act or failure to act took place.

The complainant shall thereafter deposit the same amount of the monthly rent in an escrow account each month until the complaint is resolved by decision of the hearing official or panel.

The PHA may waive these escrow requirements. The escrow deposit requirement must be waived if tenant has a financial hardship paying the minimum rent. Also it must be waived if the tenant has reduced welfare benefits related to work requirements.

Unless so waived, failure to make the required escrow payments shall result in termination of the grievance procedure.

Failure to make such payments does not constitute a waiver of any right the complainant may have to contest the PHA's disposition of the grievance in any appropriate judicial proceeding.

Scheduling

If the complainant complies with the procedures outlined above, a hearing shall be scheduled by the hearing officer promptly within twenty eight (28) business days at a time and place reasonably convenient to the complainant and the PHA.

A written notification of the date, time, place, and procedures governing the hearing shall be delivered to the complainant and the appropriate PHA official.

Hearing Procedures

The hearing shall be held before a hearing officer.

The complainant shall be afforded a fair hearing and be provided the basic safeguards of due process to include:

- The opportunity to examine and to copy before the hearing, at the expense of the complainant, all documents, records and regulations of the PHA that are relevant to the hearing with at least a 24 hour notice to the legal department prior to the hearing. Any document not so made available after request by the complainant may not be relied upon by the PHA at the hearing.
- The PHA shall also have the opportunity to examine and to copy at the expense of the PHA all documents, records and statements that the family plans to submit during the hearing to refute the PHA's inaction or proposed action. Any documents not so made available to the PHA may not be relied upon at the hearing.
- The right to a private hearing unless otherwise requested by the complainant.
- The right to be represented by counsel or other person chosen as a representative.
- The right to present evidence and arguments in support of the complaint, to controvert evidence presented by the PHA , and to confront and cross-examine all witnesses upon whose testimony or information the PHA relies, limited to the issues for which the complainant has received the opportunity for a formal hearing; and
- The right to a decision based solely and exclusively upon the facts presented at the hearing.

If the hearing officer determines that the issue has been previously decided in another proceeding, a decision may be rendered without proceeding with the hearing.

If the complainant or PHA fail to appear at the scheduled hearing, the hearing officer may:

- make a determination that the party has waived his/her right to a hearing.

Such a determination in no way waives the complainant's right to appropriate judicial proceedings in another forum.

At the hearing. the complainant must first make a showing of an entitlement to the relief sought and thereafter the PHA must sustain the burden of justifying the PHA action or failure to act against which the complaint is directed.

The hearing shall be conducted by the hearing officer as follows:

> Informal: Oral and documentary evidence pertinent to the facts and issues raised by the complaint may be received without regard to admissibility under the rules of evidence applicable to judicial proceedings;
>
> Formal: The hearing officer shall require the PHA, complainant. counsel. and other participants and spectators to conduct themselves in an orderly manner. The failure to comply with the directions of the hearing official/panel to maintain order will result in the exclusion from the proceedings, or a decision adverse to the interests of the disorderly party and granting or denial of the relief sought, as appropriate.

The PHA 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.

Decisions of the Hearing Officer/Panel

The hearing officer shall give the PHA and the complainant a written decision. including the reasons for the decision, within a reasonable time following the hearing. The PHA will place one copy in the tenant files. The written decision will be sent to the address provided at the hearing.

The decision of the hearing officer shall be binding on the PHA which shall take all actions necessary to carry out the decision, unless the complainant files for a judicial review or trial in Circuit Court.

Housing Authority Eviction Actions

If a tenant has requested a hearing in accordance with these duly adopted Grievance Procedures on a complaint involving a PHA notice of termination of tenancy, and the hearing officer upholds the PHA action, the PHA shall not commence an eviction action until it has served a notice to vacate on the tenant.

In no event shall the notice to vacate be issued prior to the decision of the hearing officer having been mailed or delivered to the complainant.

Such notice to vacate must be in writing and specify that if the tenant fails to quit the premises within the applicable statutory period, or on the termination date as stated in the notice of

termination, whichever is later, appropriate action will be brought against the complainant. The complainant may be required to pay court costs and attorney fees.