

Chapter 5A
APPEALS BY APPLICANTS DETERMINED INELIGIBLE
[24 CFR Part 960-208]

INTRODUCTION

This Chapter describes the policies to be used when applicants for public housing assistance disagree with an HHA decision of ineligibility for assistance. It is the policy of HHA to ensure that all families have the benefit of all protections due to them under the law.

The grievance procedures for **HHA residents** is different than and do not apply to **HHA** eligibility determinations. The HHA resident grievance procedure is set forth in Chapter 14.

A. APPEALS BY APPLICANTS FOR ISSUES NOT RELATED TO CRIMINAL BACKGROUND INFORMATION

Applicants who are determined ineligible, who do not meet **HHA's** admission standards, including the reason for the determination.

Ineligible applicants will be promptly provided with a letter detailing their individual status, stating the reason for their ineligibility, and offering them an opportunity for an informal hearing. Applicants must submit their request for an informal hearing in writing to **HHA** within **7 calendar** days from the date of **service of** the notification of their ineligibility. **The request must include:**

- The particular grounds upon which the appeal is based;**
- All supporting appeal documentation;**
- The action requested by the applicant; and**
- The name, address, and telephone number of the applicant, and contact information for the applicant's representative, if any.**

If the applicant requests an informal hearing, **HHA** will provide an informal hearing within **10 calendar** days of receiving the request. **HHA** will notify the applicant of the place, date, and time.

Informal hearings will be conducted by an impartial hearing officer, and in most cases informal hearings will be conducted by a member of HHA management. The applicant may bring to the hearing any additional documentation or evidence s/he wishes and the applicant's evidence along with the data compiled by **HHA** will be considered by the hearing officer.

The hearing officer will make a determination based upon the merits of the evidence presented by both sides. Within **10 calendar** days of the date of the hearing, the hearing officer will mail a written decision to the applicant and place a copy of the decision in the applicant's file. The HHA Executive Director will have final and binding approval over determinations of the Hearings Officer.

B. APPEALS BY APPLICANTS RELATED TO INFORMATION ON CRIMINAL BACKGROUND

Applicants who receive a pre-denial letter based on information in their criminal background may appeal the decision by providing the HHA written request for appeal. Applicants must provide written documentation demonstrating they have successfully completed items as outlined in the Criminal Background Entry/Re-Entry Policy as described in Chapter 2, within 7 calendar days of receiving the pre-denial letter.

Upon receipt of adequate documentation the Admissions Specialist will schedule an appeal meeting for the applicant with the Executive Director or Appointee. All documents will be reviewed and the Executive Director or their appointee will make a formal decision to determine final eligibility. Should the HHA deny entry based on the appeal/written documentation and other data compiled by HHA the applicant will then be entitled to request an informal hearing process, as outlined above, within 7 days of receiving the denial of eligibility determination letter.

C. APPEALS BASED ON PAST CRIMINAL ACTIVITY OR VIOLENT OFFENDERS

HHA is committed to providing safe, affordable housing to community members. Crime prevention in federally assisted housing is advanced by the ability of HHA to screen-out those who engage in illegal drug use or other criminal activity. Crime prevention and enforcement will be advanced by HHA's ability to evict and terminate assistance for persons who participate in drug related and criminal activity.

Individuals who have engaged in past drug related activity or past criminal activity, including persons listed as a violent offender on the Montana Violent Offender Registry or any other similar registry and who are denied eligibility by HHA accordingly, may appeal the denial of assistance. This appeal process is not available to those applicants listed as a sexual offender on the Montana Sexual Offender Registry or any other similar sexual offender registry.

The appeal will be conducted by an impartial hearing officer, which may include any officer or another impartial person or persons appointed by HHA.

For applicants denied eligibility based on past drug related activity and/or past violent criminal activity including registry listed violent offenders, the Hearing Officer will consider any offered letters of support or other evidence regarding the successful rehabilitation and self-sufficiency efforts of those who have previously engaged in past drug related or violent criminal activity. For applicants denied eligibility based upon past eviction from federally assisted housing for drug-related criminal activity, the Hearing Officer may waive the mandatory three year date from eviction waiting period of eligibility based upon a sufficient showing of rehabilitation, or in the event the past evicted disqualified household member is no longer a member of the applicant household.

If the applicant requests an appeal in writing that evidence of rehabilitation or lack of disqualifying factors exist, the applicant must provide sufficient evidence and documentation

demonstrating three or more of the following grounds for entry or re-entry , from separate entities:

- Successful completion of a treatment center program;
- Successful completion of a rehabilitation center program;
- Successful completion of a self- sufficiency course;
- Acceptance or willingness of the applicant or family to receive social services;
- Recommendation from a social worker;
- Recommendation from a counselor;
- Recommendations from community members, such as a police officer, landlord, neighbor, employer, teacher, agency worker, etc. (Recommendations from family and personal friends will not be considered);
- Proof of current employment from an employer;
- Proof of employment for the previous (6) six-months from an employer; and
- Any other documentation evidencing rehabilitation or probability of future favorable conduct.

Hearing Procedures

The hearing shall be held before a HHA designated Hearing Officer.

The applicant shall be afforded a fair hearing and be provided the basic safeguards of due process to include:

The opportunity to examine and to copy before the hearing, at the expense of the complainant, all documents, records and regulations of HHA that are relevant to the hearing with at least a 24-hour notice to HHA prior to the hearing. Any document not so made available after request by the complainant may not be relied upon by HHA at the hearing;

HHA shall also have the opportunity to examine and to copy at the expense of HHA all documents, records and statements that the applicant plans to submit during the hearing to refute HHA's inaction or proposed action with at least 24-hour notice to the complainant prior to the hearing. Any documents not so made available to HHA may not be relied upon at the hearing;

The right to a private hearing unless otherwise waived by the Applicant;

The right to be represented by counsel or other person chosen as a representative;

The right to present evidence and arguments in support of the appeal, to controvert evidence presented by HHA, and to confront and cross-examine all witnesses upon whose testimony or information HHA relies, limited to the issues of eligibility.

The right to a decision based solely and exclusively upon the facts presented at the hearing.

If the applicant or HHA fail to appear at the scheduled hearing, the Hearing Officer may make a determination that the party has waived his/her right to a hearing. Such a determination in no

way waives the applicant's right to appropriate judicial proceedings in another forum.

Burden of Proof

At the hearing, the applicant must first make a showing of an entitlement to the relief sought and thereafter HHA must sustain the burden of justifying the HHA determination of ineligibility.

The HHA Executive Director will have final and binding approval over recommendations of the Hearings Officer.

D. HEARING AND APPEAL PROVISIONS FOR "RESTRICTIONS ON ASSISTANCE TO NON-CITIZENS"

INS Determination of Ineligibility

If an applicant family member claims to be an eligible immigrant and the INS SAVE system and manual search do not verify the claim, **HHA will notify** the applicant or **resident** within ten **working** days of their right to appeal to the INS or to request an informal hearing with **HHA**, either in lieu of or subsequent to the INS appeal.

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

The request for a **HHA** hearing must be made within fourteen **calendar** days of receipt of the notice offering the hearing or, if an appeal was made to the INS, within fourteen **calendar** days of receipt of that notice.

After receipt of a request for an informal hearing, the hearing is conducted as described in the "Grievance Procedures" section of the "**Complaints & Grievances**" chapter for both applicants and residents. If the hearing officer decides that the individual is not eligible, and there are no other eligible family members **HHA** will:

Deny the applicant family.
Terminate the participant.

However, if there are eligible members in the family **HHA** 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 certification as required by the regulation, that member is treated as ineligible. If all family members fail to provide documentation, the family will be denied or terminated for failure to provide such information.

Residents 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 **Resident** Rent and Total Tenant Payment.

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.

Assistance to the family may not be delayed, denied or terminated on the basis of immigration status at any time prior to the receipt of the decision on the INS appeal.