

HAP, INC.

SECTION 8 PARTICIPANT GRIEVANCE PROCEDURE¹

1. **AVAILABILITY OF HAP GRIEVANCE PROCEDURE.**

- A. A participant family may appeal the following, to determine whether HAP's decisions relating to the individual circumstances of the participant family are in accordance with the law, HUD regulations, and HAP's policies:
- (1) A determination of the family's annual or adjusted income, and the use of such income to compute the housing assistance payment;
 - (2) A determination of the appropriate utility allowance (if any) for tenant-paid utilities from HAP's utility allowance schedule;
 - (3) A determination of the family unit size under HAP's subsidy standards;
 - (4) A determination that a Section 8 program family is residing in a unit with a larger number of bedrooms than appropriate for the family unit size under HAP's subsidy standards, or a determination to deny the family's request for an exception from the standards;
 - (5) A determination to terminate assistance for a participant family because of the family's action or failure to act;
 - (6) A determination to terminate assistance because the participant family has been absent from the assisted unit for longer than the maximum period permitted under HAP's policy and HUD rules;
 - (7) A determination on a claim for unpaid rent, damage or vacancy payments, if the participant is required to make repayment to HAP.
 - (8) A determination to terminate a family's Family Self Sufficiency contract, withhold supportive services, or propose forfeiture of the family's escrow account;
- B. A participant family may not appeal the following:
- (1) Discretionary administrative determinations by HAP;
 - (2) General policy issues or class grievances;
 - (3) Establishment by HAP of the schedule of utility allowances for families in the program;
 - (4) A determination not to approve an extension or suspension of a voucher term;
 - (5) A determination not to approve a unit or a lease;
 - (6) A determination that an assisted unit is not in compliance with applicable housing quality standards. However, a family may appeal HAP's decision to terminate assistance for a breach of those standards caused by the family;

¹ For the denial or termination of assistance on the basis of ineligible immigration status, see also the regulations at 24 CFR 5.514.

- (7) A determination that the unit is not in accordance with applicable housing quality standards because of the family size;
- (8) A determination to exercise or not to exercise any right or remedy against the owner under a Section 8 contract.

2. NOTICE.

- A. Notice of right to request explanation: In the cases described in 1A (1), (2) and (3) above, HAP shall notify the family that it may ask for an explanation of the basis for the determination, and that if after explanation the family does not agree with the determination, that it may then request an Informal Hearing. The family shall be notified that the Informal Hearing request must be in writing and must be delivered in person, by first class mail or by facsimile machine by the close of the business day which is 15 business days from the date of the written explanation, and that the request must be directed to the person providing the explanation. The family shall also be notified that the failure to request or attend an Informal Hearing waives any right to request further review by the Massachusetts Department of Housing and Community Development. In its discretion, HAP may elect to treat a verbal appeal received within 15 business days as timely, provided that HAP receives a follow-up written appeal within a further two business days.
- B. Notice containing explanation: In the cases described in 1(A) (4) through (8)) above, HAP shall give the family prompt written notice, which shall:
 - (1) Contain a brief statement of reasons for the decision and the effective date of the decision;
 - (2) State that if the family does not agree with the decision, the family may request an Informal Hearing on the decision by written request to a designated individual or individuals;
 - (3) State that the appeal request must be delivered either in person, by first class mail or by facsimile machine by the close of the business day no later than 15 business days from the date of the notice. In its discretion, HAP may elect to treat a verbal appeal received within 15 business days as timely, provided that HAP receives a follow-up written appeal within a further two business days.
 - (4) State that failure to request or attend an Informal Hearing waives any right to request further review by DHCD.

3. SCHEDULING OF APPEAL.

- A. HAP shall use reasonable efforts to hold the Informal Hearing within 15 business days of the receipt of the appeal request. Notice to the participant shall be mailed at least 7 calendar days in advance.
- B. An Informal Hearing shall be provided prior to the termination of housing assistance payments under an outstanding HAP contract, if the reason for termination is described in section 1A (4), through 1A (8) above. Therefore, an appeal of such action shall suspend the effective date at least until the appeal decision is rendered.
- C. In all other cases, the effective date of the determination may be before the scheduled Informal Hearing date.

- D. HAP may elect to schedule a review meeting with the family prior to the Informal Hearing, in an effort to resolve the matter prior to hearing. If the matter is not resolved, the family shall have the right to an Informal Hearing whether or not it attends any such review meeting.

The family may request a postponement of the hearing date for up to one week, for good cause shown, or if needed as a reasonable accommodation for a person with handicaps. Good cause is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family. Under extenuating circumstances, an additional postponement and/or a postponement of more than one week may be granted. HAP is under no obligation to provide more than one extension of the hearing date.

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 HAP within 24 hours of the scheduled hearing date, excluding weekends and holidays. HAP 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 handicaps.

4. CONDUCT OF INFORMAL HEARING.

- A. Hearing Officer(s): The hearing may be conducted by any person or persons designated by HAP, other than a person who made or approved the decision under review or a subordinate of that person.
- B. Representation: The family may retain counsel or other representation at his/her own expense.
- C. Inability of participant to attend due to incarceration: If the participant notifies HAP that s/he cannot attend the appeal due to incarceration, HAP shall offer to conduct the appeal either by mail or by proxy. HAP is not obligated to conduct the appeal at the site of incarceration, or to provide more than one extension of the hearing date.
- D. Access to evidence:
 - (1) The family shall have adequate opportunity, after request, to examine before the hearing any HAP documents that are directly relevant to the hearing. The family shall be allowed to copy any such document at a cost of \$0.25 per page. The family must request discovery of HAP documents no later than 12:00 p.m. on the business day prior to the scheduled hearing date. If HAP does not make the document available for examination upon timely request, HAP may not rely on the document at the hearing.
 - (2) Whenever a participant family requests an Informal Hearing, HAP will mail a letter to the family requesting a copy of all documents that the family intends to present or utilize at the hearing. The family must make the documents available no later than 12:00 p.m. on the business day prior to the scheduled hearing date.
- E. Evidence: HAP and the family shall have the opportunity to present evidence. The family shall have the opportunity to produce evidence of any relevant circumstances. Each party may call witnesses, cross-examine witnesses, and submit documentary and rebuttal evidence. Only information presented at the hearing may be considered by the hearing officer in making findings of fact. The hearing officer need not observe the rules of evidence observed by the courts, but may admit or exclude evidence depending on whether it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs.
- F. Conduct of Hearing: 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.

- G. Tape recording: The hearing shall be tape recorded by HAP. The hearing officer shall announce this prior to the start of the hearing. Upon request, the family shall also be allowed to tape record the proceedings, at its expense.
- H. Attendance at the Informal Hearing: Hearings may be attended by a hearing officer and the following applicable persons: a HAP representative and any witnesses for HAP; the participant family and any witnesses for the family; the family's counsel or other representative; any other person approved by HAP as a reasonable accommodation for a person with a disability. Any person who can demonstrate that they may be substantially and specifically affected by the proceeding may, in HAP's sole discretion, be allowed to participate in the hearing, in whole or in part, or they may be allowed to present evidence, either orally or in writing. A request for attendance by any such individual claiming to be so affected must be submitted to HAP three business days before the hearing.
- I. Keeping the hearing open: At the conclusion of the Informal Hearing, HAP may hold the hearing open for a specific period of time for the purpose of receiving further documents, or adjourn the hearing in order to reconvene at a later date, before reaching a decision. If the family misses an appointment or deadline ordered by the hearing officer, the action of HAP will take effect and another hearing will not be granted.
- J. Rehearing or further hearing: Within 15 business days after the date the hearing officer's report is mailed to the participant family, HAP or the family 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 15 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 HAP to grant or deny the request for further hearing or rehearing. A further hearing may be limited to written submissions by the parties.

5. INFORMAL HEARING DECISION.

A written Notice of Final Decision shall be rendered within 30 business days of the hearing, but only if the participant family attends. The decision shall be dated, and shall include a hearing officer's report containing the following information:

- Hearing information: Name of the participant family; date, time and place of the hearing; name of the hearing officer; name of all attendees
- Background: A brief, impartial statement of the reason for the hearing
- Summary of the Evidence: A summary of the testimony of each witness and identification of any documents admitted into evidence
- Findings of Fact: Findings of fact made by the hearing officer based on a preponderance of evidence.
- Conclusions: Whether HAP's decision should be upheld based on the findings of fact and applicable regulations. Decisions concerning termination of program participation shall reflect the hearing officer's consideration of evidence concerning the seriousness of the case, the extent of participation or culpability of individual family members, mitigating circumstances related to the disability of a family member, and the effects of denial or termination of assistance on other family members who were not involved in the action or failure.

- Order: A statement as to whether HAP's decision is upheld or overturned. If it is overturned, the hearing officer will instruct HAP to change the decision in accordance with the hearing officer's determination.

The Notice of Final Decision will be mailed to the participant family and their representative, if any. The Notice will be sent by first-class mail, with an affidavit of mailing enclosed, although the failure to enclose such affidavit shall not invalidate the decision. If the decision is to terminate program participation, the Notice must notify the family of its right to an appeal at DHCD. The notice must state that DHCD's Bureau of Federal Rental Assistance must receive the appeal within 15 calendar days from the date of the decision letter.

6. EFFECT OF DECISION.

HAP shall be bound by the hearing officer's decision, unless:

- A. It concerns a matter for which HAP is not required to provide an Informal Hearing, or that otherwise exceeds the authority of the hearing officer under HAP's hearing procedures.
- B. It is contrary to HUD regulations or requirements, or otherwise contrary to federal, state or local law;

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

7. APPEALS FOLLOWING REINSTATEMENT WITH CONDITIONS.

When a participant family is reinstated with conditions (by HAP or by DHCD) and subsequently breaches those same conditions within one year, the participant must be informed that the appeal is made directly to DHCD. If more than one year has passed before the conditions are breached, HAP must conduct another hearing to determine if the circumstances have changed.

8. HAP ADHERENCE TO TIME PERIODS.

HAP shall use its best efforts to comply with the time periods contained herein. However, failure to comply shall be excused if the participant is not materially prejudiced thereby.