

Chapter 14

GRIEVANCES AND APPEALS

INTRODUCTION

It is the policy of the NBHA to ensure that all families have the benefit of all protections due to them under the law. Therefore, the NBHA has established a grievance procedure which affords all residents the opportunity to be heard when a resident disputes, within a reasonable time, any NBHA action or failure to act involving the resident's lease with the NBHA or NBHA regulations which adversely affect the individual resident's rights, duties, welfare or status.

Grievances shall be handled in accordance with the authority'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.

Grievance procedures are not applicable to the following issues:

- Disputes with non-residents
- Disputes between residents not involving the NBHA
- Disputes between a live-in aide and the NBHA
- Disputes not involving the NBHA
- Certain disputes in due process states
- Class grievances

PART I: INFORMAL HEARINGS FOR PUBLIC HOUSING APPLICANTS

14 -I.A. INFORMAL HEARING PROCESS [24 CFR 960.208(a) and PH Occ GB, p. 58]

Informal hearings are intended to provide a means for an applicant to dispute a determination of ineligibility for admission to a project [24 CFR 960.208(a)]. Applicants to public housing are not entitled to the same hearing process afforded tenants in the NBHA grievance procedure [24 CFR 966.53(a) and PH OCC GB, p. 58].

Informal hearings provide the applicant a means to hear the details of the reasons for rejection, and an opportunity to present evidence to the contrary if available, and to claim mitigating circumstances if possible.

Informal Review Procedures for Applicants

Preference Denials

When the NBHA denies a preference to an applicant, the family will be notified in writing of the specific reasons for the denial and offered the opportunity for a meeting with the NBHA staff to discuss the reasons for the denial and to dispute the NBHA's decision.

Assistance Denials [24 CFR 960.208(a)]

Informal reviews are provided for applicants who are denied assistance. The exception is that when an applicant is denied assistance for citizenship or eligible immigrant status, the applicant is entitled to a formal hearing.

When the NBHA determines that an applicant is ineligible for the program, the family must be notified of their ineligibility in writing. The notice must contain:

- The reason (s) they are ineligible
- The procedure for requesting a review if the applicant does not agree with the decision
- The time limit for requesting a review

When denying admission for criminal activity as shown by a criminal record or sexual offender, the NBHA will provide the subject with the opportunity to dispute the decision and review any documents or evidence in the possession of the NBHA.

The NBHA must provide applicants with the opportunity for an informal review of decisions denying:

- Qualification for preference
- Listing on NBHA's waiting list
- Participation in the program

Informal reviews are not required for established policies and procedures and NBHA determinations such as:

- Discretionary administrative determinations by the NBHA
- General policy issues or class grievances
- A determination of the family unit size under the NBHA subsidy standards
- Determination that the unit is not in compliance with UPCS
- Determine that the unit is not in accordance with HQS due to family size or composition

Scheduling an Informal Hearing

A request for an informal hearing must be made in writing and delivered to the NBHA either in person or by first class mail, by the close of the business day, no later than fifteen (15) business days from the date of the NBHA's notification of denial of admission.

The informal review will be held within thirty (30) days from the date the request is received

Conducting an Informal Hearing [PH Occ GB, p. 58]

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

The applicant will be provided an opportunity to present written or oral objections to the decision of the NBHA. Both the NBHA and the family may present evidence and witnesses. The family may use an attorney or other representative to assist them at their own expense.

The person conducting the informal hearing will make a recommendation to the NBHA, but the NBHA is responsible for making the final decision as to whether admission should be granted or denied.

Informal Hearing Decision [PH Occ GB, p. 58]

The NBHA will notify the applicant of the NBHA's final decision, including a brief statement of the reasons for the final decision within fifteen (15) days after the review. It shall include the decision of the reviewer, and the explanation of the reasons for the decision.

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

If the family fails to appear for their informal hearing, the denial of admission will stand and the family will be so notified.

Reasonable Accommodation for Persons with Disabilities [24 CFR 966.7]

Persons with disabilities may request reasonable accommodations to participate in the informal hearing process and the NBHA must consider such accommodations. The NBHA must also consider reasonable accommodation requests pertaining to the reasons for denial if related to the person's disability. See Chapter 2 for more detail pertaining to reasonable accommodation requests.

PART II: INFORMAL HEARINGS WITH REGARD TO NONCITIZENS

14-ILA. HEARING AND APPEAL PROVISIONS FOR NONCITIZENS [24 CFR 5.514]

Assistance to a family may not be delayed, denied, or terminated on the basis of immigration status at any time prior to a decision under the United States Citizenship and Immigration Services (USCIS) appeal process. Assistance to a family may not be terminated or denied while the NBHA 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 NBHA 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 [24 CFR 5.514(d)]

As discussed in Chapters 3 and 13, the notice of denial or termination of assistance for noncitizens must advise the family of any of the following that apply:

- 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 assistance.
- In the case of a tenant, the criteria and procedures for obtaining relief under 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 NBHA 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.

INS Determination of Ineligibility [24 CFR 5.514 (e)]

If a family member claims to be an eligible immigrant and the INS SAVE system and manual search do not verify the claim, the NBHA notifies the applicant or resident within ten days of their right to appeal to the INS within thirty (30) days to request a formal hearing with the NBHA either in lieu of or subsequent to the INS appeal.

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

The request for a hearing must be made to the NBHA within fourteen days of receipt of the notice offering the hearing or, if an appeal was made to the INS, within fourteen (14) days of receipt of that notice.

After receipt of a request for a formal hearing, the hearing is conducted as described in the “Formal Hearing” 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 NBHA will:

- Deny the applicant family
- Defer termination if the family is a participant and qualifies for deferral
- Terminate the participant if the family does not qualify for deferral

If there are eligible members in the family, the NBHA 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 certifications 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 documentation
- 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 the resident's Total Tenant Payment (TTP).
- 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.

PART III: GRIEVANCE PROCEDURES FOR PUBLIC HOUSING RESIDENTS

INTRODUCTION

It is the policy of The Housing Authority of the City of New Britain ("NBHA") to ensure that all families have the benefits of all protections due to them under the law. Therefore, the NBHA has established this grievance procedure which affords all residents the opportunity to be heard when a resident disputes, within a reasonable time, any NBHA action or failure to act involving the resident's lease with the NBHA or NBHA regulations which adversely affect the individual resident's rights, duties, welfare or status, included but not limited to termination, denial for family household composition, denial of transfer, rent determination, fees and charges.

14. III. A. DEFINITIONS

Grievance shall mean any dispute that a resident may have with respect to a NBHA action or failure to act in accordance with the individual resident's lease or NBHA regulations which adversely affect the individual resident's rights, duties, welfare or status.

Complainant shall mean any resident whose grievance is presented to the NBHA or at the project management office accordance with 24 CFR 966.54 and 966.55(a).

Elements of due process shall mean an eviction action or a termination of tenancy in a State or local court in which the following procedural safeguards are require:

- 1.) Adequate notice to the resident of the grounds for terminating the tenancy and for eviction;
- 2.) Right of the resident to be represented by counsel;
- 3.) Opportunity for the resident to refute the evidence presented by the NBHA including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense which the resident may have; and
- 4.) A decision on the merits.

Hearing Officer shall mean a person selected in accordance with 24 CFR 966.55 to hear grievances and render a decision with respect thereto.

Resident shall mean the adult person(s) (other than a live-in aide):

- 1.) Who resides in the unit, and who executed the lease with the NBHA as lessee of the dwelling unit, or, if no such person now resides in the unit,
- 2.) Who resides in the unit, and who is the remaining head of household of the family residing in the dwelling unit.

14. IIL.B. NOTICE OF PROPOSED ADVERSE ACTION

When the NBHA takes an action or makes a decision that may affect the resident's rights, duties, welfare or status, the resident must be notified in writing. The NBHA will give the family prompt notice of such determinations that will include:

1. The proposed action or decision of the NBHA
2. The date the proposed action or decision will take place
3. The family's right to an explanation of the basis for the NBHA's decision
4. The procedure's for requesting a hearing if the family disputes the action or decision
5. The time limit for requesting the hearing
6. To whom the hearing request should be addressed
7. A copy of the NBHA's hearing procedures

The NBHA Grievance Procedure must be included, or incorporated by reference in, the lease.

14. III. C. SITUATIONS WHEN GRIEVANCE PROCEDURE IS NOT APPLICABLE

Grievance procedures are not applicable to the following issues:

- Disputes with non-residents
- Disputes between residents not involving the NBHA
- Disputes between a live-in aide and the NBHA
- Disputes not involving the NBHA
- Certain disputes in due to process states*
- Discretionary administrative determinations by the NBHA
- A determination of the family unit size under the NBHA subsidy standards
- A determination that the unit is not in compliance with UPCS
- Determine that the unit is not in accordance with HQS due to family size or composition
- Class grievance
- General policy issues

*HUD has determined that Connecticut’s eviction procedure provide the opportunity for a hearing in court that contains the following basic elements of due process. The following lease terminations are therefore not subject to the grievance procedure:

- Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or employees of the NBHA;
- Any violent or drug-related criminal activity on or off such premises; or
- Any criminal activity that resulted in felony conviction of a household member

Note: The grievance procedure is not intended as a forum for initiating or negotiating policy changes between a group or groups of residents and the NBHA’s Board of Commissioners.

14. III.D. INFORMAL SETTLEMENT (24 CFR § 966.54)

A resident may present the grievance initially either or orally or in writing to the following, within fifteen (15) working days after the event that triggered the grievance:

John T. Hamilton, Executive Director
Housing Authority of the City of New Britain
16 Armistice Street
New Britain, CT 06053
860-225-3534 x 202

The grievance will be reviewed to ensure that it is not a matter excluded from the grievance process. If it is not excluded,

- The grievance will be referred to the department or office responsible for the activity being grieved;
- Within fifteen (15) working days a meeting will be arranged at a mutually agreeable time;
- The Public Housing Director or designee will conduct the informal hearing for each other's property. If needed the Housing Choice Voucher Program supervisor may conduct the hearing.
- At the meeting, the resident will present the grievance and the NBHA staff person responsible for the area will attempt settlement.
- if settlement is not reached, within five (5) working days the resident will receive a written summary of the informal hearing, which will include the following information:
 - a) The names of the participants, the date(s) of the meeting(s),
 - b) The nature of and the reasons for the proposed disposition, and
 - c) The procedures for obtaining a formal hearing if the complainant is not satisfied
 - d) A copy of the summary will be placed in the resident's file.

14. III.E. FORMAL GRIEVANCE HEARING (24 CFR § 966.55 (a))

If the complainant is not satisfied with the results of the informal hearing, the complainant must submit a written request for a formal grievance hearing within five (5) working days after receipt of the informal hearing summary to the following:

John T. Hamilton, Executive Director
Housing Authority of the City of New Britain
16 Armistice Street
New Britain, CT 06053

The request must include:

- • The reason(s) for the grievance; and
- • The action sought from the NBHA.

If the complainant does not request a formal hearing within the time frame specified herein, the decision made during the informal hearing becomes final, unless the resident can show good cause why s/he failed to request a formal hearing in accordance with the grievance procedure.

Failure to request a formal hearing, however, does not affect the tenant's right to contest the final decision in court.

14. III. F. SELECTING THE HEARING OFFICER (24 CFR § 966.5 (b))

The formal grievance hearing will be conducted by an impartial person or persons appointed by the NBHA, who is someone other than the person who made or approved the NBHA's action being grieved.

The hearing officer will be chosen by one of the following methods:

- The NBHA shall maintain a list of impartial attorneys that the applicant/tenant may choose from to conduct the hearing. The selected attorney shall not conduct the hearing if they are familiar with or transacted business with the applicant/tenant.
- Appointment by the Executive Director of a person or persons (who may be an officer or employee of the NBHA).
- The NBHA Executive Director may appoint a staff member who did not participate in the decision making process and who is not supervised by the person who made the decision to deny the applicant or who made the decision regarding the tenant.

14. III. G. ESCROW DEPOSITS (24 CFR § 966.5 (e))

If a grievance involves the amount of rent payable by the resident, the complainant must pay a deposit to the NBHA in the amount of the rent NBHA states is due and payable as of the first of the month preceding the month in which the act/failure to act occurred. The same amount must be deposited monthly until the grievance is resolved by decision of the hearing officer. These payments will be held in escrow by NBHA. Failure to make the escrow deposit terminates the grievance procedure, but does not waive the resident's right to contest the action in an appropriate judicial proceeding.

NOTE: The NBHA will waive this requirement if the resident is paying minimum rent and the grievance is based on a request for hardship exemption or imputed welfare income.

14. III. H. SCHEDULING HEARINGS (24 CFR § 966.55 (f))

The formal hearing will be held within fifteen (15) working days of receiving the request. A written notification specifying the time place and procedures governing the hearing will be delivered to the complainant and appropriate NBHA officials.

14.III. I. PROCEDURES GOVERNING THE HEARING (24 CFR § 966.56)

Hearing Notice:

The hearing notice will advise the resident that s/he has the following rights:

- The opportunity to examine any NBHA documents before the hearing, including records and regulations that are relevant to the hearing;
- The opportunity to copy documents relevant to the hearing at the resident's expense [Any documents not made available upon request of the tenant may not be used in the course of the hearing]
- To be represented by counsel or other person chosen as his/her representative, who may make statements on the resident's behalf;
- To a private hearing unless s/he requests a public hearing; and
- To present evidence and arguments in support of the complaint, to controvert evidence relied on by the NBHA, and to confront and cross-examine all witnesses upon whose testimony or information the NBHA relies; and
- A decision based solely and exclusively upon the facts presented at the hearing.

Note: The hearing panel or officer may render a decision without proceeding with the hearing, if it is determined that the issue was previously decided in another proceeding.

Hearing Conduct:

- Resident first must demonstrate that s/he is entitled to the relief sought
- NBHA must justify its action or failure to act on the issue on which the grievance was filed
- The hearing will be informally, and both oral and written evidence being permitted
- All participants must conduct themselves in an orderly fashion or the hearing officer may exclude the disorderly party from the proceedings and grant or deny relief as appropriate
- The rules of evidence of a judicial proceeding do not apply to the grievance hearing
- Both the NBHA and the complainant will provide the Hearing Officer with specific information on the regulation or policy on which the NBHA based its action or which demonstrates the NBHA's failure to act

- Either party may arrange, in advance, for a transcript of the hearing to be made, and will bear the cost of the transcript
- Any person may purchase a copy of the transcript.

If either the complainant or the NBHA fails to appear at the scheduled hearing, the hearing officer may postpone the hearing for not more than five (5) working days or may decide that the absent party has waived the right to a hearing. This does not, however, affect the resident's right to contest the matter in court.

14. III. J. DECISION OF THE HEARING OFFICER (24 CFR § 966.57)

The hearing officer is required to issue a written decision within fifteen (15) working days. The decision must include the following information:

- **Introduction:**
 - a) Include the name of the complainant, name(s) of the hearing officer, date, time and location of hearing, name of other participants, including counsel or complainant's representative and witnesses.
 - b) Include a brief summary of the grievance (preferably quoting the complainant's letter requesting the hearing). Also include the date on which the informal hearing was held, who held the informal hearing, and summarize the results of the informal hearing. Include the date on which the complainant requested a hearing.
- **Hearing summary:** Summarize the oral and written evidence presented by both the complainant and the NBHA.
- **Decision:** In making the determination, the Hearing Officer should cite the policy or regulation provided by the complainant or the NBHA that supports the decision made.
- A copy of the decision must be placed in the resident's file and an additional copy (with the names and dates redacted, or edited out) must be retained by the PHA and be made available for a prospective complainant, the complainant's representative, or hearing officer.

HEARING OFFICER'S DECISION IS BINDING

The decision is binding on the NBHA, which must take the action or refrain from taking the action cited in the decision, unless the NBHA's Board of Commissioners determines within thirty (30) calendar days and notifies the complainant that:

- The grievance does not concern NBHA action or failure to act in accordance with or involving the complainant's lease or NBHA regulations which adversely affect the complainant's rights, duties, welfare or status; or
- The decision of the hearing officer is contrary to Federal, state or local law, HUD regulations or requirements of the annual contributions contract between HUD and NBHA.

A decision by the hearing officer or Board of Commissioners in favor of the NBHA's action or failure to act or which denies the relief requested in whole or in part does not constitute a waiver of any rights the complainant may have to a subsequent trial or judicial review in court.

14. III. K. REASONABLE ACCOMMODATION IN THE GRIEVANCE PROCEDURE

Reasonable accommodation will be provided throughout the grievance process for persons with disabilities, including, but not limited to, the following:

- Accepting grievance at alternate sites or by mail
- Having NBHA staff reduce an oral request for a grievance to writing for a resident with a disability who cannot write due to his or her disability, and
- Providing accommodations in the grievance hearing itself by providing qualified sign language interpreters, readers, accessible locations or attendants