

Chapter 14

GRIEVANCES AND APPEALS

INTRODUCTION

This chapter discusses grievances and appeals pertaining to MHA actions or failures to act that adversely affect public housing applicants or residents. The policies are discussed in the following three parts:

Part I: Informal Hearings for Public Housing Applicants. This part outlines the requirements and procedures for informal hearings for public housing applicants.

Part II: Informal Hearings with Regard to Noncitizens. This part discusses informal hearings regarding citizenship status and where they differ from the requirements for general applicant and tenant grievances.

Part III: Grievance Procedures for Public Housing Residents. This part outlines the requirements and procedures for handling grievances for public housing residents.

Note that this chapter is not MHA's grievance procedure. The grievance procedure is a document separate from the ACOP. This chapter of the ACOP provides the policies that drive the grievance procedure.

PART I: INFORMAL HEARINGS FOR PUBLIC HOUSING APPLICANTS

14-I.A. OVERVIEW

When MHA makes a decision that has a negative impact on an applicant family, the family is often entitled to appeal the decision. For applicants, the appeal takes the form of an informal hearing. HUD regulations do not provide a structure for or requirements regarding informal hearings for applicants (except with regard to citizenship status, to be covered in Part II). This part discusses MHA policies necessary to respond to applicant appeals through the informal hearing process.

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

Informal hearings are provided for public housing applicants. An applicant is someone who has applied for admission to the public housing program, but is not yet a tenant in the program. 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 under MHA grievance procedures [24 CFR 966.53(a) and PH Occ GB, p. 58].

Informal hearings provide applicants the opportunity to review the reasons for denial of admission and to present evidence to refute the grounds for denial.

Use of Informal Hearing Process

While MHA must offer the opportunity of an informal hearing to applicants who have been determined as ineligible for admission, MHA could make the informal hearing process available to applicants who wish to dispute other MHA actions that adversely affect them.

MHA Policy

MHA will only offer informal hearings to applicants for the purpose of disputing denials of admissions.

Notice of Denial [24 CFR 960.208(a)]

MHA must give an applicant prompt notice of a decision denying eligibility for admission. The notice must contain a brief statement of the reasons for the MHA decision, and must also state that the applicant may request an informal hearing to dispute the decision. The notice must describe how to obtain the informal hearing.

MHA Policy

As applicable MHA's notice of denial will include information about required or requested informal hearings.

When denying eligibility for admission, the PHA must provide the family a notice of VAWA rights (form HUD-5380) as well as the HUD VAWA self-certification form (form HUD-5382) in accordance with the Violence against Women Reauthorization Act of 2013, and as outlined in 16-VII.C. The notice and self-certification form must accompany the written notification of the denial of eligibility determination.

Prior to notification of denial based on information obtained from criminal or sex offender registration records, the family, in some cases, must be given the opportunity to dispute the information in those records which would be the basis of the denial. See Section 3-III.G for details concerning this requirement.

Scheduling an Informal Hearing

A request for an informal hearing must be made in writing and delivered to MHA 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 MHA's notification of denial of admission.

MHA will schedule and send written notice of the informal hearing within 10 business days of the family's request.

If the MHA informal hearing will be conducted remotely, at the time the notice is sent to the family, the family will be informed:

Regarding the processes involved in a remote informal hearing;

That MHA will provide technical assistance prior to and during the informal hearing, if needed; and

That if the family or any individual witness has any technological, resource, or accessibility barriers preventing them from fully accessing the remote informal hearing, the family may inform MHA and MHA will assist the family in either resolving the issues or allow the family to participate in an in-person informal hearing, as appropriate.

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

MHA Policy

The informal hearing will 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 will be provided an opportunity to present written or oral objections to the decision of MHA.

The person conducting the informal hearing will make a recommendation to MHA, but MHA is

responsible for making the final decision as to whether admission should be granted or denied.

Conducting Remote Informal Hearings

Remote Informal Hearings [Notice PIH 2020-32]

There is no requirement that informal hearings be conducted in-person, and as such, HUD allows PHAs to conduct all or a portion of their informal hearings remotely either over the phone, via video conferencing, or through other virtual platforms. If the PHA chooses to conduct remote informal hearings, applicants may still request an in-person informal hearing, as applicable.

MHA Policy

MHA has the sole discretion to require that informal hearings be conducted remotely in case of local, state, or national physical distancing orders, and in cases of inclement weather or natural disaster.

In addition, MHA will conduct an informal hearing remotely upon request of the applicant as a reasonable accommodation for a person with a disability, if an applicant does not have child care or transportation that would enable them to attend the informal hearing, or if the applicant believes an in-person informal hearing would create an undue health risk. MHA will consider other reasonable requests for a remote informal hearing on a case-by-case basis.

Ensuring Accessibility for Persons with Disabilities and LEP Individuals

As with in-person informal hearings, the platform for conducting remote informal hearings must be accessible to persons with disabilities and the informal hearing must be conducted in accordance with Section 504 and accessibility requirements. This includes ensuring any information, websites, emails, digital notifications, and other virtual platforms are accessible for persons with vision, hearing, and other disabilities. Further, providing effective communication in a digital context may require the use of individualized auxiliary aids or services, such as audio description, captioning, sign language and other types of interpreters, keyboard accessibility, accessible documents, screen reader support, and transcripts. Auxiliary aids or services must be provided in accessible formats, in a timely manner, and in such a way to protect the privacy and independence of the individual. PHAs may never request or require that individuals with disabilities provide their own auxiliary aids or services, including for remote informal hearings. If no method of conducting a remote informal hearing is available that appropriately accommodates an individual's disability, the PHA may not hold against the individual his or her inability to participate in the remote informal review, and the PHA should consider whether postponing the remote informal hearing to a later date is appropriate or whether there is a suitable alternative.

Due to the individualized nature of disability, the appropriate auxiliary aid or service necessary, or reasonable accommodation, will depend on the specific circumstances and requirements.

As with in-person hearings, Limited English Proficiency (LEP) requirements also apply to remote informal hearings, including the use of interpretation services and document translation. See Chapter 2 for a more thorough discussion of accessibility and LEP requirements, all of which apply in the context of remote informal hearings.

Conducting Remote Informal Hearings [Notice PIH 2020-32]

The PHA must ensure that the lack of technology or inability to use technology for remote informal hearings does not pose a disadvantage to families that may not be apparent to the PHA. The PHA should determine through a survey or other means if these barriers exist prior to conducting the remote informal hearing and, if the family does not have the proper technology to fully participate, either postpone the informal hearing or provide an alternative means of access.

As with in-person informal hearings, the PHA must provide all materials presented, whether paper or electronic, to the family prior to the remote informal hearing. The family must also be provided with an accessible means by which to transmit their own evidence.

The PHA must ensure that the applicant has the right to hear and be heard. All PHA policies and processes for remote informal hearings will be conducted in accordance with due process requirements and will be in compliance with HUD regulations at 24 CFR 966.56 and the guidance for conducting remote hearings specified in Notice PIH 2020-32.

MHA Policy

MHA will conduct remote informal hearings via a video conferencing platform, when available. If, after attempting to resolve any barriers, applicants are unable to adequately access the video conferencing platform at any point, or upon applicant request, the informal hearing will be conducted by telephone conferencing call-in. If the family is unable to adequately access the telephone conferencing call-in at any point, the remote informal hearing will be postponed, and an in-person alternative will be provided promptly within a reasonable time.

At least five business days prior to scheduling the remote hearing, MHA will provide the family with login information and/or conferencing call-in information and an electronic copy of all materials being presented via first class mail and/or email. The notice will advise the family of technological requirements for the hearing and request the family notify MHA of any known barriers. MHA will resolve any barriers using the guidance in Section 6 of Notice PIH 2020-32, including offering the family the opportunity to attend an in-person hearing.

If the informal hearing is to be conducted remotely, MHA will require the family to provide any documents directly relevant to the informal hearing at least 24 hours before the scheduled hearing through the mail, via email, or text. MHA will scan and email copies of these documents to the MHA representative and to the person conducting the informal hearing the same day.

Documents will be shared electronically whenever possible.

MHA will follow up the email with a phone call and/or email to the applicant at least one business day prior to the remote informal hearing to ensure that the applicant received all information and is comfortable accessing the video conferencing or call-in platform.

MHA will ensure that all electronic information stored or transmitted with respect to the informal hearing is secure, including protecting personally identifiable information (PII), and meets the requirements for accessibility for persons with disabilities and persons with LEP.

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

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

In rendering a decision, MHA will evaluate the following matters:

Whether or not the grounds for denial were stated factually in the notice

The validity of grounds for denial of admission. If the grounds for denial are not specified in the regulations or in MHA policy, then the decision to deny assistance will be overturned. See Chapter 3 for a detailed discussion of the grounds for applicant denial.

The validity of the evidence. The MHA will evaluate whether the facts presented prove the grounds for denial of admission. If the facts provide that there are grounds for denial, and the denial is required by HUD, MHA will uphold the decision to deny admission.

If the facts prove the grounds for denial, and the denial is discretionary, MHA will consider the recommendation of the person conducting the informal hearing in making the final decision whether to deny admission.

MHA will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. The notice will be mailed, with return receipt requested, within 10 business days of the informal hearing, to the applicant and his or her representative, if any.

If the informal hearing decision overturns the denial, processing for admission will resume.

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 MHA must consider such accommodations. MHA 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-II.A. HEARING AND APPEAL PROVISIONS FOR NONCITIZENS [24 CFR 5.514]

Denial or termination of assistance based on immigration status is subject to special hearing and notice rules. These special hearings are referred to in the regulations as informal hearings, but the requirements for such hearings are different from the informal hearings used to deny applicants for reasons other than immigration status.

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 MHA hearing is pending, but assistance to an applicant may be delayed pending the completion of the informal hearing.

MHA Policy

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

United States Citizenship and Immigration Services Appeal Process [24 CFR 5.514(e)]

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

MHA Policy

MHA 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 MHA 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.

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

MHA Policy

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

The informal hearing procedures for applicant families are described below.

Informal Hearing Officer

MHA 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 of approved the decision.

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 MHA 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.

MHA 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 MHA 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 MHA, and to confront and cross-examine all witnesses on whose testimony or information MHA relies.

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 request an interpreter. MHA is obligated to provide a competent interpreter, free of charge, upon request. The family may also or instead provide its own interpreter, at the expense of the family.

Recording of the Hearing

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

MHA will not provide a transcript of an audio taped informal hearing.

Hearing Decision

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

Retention of Documents

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

PART III: GRIEVANCE PROCEDURES FOR PUBLIC HOUSING RESIDENTS

14-III.A. REQUIREMENTS [24 CFR 966.52]

PHAs must have a grievance procedure in place through which residents of public housing are provided an opportunity to grieve any MHA action or failure to act involving the lease or MHA policies which adversely affect their rights, duties, welfare, or status. MHA must not only meet the minimal procedural due process requirements provided under the regulations, but must also meet any additional requirements imposed by local, state or federal law.

The MHA grievance procedure must be included in, or incorporated by reference in, the lease.

MHA Policy

The MHA grievance procedure will be incorporated by reference in the tenant lease.

MHA must provide at least 30 days' notice to tenants and resident organizations setting forth proposed changes in the MHA grievance procedure, and provide an opportunity to present written comments. Comments submitted must be considered by the MHA before adoption of any changes to the grievance procedure by the MHA.

MHA Policy

Residents and resident organizations will have 30 calendar days from the date they are notified by MHA of any proposed changes in the MHA grievance procedure, to submit written comments to MHA.

MHA must furnish a copy of the grievance procedure to each tenant and to resident organizations.

14-III.B. DEFINITIONS [24 CFR 966.53; 24 CFR 966.51(a)(2)(i)]

There are several terms used by HUD with regard to public housing grievance procedures, which take on specific meanings different from their common usage. These terms are as follows:

Grievance: Any dispute which a resident may have with respect to a MHA action or a failure to act in accordance with the individual resident's Lease or MHA regulations, which adversely affects the individual resident's rights, duties, welfare or status.

Complainant: Any resident whose grievance is presented to MHA or at the project management office.

Due Process Determination – a determination by HUD that law of the jurisdiction requires that the tenant must be given the opportunity for a hearing in court which provides the basic elements of due process before eviction from the dwelling unit

Expedited Grievance – a procedure established by MHA for any grievance or termination that involves:

- A health and safety violation that threatens the health, safety, or right to peaceful enjoyment of the premises by family members, other residents or employees of MHA, or any other non-criminal violation in which the notice period is less than 14 days (other than non-payment of rent)

Elements of due process: The following procedural safeguards are required to be followed in an eviction action or a termination of tenancy in a state or local court:

- (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 MHA, including the right to confront and cross examine witnesses and to present any affirmative legal or equitable defense which the resident may have;
- (4) A decision on the merits.

Hearing Officer/Panel: an impartial person or persons selected by MHA, other than the person who made or approved the decision under review, or a subordinate of that person. The individual or individuals do not need legal training.

Tenant: the adult person (or persons) (other than a live-in aide)

Who resides in the unit, and who executed the lease with MHA as lessee of the dwelling unit, or, if no such person now resides in the unit,

Who resides in the unit, and who is the remaining head of household of the tenant family residing in the dwelling unit

Resident Organization: An organization of residents, which includes any Resident Management Corporation and specifically includes the Resident Organization

14-III.C. APPLICABILITY [24 CFR 966.51]

Grievances could potentially address most aspects of a MHA's operation. However, there are some situations for which the grievance procedure is not applicable.

The grievance procedure is applicable only to individual tenant issues relating to MHA. It is not applicable to disputes between tenants not involving MHA. Class grievances are not subject to the grievance procedure and the grievance procedure is not to be used as a forum for initiating or negotiating policy changes of MHA.

MHA Policy

MHA is located in a HUD-declared due process state. Therefore, MHA will not offer grievance hearings for lease terminations involving criminal activity that threatens the

health, safety, or right to peaceful enjoyment of the premises of other residents or employees of MHA, or for violent or drug-related criminal activity on or off the premises, or for any criminal activity that resulted in felony conviction of a household member.

See Chapter 13 for related policies on the content of termination notices.

14-III.D. INFORMAL SETTLEMENT OF GRIEVANCE [24 CFR 966.54]

HUD regulations state that any grievance must be personally presented, either orally or in writing, to the MHA office or to the office of the housing development in which the complainant resides so that the grievance may be discussed informally and settled without a hearing.

MHA Policy

MHA will accept requests for an informal settlement of a grievance either orally or in writing (including emailed requests), to the MHA office within 10 business days of the grievable event. Within 10 business days of receipt of the request MHA will arrange a meeting with the tenant at a mutually agreeable time and confirm such meeting in writing to the tenant.

The informal settlement may be conducted remotely as required by MHA, or may be conducted remotely upon consideration of the request of the tenant. See 14-III.G for information on how and under what circumstances remote informal settlements may be conducted.

A 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 MHA documents no later than 12:00 p.m. on the business day prior to the hearing.

If a tenant fails to attend the scheduled meeting without prior notice, MHA will reschedule the appointment only if the tenant can show good cause for failing to appear, 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.

HUD regulations require that a summary of such discussion will be prepared within a reasonable time and one copy will be given to the tenant and one retained in MHA's tenant file.

The summary must specify the names of the participant, dates of meeting, the nature of the proposed disposition of the complaint and the specific reasons therefore, and will specify the procedures by which a hearing may be obtained if the complainant is not satisfied.

MHA Policy

MHA will prepare a summary of the informal settlement within 5 business days; one copy to be given to the tenant and one copy to be retained in MHA's tenant file.

14-III.E. PROCEDURES TO OBTAIN A HEARING

Requests for Hearing and Failure to Request

MHA Policy

The resident must submit a written request (including emailed requests) for a grievance hearing to MHA within 5 business days of the tenant's receipt of the summary of the informal settlement.

If the complainant does not request a hearing, MHA's disposition of the grievance under the informal settlement process will become final. However, failure to request a hearing does not constitute a waiver by the complainant of the right to contest MHA's action in disposing of the complaint in an appropriate judicial proceeding.

Scheduling of Hearings [24 CFR 966.56(a)]

If the complainant has complied with all requirements for requesting a hearing as described above, a hearing must be scheduled by the hearing officer/panel promptly for a time and place reasonably convenient to both the complainant and MHA. A written notification specifying the time, place and the procedures governing the hearing must be delivered to the complainant and the appropriate MHA official.

MHA Policy

Within 10 business days of receiving a written request for a hearing, the hearing officer will schedule and send written notice of the hearing to both the complainant and MHA.

If the PHA hearing will be conducted remotely, at the time the notice is sent to the family, the family will be notified:

Regarding the processes involved in a remote grievance hearing;

That the PHA will provide technical assistance prior to and during the hearing, if needed; and

That if the family or any individual witness has any technological, resource, or accessibility barriers, the family may inform the PHA and the PHA will assist the family in either resolving the issue or allow the family to participate in an in-person hearing, as appropriate.

The tenant 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, MHA may request documentation of the “good cause” prior to rescheduling the hearing.

Expedited Grievance Procedure [24 CFR 966.52(a)]

MHA may establish an expedited grievance procedure for any grievance concerning a termination of tenancy or eviction that involves:

- A health and safety violation that threatens the health, safety, or right to peaceful enjoyment of the premises by family members, other residents or employees of MHA, or any other non-criminal violation in which the notice period is less than 14 days (other than non-payment of rent).

In such expedited grievances, the informal settlement of grievances as discussed in 14-III.D is not applicable.

MHA may adopt special procedures concerning expedited hearing, including provisions for expedited notice or scheduling, or provisions for expedited decision on the grievance.

MHA Policy

MHA may establish an expedited grievance procedure for any grievance concerning a termination of tenancy or eviction that involves:

- A health and safety violation that threatens the health, safety, or right to peaceful enjoyment of the premises by family members, other residents or employees of MHA, or
- Any non-criminal violation in which the notice period is less than 14 days as allowed under state and local law (other than non-payment of rent)

The notice period and the time between the date of the termination notice and the proposed effective date of the termination should allow enough time for the grievance hearing process to be completed, whether it be a regular grievance hearing or an expedited grievance hearing (see Chapter 14).

14-III.F. SELECTION OF HEARING OFFICER [24 CFR 966.53(e)]

The grievance hearing must be conducted by an impartial person or persons appointed by MHA, other than the person who made or approved the MHA action under review, or a subordinate of such person. MHA must describe their policies for selection of a hearing officer in their lease.

MHA Policy

MHA grievance hearings will be conducted by a single hearing officer and not a panel.

MHA will select hearing officers who do not work for the agency. These could include employees of other housing agencies in the area, retirees, legal professionals, or other community volunteers with experience in subsidized housing programs

14-III.G. REMOTE HEARINGS [Notice PIH 2020-32]

There is no requirement that grievance hearings be conducted in-person, and as such, HUD allows PHAs to conduct all or a portion of their grievance hearings remotely either over the phone, via video conferencing, or through other virtual platforms. If the PHA chooses to conduct remote grievance hearings, applicants may still request an in-person hearing, as applicable.

MHA Policy

MHA has the sole discretion to require that hearings be conducted remotely in case of local, state, or national physical distancing orders, and in cases of inclement weather or natural disaster.

In addition, MHA will conduct a hearing remotely upon request as a reasonable accommodation for a person with a disability, if a tenant does not have child care or transportation that would enable them to attend the hearing, or if the tenant believes an in-person hearing would create an undue health risk. MHA will consider other reasonable requests for a remote hearing on a case-by-case basis.

Discovery of Document Before the Remote Hearing

MHA Policy

If the hearing will be conducted remotely, MHA will compile a hearing packet, consisting of all documents MHA intends to produce at the hearing. MHA will mail copies of the hearing packet to the tenant, the tenant's representatives, if any, and the hearing officer at least three days before the scheduled remote hearing. The original hearing packet will be in the possession of the MHA representative and retained by MHA.

If the hearing is to be conducted remotely, MHA will require the resident to provide any documents directly relevant to the hearing at least 24 hours before the scheduled hearing through the mail, via email, or text. MHA will scan and email copies of these documents to the hearing officer and the MHA representative the same day they are received.

Documents will be shared electronically whenever possible.

Conducting Hearings Remotely

The PHA must ensure that the lack of technology or inability to use technology for remote grievance hearings does not pose a disadvantage to families that may not be apparent to the

PHA. The PHA should determine through a survey or other means if these barriers exist prior to conducting the remote grievance hearing and, if the family does not have the proper technology to fully participate, either postpone the hearing or provide an alternative means of access.

As with in-person grievance hearings, the PHA must provide all materials presented, whether paper or electronic, to the family prior to the remote grievance hearing. The family must also be provided with an accessible means by which to transmit their own evidence.

The PHA's essential responsibility is to ensure grievance hearings meet the requirements of due process and comply with HUD regulations. Therefore, all PHA policies and processes for remote grievance hearings will be conducted in accordance with due process requirements and will be in compliance with HUD regulations at 24 CFR 966.56 and the guidance for conducting remote hearings specified in Notice PIH 2020-32.

MHA Policy

MHA will conduct remote grievance hearings via a video conferencing platform, when available. If, after attempting to resolve any barriers, participants are unable to adequately access the video conferencing platform at any point, or upon request, the grievance hearing will be conducted by telephone conferencing call-in. If the family is unable to adequately access the telephone conferencing call-in at any point, the remote grievance hearing will be postponed, and an in-person alternative will be provided promptly within a reasonable time.

At least five business days prior to scheduling the remote hearing, MHA will provide the family with login information and/or conferencing call-in information and an electronic copy of all materials being presented via first class mail and/or email. The notice will advise the family of technological requirements for the hearing and request the family notify MHA of any known barriers. MHA will resolve any barriers using the guidance in Section 6 of Notice PIH 2020-32, including offering the family the opportunity to attend an in-person hearing.

MHA will follow up with a phone call and/or email to the family at least one business day prior to the remote grievance hearing to ensure that the family received all information and is comfortable accessing the video conferencing or call-in platform. MHA will ensure that all electronic information stored or transmitted with respect to the grievance hearing is secure, including protecting personally identifiable information (PII), and meets the requirements for accessibility for persons with disabilities and persons with LEP.

14-III.H. PROCEDURES GOVERNING THE HEARING [24 CFR 966.56]

Rights of Complainant [24 CFR 966.56(b)]

The complainant will be afforded a fair hearing, this includes:

- The opportunity to examine before the grievance hearing any MHA documents, including records and regulations that are directly relevant to the hearing. The tenant must be allowed to copy any such document at the tenant's expense. If MHA does not make the document available for examination upon request by the complainant, MHA may not rely on such document at the grievance hearing.

The tenant will be allowed to copy any documents related to the hearing at a cost of \$.25 per page. There will be no charge for documents emailed by MHA. The family must request discovery of MHA documents no later than 12:00 p.m. on the business day prior to the hearing.

- The right to be represented by counsel or other person chosen to represent the tenant, and to have such person make statements on the tenant's behalf.

Hearings may be attended by the following applicable persons:

MHA representative(s) and any witness for MHA

The tenant and any witnesses for the tenant

The tenant's counsel or other representative

Any other person approved by MHA as a reasonable accommodation for a person with a disability

- The right to a private hearing unless the complainant requests a public hearing.
- The right to present evidence and arguments in support of the tenant's complaint, to controvert evidence relied on by MHA or project management, and to confront and cross-examine all witnesses upon whose testimony or information MHA or project management relies.
- A decision based solely and exclusively upon the facts presented at the hearing.

Failure to Appear [24 CFR 966.56(c)]

If the complainant or MHA fails to appear at a scheduled hearing, the hearing officer/panel may make a determination to postpone the hearing for no more than five business days or may make a determination that the party has waived his/her right to a hearing. Both the complainant and MHA must be notified of the determination by the hearing officer/panel: Provided, that a determination that the complainant has waived his/her right to a hearing will not constitute a waiver of any right the complainant may have to contest MHA's disposition of the grievance in an appropriate judicial proceeding.

There may be times when a complainant does not appear due to unforeseen circumstances which

are out of their control and are no fault of their own.

MHA Policy

If the tenant does not appear at the scheduled time of the hearing, the hearing officer will wait up to 30 minutes. If the tenant appears within 30 minutes of the scheduled time, the hearing will be held. If the tenant does not arrive within 30 minutes of the scheduled time, they will be considered to have failed to appear.

If the tenant fails to appear and was unable to reschedule the hearing in advance, the tenant must contact MHA within 24 hours of the scheduled hearing date, excluding weekends and holidays. The hearing officer will reschedule the hearing only if the tenant can show good cause for the failure to appear, or 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.

General Procedures [24 CFR 966.56(d), (e)]

At the hearing, the complainant must first make a showing of an entitlement to the relief sought and thereafter MHA must sustain the burden of justifying the MHA action or failure to act against which the complaint is directed [24 CFR 966.56(d)].

The hearing is conducted informally by the hearing officer/panel. MHA and the tenant must be given the opportunity to present oral or documentary evidence pertinent to the facts and issues raised by the complaint, and to question any witnesses.

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 MHA. Writings include all forms of recorded communication or representation, including letters, emails, 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 based not on a witness' personal knowledge. In and of

itself, hearsay evidence carries no weight when making a finding of fact. The hearing officer may include hearsay evidence when considering their decision if it is corroborated by other evidence. Even though hearsay evidence is generally admissible in a hearing, the hearing officer will not base a hearing decision on hearsay alone unless there is clear probative value and credibility of the evidence, and the party seeking the change has met the burden of proof.

If MHA fails to comply with the discovery requirements (providing the tenant with the opportunity to examine MHA documents prior to the grievance hearing), the hearing officer will refuse to admit such evidence.

Other than the failure of MHA to comply with discovery requirements, the hearing officer has the authority to overrule any objections to evidence.

The complainant or MHA may arrange, in advance and at the expense of the party making the arrangement, for a transcript of the hearing. Any interested party may purchase a copy of such transcript [24 CFR 966.56(e)].

MHA Policy

If the complainant would like MHA to record the proceedings by audiotape, the request must be made to MHA by 12:00 p.m. on the business day prior to the hearing.

MHA will consider that an audio tape recording of the proceedings is a transcript.

Accommodations of Persons with Disabilities [24 CFR 966.56(f)]

The MHA must provide reasonable accommodation for persons with disabilities to participate in the hearing. Reasonable accommodations may include qualified sign language interpreters, readers, accessible locations, or attendants.

If the tenant is visually impaired, any notice to the tenant which is required in the grievance process must be in an accessible format.

See Chapter 2 for a thorough discussion of the MHA's responsibilities pertaining to reasonable accommodation.

Limited English Proficiency (24 CFR 966.56(g))

MHA must comply with HUD's LEP Final Rule in providing language services throughout the grievance process.

14-III.L. DECISION OF THE HEARING OFFICER [24 CFR 966.57]

The hearing officer must issue a written decision, stating the reasons for the decision, within a reasonable time after the hearing. 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 decision must be sent to the complainant and MHA. MHA must retain a copy of the decision in the tenant's folder. A log of all hearing officer decisions must also be maintained by MHA and made available for inspection by a prospective complainant, his/her representative, or the hearing officer [24 CFR 966.57(a)].

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

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

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

MHA Evidence to Support MHA 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 MHA's conclusion.

Validity of Grounds for Termination of Tenancy (when applicable): The hearing officer will determine if the termination of tenancy is for one of the grounds specified in the HUD regulations and MHA policies. If the grounds for termination are not specified in the regulations or in compliance with MHA policies, then the decision of MHA will be overturned.

The hearing officer will issue a written decision to the family and MHA no later than 10 business days after the hearing. The report will contain the following information:

Hearing information:

- Name of the complainant
- Date, time and place of the hearing
- Name of the hearing officer
- Name of MHA representatives(s)
- Name of the family representatives (if any)
- Name of witnesses (if any)

Background: A brief, impartial statement of the reason for the hearing and the date(s) on which the informal settlement was held, who held it, and a summary of the results of the informal settlement. Also includes the date the complainant requested the grievance 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 as a whole 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 MHA's decision.

Order: The hearing report will include a statement of whether MHA's decision is upheld or overturned. If it is overturned, the hearing officer will instruct MHA to change the decision in accordance with the hearing officer's determination. In the case of termination of tenancy, the hearing officer will instruct MHA to restore the family's status.

Procedures for Further Hearing

MHA Policy

The hearing officer may ask the family for additional information and/or might 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 MHA will take effect and another hearing will not be granted.

Final Decision [24 CFR 966.57(b)]

The decision of the hearing officer/panel is binding on MHA which must take the action, or refrain from taking the action cited in the decision unless the MHA Board of Commissioners determines within a reasonable time, and notifies the complainant that:

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

When MHA considers the decision of the hearing officer to be invalid due to the reasons stated above, it will present the matter to the MHA Board of

Commissioners within 10 business days of the date of the hearing officer's decision. The Board has 30 calendar days to consider the decision. If the Board decides to reverse the hearing officer's decision, it must notify the complainant within 10 business days of this decision.

A decision by the hearing officer, or Board of Commissioners in favor of MHA or which denies the relief requested by the complainant in whole or in part must not constitute a waiver of any rights, nor effect in any manner whatever, any rights the complainant may have to a subsequent trial or judicial review in court [24 CFR 966.57(c)].