

Chapter 20

COMPLAINTS AND APPEALS

This Chapter describes the policies, procedures and standards to be applied when applicants, owners or participants disagree with an SHA decision.

A. Complaints

Processing Complaints

All complaints, other than HQS violation complaints, must be in writing. HQS complaints may be reported orally (by telephone or in person) or in writing.

SHA will respond to all properly documented complaints within 10 business days.

Complaints By or Concerning Participants

Complaints by or concerning program participants shall be referred to the Certification Specialist II. Any complaint not resolved by the Certification Specialist II shall be referred to the Occupancy Supervisor, and if still unresolved to the Section 8 Manager and then to the PorchLight Director of Rental Assistance Programs.

Complaints By or Concerning Applicants

Complaints by or concerning applicants shall be referred to the Issuance Supervisor. Any complaint not resolved by the Issuance Supervisor shall be referred to the Section 8 Manager and then to the PorchLight Director of Rental Assistance Programs.

B. Informal Reviews for Denials of Admission to Program [24 CFR 982.54(d)(12), 982.554]

An informal review is a review of an applicant's file and circumstances by an SHA staff person who has not had any previous material involvement with the applicant, to determine whether SHA's policies and procedures have been applied correctly in denying the application.

When Informal Reviews are Required

An applicant whose application is denied shall be provided an opportunity for an informal review of SHA's decision.

Exception: An applicant whose application is denied for reasons of citizenship or eligible immigrant status shall be provided an "informal hearing" (see procedures below).

When Informal Reviews are Not Required

Informal reviews are not required for the following:

1. Discretionary administrative determinations such as what constitutes a complete application, how and when applications will be assigned for review, and what resources will be devoted to the review of a particular application or applications in general;
2. General policy issues or class grievances such as local preferences and income eligibility;
3. The determination of the family unit size under SHA subsidy standards;
4. A refusal to extend or suspend a voucher;
5. A determination not to approve tenancy for a specific unit;
6. A determination that a unit selected by an applicant is not in compliance with HQS because of characteristics of the unit; or
7. A determination that a unit is not in accordance with HQS due to family size or composition.

Notice of Denial/Procedure for Requesting Informal Review

When SHA determines that an applicant is ineligible, the applicant must be notified of the decision in writing.

The notice must state:

1. The reason(s) for ineligibility;
2. A statement that the applicant may request an informal review if they disagree with the decision;
3. The procedure for requesting a review if the applicant does not agree with the decision; and
4. The deadline for requesting a review.

When an application is denied because of criminal activity described in a criminal record, SHA must, on request, provide both the applicant and the person who is the subject of the record a copy of the criminal record upon which the denial decision is based (24 CFR 5.903 (f)).

Procedure for Informal Review

A request for an informal review must be submitted in writing to PorchLight by 4:00 p.m., no later than 10 business days from the date of SHA's denial notice. An informal review will be scheduled within 10 business days from the date the hearing request is received.

The review may be conducted by a supervisory level staff person who was not involved in the decision under review, and who is not subordinate to the person who made the decision.

The applicant will be given the opportunity to present oral or written objections to the decision. Both SHA and the applicant may present evidence and witnesses. The applicant may, at the applicant's own expense, be represented by an attorney or other representative.

The applicant may be present at the review to provide information, but the applicant's presence is not required.

The review may be conducted as a conference call at the discretion of SHA.

The decision of the review officer shall be provided to the applicant in writing within 10 business days after the date of the review, and shall include an explanation of the reasons for the decision.

All review requests, supporting documentation, and a copy of the final decision shall be retained in the applicant's file.

C. Informal Hearing Procedures for Participants [24 CFR 982.555(a-f), 982.54(d)(13)]

When Hearings for Participants are 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 SHA policies:

1. The determination of the participant's annual or adjusted income and the computation of the Housing Assistance Payment;
2. The determination of the appropriate utility allowance (if any) for tenant-paid utilities, from the SHA utility allowance schedule;
3. The determination of family unit size under SHA's subsidy standards;
4. A decision to terminate a participant's Family Self-Sufficiency (FSS) contract, withhold supportive services, or propose forfeiture of the participant's escrow account;
5. The determination that a certificate program family is residing in a unit with a larger number of bedrooms than appropriate for the family unit size under SHA's subsidy standards, or a decision to deny the family's request for an exception from the standards;
6. A decision to terminate assistance for a participant family because of the family's failure to satisfy its family obligations; and
7. A decision to terminate assistance because the participant family has been absent from the assisted unit for longer than the maximum period permitted under SHA policy and HUD rules.

An opportunity for an informal hearing must always be provided before terminating assistance.

Notice to Participants of SHA Decisions

Participants shall be notified in writing of decisions regarding the amount of their assistance or their eligibility for continued participation in the program. Participants will be given prompt notice of such decisions, which shall include:

1. The proposed action or decision;
2. The date the proposed action or decision will take place;
3. The participant's right to an explanation of the basis for the decision;
4. The procedures for requesting a hearing if the participant disputes the action or decision;

5. The deadline for requesting the hearing; and
6. The name of the person to whom the hearing request should be addressed.

When continued participation in the program is denied because of criminal activity described in a criminal record, SHA will, on request, provide the participant and the person who is the subject of the record a copy of the criminal record upon which the denial decision is based.

A copy of SHA's hearing procedures shall be provided if requested by the family.

Notification of Hearing

When a request for an informal hearing is received, a hearing shall be scheduled within 30 days from the date the request is received by SHA. The hearing notification shall state:

1. The date and time of the hearing;
2. The place where the hearing will be held;
3. That the participant has a right to present evidence and witnesses, bring translators, and be represented by legal or other representatives at the participant's expense;
4. That the participant has the right to view any available documents or evidence upon which SHA based the proposed action and, at the family's expense, obtain a copy of such documents prior to the hearing. Requests for such documents or evidence must be received no later than three business days before the hearing date. If the family requests copies of documents relevant to the hearing, SHA will make the copies for the family and assess a charge of 15 cents per copy. In no case will the family be allowed to remove the file from SHA's office; and
5. That SHA shall have the opportunity to examine, at its offices, before the hearing, any of the participant's documents that are relevant to the hearing, and must be allowed to copy any such document at its expense. Any documents not provided to SHA may not be used in the hearing.

D. Conduct of Hearings Not Involving a Voucher Termination

Participant Rights

Participants have the right to:

1. Present written or oral objections to SHA's determination;
2. Examine the documents that are the basis for SHA's action, and all documents submitted to the Hearing Officer;
3. Present any information or witnesses on any pertinent issues;
4. Request that SHA staff be available or present at the hearing to answer questions pertinent to the case; and
5. Be represented, at their own expense, by legal counsel or other designated advocate or representative.

SHA Rights

In addition to other rights contained in this Chapter, SHA has a right to:

1. Present evidence and information on any pertinent issue;
2. Three days' advance notice of the participant's intent to be represented by legal counsel or other advocate or representative;
3. Examine and copy any documents presented at the hearing;
4. Be represented by counsel; and
5. Have staff persons and other witnesses familiar with the case present.

Conduct of the Hearing

The informal hearing shall be conducted by a Hearing Officer appointed by SHA who is neither the person who made or approved the decision, nor a subordinate of that person.

Only the issues subject to appeal and raised by the participant in their notice of appeal shall be addressed at the hearing. Evidence presented at the hearing may be considered without regard to admissibility under the rules of evidence in judicial proceedings.

No documents may be presented at the hearing which have not been provided to the other party if requested before the hearing. "Documents" include all written records.

If the participant desires an audio recording of the hearing, the recording must be requested at least one business day prior to the hearing date.

The Hearing Officer may ask the family for additional information and/or may adjourn the hearing as needed. In the case of domestic violence, the hearing may be postponed pending further investigation.

If the family fails to appear at the hearing, or fails to meet a deadline imposed by the Hearing Officer, the decision of SHA shall become final and take effect immediately. No new hearing will be granted unless the applicant is able to demonstrate to SHA, by clear and compelling evidence, that their failure to appear or meet the deadline was caused by circumstances beyond their control.

Standard of Review

The Hearing Officer will determine whether SHA's action or decision is consistent with HUD regulations and this Administrative Plan based upon the evidence and testimony provided at the hearing. Factual determinations relating to the individual circumstances of the family will be based on a preponderance of the evidence presented at the hearing.

Decision

The Hearing Officer will issue a written decision within 10 business days after the date the hearing is closed.

The decision shall include:

1. A clear statement of the Hearing Officer's findings, conclusion and decision;
2. A clear summary of the decision and explanation of the reasons;
3. If the decision involves money owed, a clear statement of the amount owed, and documentation of the calculation of the amount owed; and
4. The date the decision is effective.

E. Informal Voucher Termination Hearing Procedures

Participant Rights

SHA shall afford, at a minimum, the following procedural safeguards to any Housing Choice Voucher participant facing termination:

1. At least 30 days notice of the grounds for termination;
2. An opportunity to appear in person and present objections orally;
3. An opportunity to present any information or witnesses on any pertinent issues;
4. An opportunity to confront and cross-examine adverse witnesses;
5. An opportunity to have counsel (at the participant's expenses);
6. A competent and impartial decision-maker;
7. Determination of relevant facts by a preponderance of the evidence;
8. A decision based solely on the evidence and arguments presented at the hearing;
9. A written decision that explains the legal reasoning and factual basis for the decision;
10. A record made of the hearing.

SHA Rights

In addition to other rights contained in this Chapter, SHA has a right to:

1. Present evidence and information on any pertinent issue;
2. Three days' advance notice of the participant's intent to be represented by legal counsel or other advocate or representative;
3. Examine and copy any documents presented at the hearing;
4. Be represented by counsel; and
5. Have witnesses testify on any issue and have staff persons and other witnesses familiar with the case present.

Conduct of the Hearing

The informal hearing shall be conducted by a Hearing Officer appointed by SHA who is neither the person who made or approved the decision, nor a subordinate of that person, and who has the qualifications described in Section "H" below.

Only the issues subject to appeal and raised by the participant in their notice of appeal shall be addressed at the hearing. A participant family may present any relevant legal argument arising from any valid source of law at information hearings, and hearing officers shall consider such arguments to the extent that they are relevant and germane to the case. An argument is relevant if the manner in which the contention is resolved could affect the outcome of the hearing. Relevance shall be determined by the Hearing Officer based on the specific facts and circumstances of each particular case. No legal theories or authorities shall be precluded from consideration at informal hearings or otherwise excluded on a categorical or near-categorical basis.

Evidence presented at the hearing may be considered without regard to admissibility under the rules of evidence in judicial proceedings; provided Hearing Officers may exclude evidence that is irrelevant, immaterial, or unduly repetitious, and; provided further that Hearing Officers shall consider evidentiary principles, including, but not limited to:

1. That the information offered is not relevant to the proceeding; “relevant” means having a tendency to prove that any fact of consequence to the outcome of the hearing more likely or less likely than without the information;
2. That the information offered presents a danger of unfair prejudice, confusion of the issues, undue delay, or other delay, or other deleterious effects that substantially outweighs the probative value of the information;
3. That the information is offered in violation of some public policy, such as evidence unlawfully obtained in violation of a family’s legal or constitutional rights, or evidence obtained in the course of settlement negotiations, or evidence of a person’s character offered to prove action in conformity therewith on a specific occasion; or
4. That the information lacks competence or is not based on personal knowledge.

No documents may be presented at the hearing which has not been provided to the other party if requested before the hearing. “Documents” include all written records.

SHA shall record all informal hearings by electronic means. If a participant objects to the recording of his or her informal hearing, the hearing officer will not make an official recording, but may make a personal recording for his or her own use.

If a party seeks to record any informal hearing by means other than audio recording, such as by stenographic transcription or by audio/video recording, the hearing officer shall permit such alternative recording at the requesting party’s expense, unless good cause exists to disallow the method of recording, in which case the hearing officer should state the reasons for denial on the record or in the written decision.

SHA shall provide a copy of a hearing recording to the family or its representative on request, provided that the family or its representative shall pay reasonable reproduction costs prior to receiving the recordings.

The Hearing Officer may ask the family for additional information and/or may adjourn the

hearing as needed.

Hearing Officers shall not impose arbitrary limits on the length of time that a hearing may last, or the amount of time specific portion of the hearing may consume, or impose unreasonable limits on the number of witnesses that may be called or the number of exhibits that may be presented. Hearing Officers may impose such limits but only as warranted for cause in their discretion, in which case the Hearing Officer should state the reasons for imposing the limits on the record or in the written decision.

If the family fails to appear at the hearing, or fails to meet a deadline imposed by the Hearing Officer, the decision of SHA shall become final and take effect immediately. No new hearing will be granted unless the applicant is able to demonstrate to SHA, by clear and compelling evidence, that their failure to appear or meet the deadline was caused by circumstances beyond their control.

Standard of Review

Hearing Officers presiding over SHA informal hearings shall consider all relevant facts and conform their rulings to all relevant legal authority, including, but not limited to:

1. The United States Constitution and U.S. Code;
2. All relevant federal regulations, particularly those codified at 24 CFR Part 982.1 et seq. (concerning the tenant based Housing Choice Voucher Program);
3. Other HUD policies, as applicable; see 24 CFR 982.52 (a);
4. Internal SHA policies, in particular the Section 8 Administrative Plan;
5. All applicable State law, including Washington statutes and regulations and the common law of Washington State as reflected by judicial decisions;
6. All relevant charter provisions, ordinances, and other laws governing the City of Seattle, including the Seattle Municipal Code.

Hearing Officers presiding over SHA informal hearings shall adjudicate all material factual issues raised at an informal hearing. A factual issue is “material” if the adjudication of the fact tends to affect the outcome of the hearing.

In adjudicating factual issues at informal hearings, the burden of production and persuasion with respect to any fact shall be on the party asserting the fact.

Decision

The Hearing Officer will issue a written decision within 10 business days after the date the hearing is closed.

The decision shall include:

1. The names of all persons present at the hearing, and identification of their roles (whether as the hearing officer, a representative for SHA, a member of the family, a witness,

- interpreter, or other);
2. The date and location of the hearing (and if the hearing occurred over multiple days, the date the hearing began and the date it ended);
 3. A summary of the factual allegations and the SHA action or decision under review;
 4. A summary of any evidence and arguments presented by the parties;
 5. A statement of the facts upon which the decision is based; and
 6. A clear statement of the conclusion of law and any other relief ordered.

F. Decisions Not Binding on SHA

SHA shall not be bound by any decision that:

1. Concerns matters for which no opportunity for a hearing is provided;
2. Conflicts with or contradicts HUD regulations or requirements;
3. Conflicts with or contradicts federal, state or local laws;
4. Exceeds the authority of the Hearing Officer; or
5. Involves issues not raised in the participant's appeal notice.

If SHA determines that it is not bound by the Hearing Officer's decision it shall, within 10 days of the date of the Hearing Officer's decision, so advise the participant in writing, which shall include the reasons for SHA's determination that it will not be bound by the decision.

G. Records

All non-termination hearing requests, supporting documentation, and a copy of the final decision shall be retained in the participant's file.

All voucher termination hearing requests, supporting documentation, and a copy of the non-redacted final decision shall be retained in the participant's file.

SHA shall safely keep and maintain the electronic recordings of all informal hearings involving voucher terminations as a public record on file for no fewer than thirty-seven (37) months after the decision date; if a family's Housing Choice Voucher program participation is terminated pursuant to an informal hearing decision, SHA shall keep the hearing recording for at least thirty-seven (37) months from the date of the last Housing Assistance Payment made on behalf of the family. SHA shall also keep, for the same duration as the hearing recording, copies of all exhibits and all other tangible materials presented to the Hearing Officer, whether or not admitted into evidence.

H. Hearing Officer Selection

Persons having no other affiliation with Seattle Housing Authority (SHA) (i.e., other than as Hearing Officers) shall serve as Hearing Officers in termination of Section 8 Housing Choice Voucher informal hearings; provided that, the PHA reserves the right to establish an in house Hearing Officer position, and; provided further, that such an in house Hearing Officer shall meet the Hearing Officer qualifications, will be selected, and will be subject to performance reviews.

SHA will maintain a roster of persons approved to serve as Hearing Officers. To the extent possible, the roster shall contain at least three (3) approved Hearing Officers at all times. SHA will assign Hearing Officers from the roster to specific cases through a blind rotating basis; exceptions will be made only for good cause, which shall include, but not limited to, scheduling difficulties and ethical conflicts. On written agreement of the parties, a person (or persons) not listed on SHA's roster of Hearing Officers may serve as the Hearing Officer for a particular case.

SHA shall solicit applications (through paid advertising) when the number of active hearing officers on SHA's roster falls below three (3).

Consistent with SHA hiring policies, SHA will advertise for Hearing Officer(s) periodically, in order to maintain a minimum of three (3) Hearing Officers on a roster to serve as Hearing Officers for informal hearings.

Whenever additional Hearing Officers are to be added to the roster, SHA will form a selection panel, composed of five members. The panel shall include housing authority officials and staff and non-housing authority personnel who have Section 8 expertise, legal training and/or experience in mediation/arbitration. One panel member shall be appointed by the Seattle Tenant's Union and one panel member shall be appointed by the King County Bar Association Housing Justice Project's Sponsor Group, provided that no one from the following organizations shall be selected to serve on the panel: The Northwest Justice Project, the Legal Action Center, Columbia Legal Services, or any other organization whose members or staff regularly represent Housing Choice Voucher participants in SHA informal hearings.

The panel will review Hearing Officer Applicant resumes, conduct in-person interviews and recommend candidates to the SHA hiring official or officials for selection.

SHA will advertise a rate of compensation for Hearing Officers reasonably calculated to attract qualified applicants to apply for the position. All advertisements shall be posted to the websites of the Seattle Housing Authority, the Washington State Bar Association, the King County Bar Association, and the Advocate Resources Center.

Advertisements for SHA Hearing Officers will indicate that qualified applicants must have legal training and experience defined as:

1. A Juris Doctorate from an accredited law school; and
2. At least three years relevant experience as an attorney, law clerk, judge, arbitrator, administrative law judge, or other legal professional.

I. Hearing Officer Evaluation

Consistent with SHA's Human Resource policies, each Hearing Officer will be subject to an annual performance evaluation.

To facilitate such reviews, SHA shall, at the conclusion of each informal hearing, distribute

“Informal Hearing Evaluation Forms” to all persons in attendance; the form shall ask:

1. Whether the Hearing Officer was courteous and respectful;
2. Whether the Hearing Officer allowed the participant a fair opportunity to present his or her evidence and arguments;
3. Whether the Hearing Officer was neutral and impartial; and
4. Any other questions, as determined by SHA.

The Informal Hearing Evaluation form shall ask respondents to identify themselves as participants, advocates, witnesses, SHA staff, etc., but shall not ask persons to identify themselves by name, office or other identifying characteristics. The Informal Hearing Evaluation form shall contain information encouraging recipients to complete and deliver the form to SHA by mail, fax, email, or hand delivery and contain instruction on how to do so.

SHA may share information collected in the Informal Hearing Evaluation Form with Hearing Officers for the purpose of assisting Hearing Officers in evaluating and improving their performance.

Prior to each Hearing Officer’s annual review, SHA will send to any attorneys and other advocates who appeared before the Hearing Officer a “Hearing Officer Evaluation Form,” which shall ask to evaluate the performance of SHA Hearing Officers in the following areas:

1. Professionalism/Demeanor/Conduct of the proceedings;
2. Skill at evaluating evidence and determining facts;
3. The soundness of legal rulings;
4. Fairness and objectivity;
5. Quality of analysis and clarity of written opinions; and
6. Any other criteria, as determined by SHA.

The Hearing Officer Evaluation Form may ask respondents to identify themselves as attorneys or other types of advocates, but shall not ask person to identify themselves by name, office, or other identifying characteristics. The Hearing Officer Evaluation Form shall contain information encouraging recipients to complete and deliver the form to SHA by mail, fax, email, or hand delivery and contain instructions on how to do so.

J. Hearing Officer Training

SHA shall establish a “Hearing Officer Training Program.” All persons admitted to SHA’s roster of Hearing Officers shall complete the Hearing Officer Training Program within three (3) months of admission to the roster.

The Hearing Officer Training Program shall consist of at least six hours of instruction on the Section 8 Housing Choice Voucher Program and SHA’s Section 8 Administrative Plan.

SHA shall create a training manual for Hearing Officers; SHA shall post an electronic copy of the manual on its website and shall distribute one copy, either in paper or electronic form, to

each Hearing Officer.

K. Hearing and Appeal Provisions for “Restrictions on Assistance to Non-Citizens”

[24 CFR Part 5, Subpart E]

If there is an INS appeal, assistance to an applicant or participant may not be delayed, denied or terminated on the basis of the applicant’s or participant’s immigration status prior to receipt of the decision on the INS appeal.

Assistance to a family may not be terminated or denied while an SHA hearing is pending.

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 participant or applicant will be notified within 10 days of the right to appeal to the INS. Such an appeal must be filed within 30 days. The applicant or participant may also request an informal hearing with SHA.

If the applicant or participant appeals to the INS, he or she must provide a copy of the appeal and proof of mailing to SHA or SHA may proceed to deny the application or terminate assistance.

The time period for requesting an appeal may be extended for good cause.

Hearing Request

The request for an SHA hearing must be made within 14 calendar days of receipt of the notice of the right to appeal to the INS or request an informal SHA hearing.

Hearing Process

After receipt of a request for an informal hearing, SHA shall schedule and conduct the hearing in accordance with the procedures described in Section “C” above.

Ineligibility Determinations

If the Hearing Officer determines that the applicant or participant is not eligible, and there are no other eligible family members, SHA may:

1. Defer termination if the participant qualifies for deferral; or
2. Terminate the participant if they do not qualify for deferral.

If there are eligible members in the family, SHA will offer to pro-rate assistance or give the family the option to remove the ineligible members.

Other Complaints Related to Citizenship/Immigration Status

If any family member fails to provide documentation or certification as required by the regulations, that member shall be considered ineligible. If all family members fail to provide the required documentation, the family will be denied assistance or terminated for failure to provide the required information.

Participants terminated after a temporary deferral may not request a hearing.

Participants whose assistance is pro-rated (either because some members are ineligible or because of the failure to verify eligible immigration status for some members after exercising their appeal and hearing rights described above) are entitled to a hearing regarding tenant rent and Total Tenant Payment determinations.

Families denied or terminated for fraud in connection with the non-citizens rule are entitled to a review or hearing in the same manner as terminations for any other fraud.