

## **Lowell Housing Authority Grievance Procedures**

### **16.D. GRIEVANCE PROCEDURES**

When the PHA makes a decision that has an impact on a family, the family is often entitled to appeal the decision. For applicants and tenants, the appeals process starts with an informal review, can go to an informal hearing and finally to court action. Most of the terms and conditions of occupancy including grievance procedures are included in the lease.

PHAs are required to include in their administrative plans, informal review and hearing procedures for applicants and tenants.

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### **16.E. INFORMAL REVIEWS**

Informal reviews are provided for program applicants and tenants. Informal reviews are intended to provide a “minimum hearing requirement” and need not be as elaborate as the hearing requirements. (24CFR966.54).

Any grievance shall be personally presented, either orally or in writing, to the PHA office or to the office of the project in which the complainant resides so that the grievance may be discussed informally and settled without a hearing. A summary of such discussion shall be prepared within a reasonable time and one copy shall be given to the tenant and one retained in the PHA's tenant file. The summary shall specify the names of the tenants, dates of meeting, the nature of the proposed disposition of the complaint and the specific reasons therefore and shall specify the procedures by which a hearing may be obtained if the complainant is not satisfied.

Informal reviews are not used for the following issues:

- Discretionary administrative determinations by the PHA
- General policy issues or class grievances
- A determination of the family unit size under the PHA occupancy standards
- A PHA determination that the unit is not in accordance with its physical standards due to family size or composition

#### LHA Policy

The LHA will offer an informal review to applicants for whom assistance is being denied.

Denial of assistance includes: denying listing on the PHA waiting list; denying a preference for the waiting list; or withdrawing a unit offer; refusing to enter into a lease.

The LHA will also offer an informal review to tenants who file a written complaint or grievance.

### **Notice to the Applicant**

The PHA must give an applicant prompt notice of a decision denying assistance. The notice must contain a brief statement of the reasons for the PHA decision and must also state that the applicant may request an informal review of the decision. The notice must describe how to obtain the informal review.

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## **Scheduling an Informal Review**

### LHA Policy

A request for an informal review must be made in writing and delivered to the LHA 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 the LHA's denial of assistance.

The LHA must schedule and send written notice of the informal review within 10 business days of the family's request.

## **Informal Review Procedures**

The informal review must be conducted by a person other than the one who made or approved the decision under review, or a subordinate of this person.

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

The person conducting the review will make a recommendation to the PHA, but the PHA is responsible for making the final decision as to whether assistance should be granted or denied.

## **Informal Review Decision**

The PHA must notify the applicant of the PHA's final decision, including a brief statement of the reasons for the final decision.

### LHA Policy

- In rendering a decision, the LHA will evaluate the following matters:
- Whether or not the grounds for denial were stated factually in the Notice.
- If the grounds for denial are not specified in the regulations, then the decision to deny assistance will be overturned.
- The LHA will evaluate whether the facts presented prove the grounds for denial of assistance. If the facts prove that there are grounds for denial, and the denial is required by HUD, the LHA will uphold the decision to deny assistance.
- If the facts prove the grounds for denial, and the denial is discretionary, the LHA will consider the recommendation of the person conducting the informal review in making the final decision whether to deny assistance.
- The LHA will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. The notice will be mailed within 10 business days of the informal review, to the applicant and his or her representative, if any, along with proof of mailing.

## **16.E. INFORMAL REVIEWS**

PHAs must offer an informal hearing for certain PHA determinations relating to the individual circumstances of a tenant family. A tenant is defined as a family that has been admitted to the PHA's LRPH program and is currently assisted in the program. The purpose of the informal

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hearing is to consider whether the PHA's decisions related to the family's circumstances are in accordance with the law, HUD regulations and PHA policies.

The PHA is not permitted to terminate a family's lease until the time allowed for the family to request an informal hearing has elapsed and any requested hearing has been completed. Termination of lease for a tenant may include any or all of the following:

### **Decisions Subject to Informal Hearing**

Circumstances for which the PHA must give a tenant family an opportunity for an informal hearing are as follows:

- Determination of the family's annual or adjusted income and the computation of the housing rental payment.
- Appropriate utility allowance used from schedule for income-based rents.
- Family unit size determination under LHA occupancy standards.
- Determination that the tenant family is under-occupied in their current unit and a request for exception is denied.
- Determination that a disabled person is required to perform Community Service.
- Determination to terminate a lease for any reason.

#### LHA Policy

The LHA will only offer tenants the opportunity for an informal hearing when required to by the regulations.

### **Informal Hearing Procedures**

#### *Notice to the Family*

When the PHA makes a decision that is subject to informal hearing procedures, the PHA must inform the family of its right to an informal hearing at the same time that it informs the family of the decision.

For decisions related to the family's annual or adjusted income, the determination of the appropriate utility allowance and the determination of the family unit size, the PHA must notify the family that they may ask for an explanation of the basis of the determination and that if they do not agree with the decision, they may request an informal hearing on the decision.

For decisions related to the termination of the family's lease, the notice must contain a brief statement of the reasons for the decision, a statement that if the family does not agree with the decision, the family may request an informal hearing on the decision and a statement of the deadline for the family to request an informal hearing.

#### LHA Policy

In cases where the LHA makes a decision for which an informal hearing must be offered, the notice to the family will include all of the following:

- The proposed action or decision of the LHA.
- A brief statement of the reasons for the decision including the regulatory reference.

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- The date the proposed action will take place.
- A statement of the family's right to an explanation of the basis for the LHA's decision.
- A statement that if the family does not agree with the decision the family may request an informal hearing of the decision.
- A deadline for the family to request the informal hearing.
- To whom the hearing request should be addressed.
- A copy of the LHA's hearing procedures.

### *Scheduling an Informal Hearing*

When an informal hearing is required, the PHA must proceed with the hearing in a reasonably expeditious manner upon the request of the family.

#### LHA Policy

- A request for an informal hearing must be made in writing and delivered to the LHA 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 the LHA's decision or notice to terminate assistance.
- The LHA must schedule and send written notice of the informal hearing to the family within 10 business days of the family's request.
- The family 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, the LHA may request documentation of the "good cause" prior to rescheduling the hearing.
- If the family does not appear at the scheduled time and was unable to reschedule the hearing in advance due to the nature of the conflict, the family must contact the LHA within 24 hours of the scheduled hearing date, excluding weekends and holidays. The LHA will reschedule the hearing only if the family can show good cause for the failure to appear, or if it is needed as a reasonable accommodation for a person with disabilities.

### *Pre-Hearing Right to Discovery*

Tenants and the PHA are permitted pre-hearing discovery rights. The family must be given the opportunity to examine before the hearing any PHA documents that are directly relevant to the hearing. The family must be allowed to copy any such documents at their own 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.

The PHA hearing procedures may provide that the PHA must be given the opportunity to examine at the PHA offices before the 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

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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.

For the purpose of informal hearings, documents include records and regulations.

### LHA Policy

The family will be allowed to copy any documents related to the hearing at a cost of \$.25 per page. The family must request discovery of LHA documents no later than 12:00 p.m. on the business day prior to the scheduled hearing date.

### *Tenant's Right to Bring Counsel*

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

### *Informal Hearing Officer*

Informal hearings will be conducted by a person, or persons approved by the PHA, other than the person who made or approved the decision or a subordinate of the person who made or approved the decision.

### LHA Policy

The LHA has designated the *Executive Director* to serve as the hearing officer.

### *Attendance at the Informal Hearing*

### LHA Policy

Hearings may be attended by a hearing officer and the following applicable persons:

- An LHA representative and any witnesses for the LHA.
- The tenant and any witnesses for the tenant.
- The tenant's counsel or other representative
- Any other person approved by the LHA as a reasonable accommodation for a person with a disability.

### *Conduct at Hearings*

The person who conducts the hearing may regulate the conduct of the hearing in accordance with the PHA's hearing procedures.

### LHA Policy

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.

### *Evidence*

The PHA and the family must be given the opportunity to present evidence and question any witnesses. In general, all evidence is admissible at an informal hearing. Evidence may be

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considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

### LHA 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 the LHA. 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 LHA 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.

### *Hearing Officer's Decision*

The person who conducts the hearing must issue a written decision, briefly stating the reasons for the decision. 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 hearing must be furnished promptly to the family.

### LHA Policy

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

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

Discovery: The hearing officer will determine if the LHA and the family were given the opportunity to examine any relevant documents in accordance with LHA policy.

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*LHA Evidence to Support the LHA 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 LHA'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 LHA policies. If the grounds for termination are not specified in the regulations or in compliance with LHA policies, then the decision of the LHA will be overturned. The hearing officer will issue a written decision to the family and the LHA no later than 10 business days after the hearing. The report will contain the following information:

*Hearing information:*

- Name of the tenant
- 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 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 LHA's decision.

*Order:* The hearing report will include a statement of whether the LHA's decision is upheld or overturned. If it is overturned, the hearing officer will instruct the LHA 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 tenant's program status.

*Procedures for Rehearing or Further Hearing*

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### LHA Policy

The hearing officer may ask the family for additional information and/or might adjourn the hearing 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 LHA 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 LHA and the tenant, the LHA or the tenant 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 LHA 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.

### *PHA Notice of Final Decision*

The PHA is not bound by the decision of the hearing officer for matters in which the PHA is not required to provide an opportunity for a hearing, decisions that exceed the authority of the hearing officer, decisions that conflict with or contradict HUD regulations, requirements, or are otherwise contrary to Federal, State, or local laws.

If the PHA determines it is not bound by the hearing officer's decision in accordance with HUD regulations, the PHA must promptly notify the family of the determination and the reason for the determination.

### LHA Policy

The LHA will mail a "Notice of Final Decision" including the hearing officer's report, to the tenant and their representative. This Notice will be sent by first-class mail, postage pre-paid with an affidavit of mailing enclosed. The tenant will be mailed the original "Notice of Final Decision" and a copy of the proof of mailing. A copy of the "Notice of Final Decision" along with the original proof mailing will be maintained in the LHA's file.

Denial or termination of assistance based on immigration status is subject to special hearing and notice rules. Applicants who are denied assistance due to immigration status are entitled to an informal hearing, not an informal review.

Assistance to a family may not be delayed, denied, or terminated based on immigration status at any time prior to a decision under the United States Citizenship and Immigration Services



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(USCIS) appeal process. 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 completion of the informal hearing.

A decision against a family member, issued in accordance with the USCIS appeal process or the PHA 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**

As discussed in Chapters 3 and 11, the notice of denial or termination of assistance for non-citizens must advise the family:

- 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 rent.
- In the case of a tenant, the criteria, and procedures for obtaining relief fund 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 the PHA 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.

### **USCIS Appeal Process [24 CFR 5.514(e)]**

When the PHA receives notification that the USCIS secondary verification failed to confirm eligible immigration status, the PHA 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 the PHA with a copy of the written request for appeal and the proof of mailing.

#### LHA Policy

The LHA 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 the LHA 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.

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The USCIS will notify the family, with a copy to the PHA, of its decision. When the USCIS notifies the PHA of the decision, the PHA must notify the family of its right to request an informal hearing.

### LHA Policy

The LHA 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, the family may request that the PHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of the PHA notice of denial or termination, or within 30 days of receipt of the USCIS appeal decision.

For the informal hearing procedures that apply to tenant families whose assistance is being terminated based on immigration status, see Section 16-III.C.

The informal hearing procedures for applicant families are described below.

### *Informal Hearing Officer*

The PHA 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. See Section 16-III.C. for a listing of positions that serve as informal hearing officers.

### *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 the PHA 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.

### LHA Policy

The family will be allowed to copy any documents related to the hearing at a cost of \$.25 per page copy. The family must request discovery of LHA documents no later than 12:00 p.m. on the business day prior to the 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 the PHA, and to confront and cross-examine all witnesses on whose testimony or information the PHA relies.

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### *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 the PHA, as may be agreed upon by the two parties.

### *Recording of the Hearing*

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

### LHA Policy

The LHA will not provide a transcript of an audio taped hearing.

### *Hearing Decision*

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

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

The PHA must retain for a minimum of 5 years the following documents that may have been submitted to the PHA by the family, or provided to the PHA as part of the USCIS appeal or the PHA 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 an USCIS appeal
- The final USCIS determination
- The request for an informal hearing
- The final informal hearing decision