

HCV Administrative Plan pages 113-120

16.0 COMPLAINTS, INFORMAL REVIEWS FOR APPLICANTS, INFORMAL HEARINGS FOR PARTICIPANTS

16.1 COMPLAINTS

The Superior Housing Authority will investigate and respond to complaints by participant families, owners, and the general public. The Superior Housing Authority may require that complaints other than HQS violations be put in writing. Anonymous complaints are investigated whenever possible.

16.2 INFORMAL REVIEW FOR THE APPLICANT

A. Informal Review for the Applicant

The Superior Housing Authority will give an applicant for participation in the Section 8 Existing Program prompt notice of a decision denying assistance to the applicant. The notice will contain a brief statement of the reasons for the Superior Housing Authority decision. The notice will state that the applicant may request an informal review within 10 business days of the denial and will describe how to obtain the informal review.

B. When an Informal Review is not Required

The Superior Housing Authority will not provide the applicant an opportunity for an informal review for any of the following reasons:

1. A determination of the family unit size under the Superior Housing Authority subsidy standards.
2. A Superior Housing Authority determination not to approve an extension or suspension of a housing choice voucher term.
3. A Superior Housing Authority determination not to grant approval to lease a unit under the program or to approve a proposed lease.
4. A Superior Housing Authority determination that a unit selected by the applicant is not in compliance with HQS.
5. A Superior Housing Authority determination that the unit is not in accordance with HQS because of family size or composition.
6. General policy issues or class grievances.

7. Discretionary administrative determinations by the Superior Housing Authority.

C. Informal Review Process

The Superior Housing Authority will give an applicant an opportunity for an informal review of the Superior Housing Authority decision denying assistance to the applicant. The procedure is as follows:

1. The review will be conducted by any person or persons designated by the Superior Housing Authority other than the person who made or approved the decision under review or a subordinate of this person.
2. The applicant will be given an opportunity to present written or oral objections to the Superior Housing Authority decision.
3. The Superior Housing Authority will notify the applicant of the Superior Housing Authority decision after the informal review within 14 calendar days. The notification will include a brief statement of the reasons for the final decision.

D. Considering Circumstances

In deciding whether to deny assistance to an applicant because of action or inaction by members of the family, the Housing Authority may consider all of the circumstances in each case, including the seriousness of the case, the extent of participation or culpability of individual family members, and the effects of denial of assistance on other family members who were not involved in the action or failure.

The Housing Authority may impose, as a condition of assistance for other family members, a requirement that family members who participated in or were culpable for the action or failure will not reside in the unit. The Housing Authority may permit the other members of a participant family to receive assistance.

If the Housing Authority seeks to deny assistance because of illegal use, or possession for personal use, of a controlled substance, or pattern of abuse of alcohol, such use or possession or pattern of abuse must have occurred within one year before the date that the Housing Authority provides notice to the family of the Housing Authority determination to deny assistance. In determining whether to deny assistance for these reasons the Superior Housing Authority will consider evidence of whether the household member:

1. Has successfully completed a supervised drug or alcohol rehabilitation program (as applicable) and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol; or
2. Has otherwise been rehabilitated successfully and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol.
- 3.

E. Informal Review Procedures for Denial of Assistance on the Basis of Ineligible Immigration Status

The applicant family may request that the Superior Housing Authority provide for an informal review after the family has notification of the INS decision on appeal, or in lieu of request of appeal to the INS. The applicant family must make this request within 30 calendar days of receipt of the *Notice of Denial or Termination of Assistance*, or within 30 calendar days of receipt of the INS appeal decision.

For applicant families, the Informal Review Process above will be utilized with the exception that the applicant family will have up to 30 calendar days of receipt of the *Notice of Denial or Termination of Assistance*, or of the INS appeal decision to request the review.

16.3 INFORMAL HEARINGS FOR PARTICIPANTS

A. When a Hearing is Required

1. The Superior Housing Authority will give a participant family an opportunity for an informal hearing to consider whether the following Superior Housing Authority decisions relating to the individual circumstances of a participant family are in accordance with the law, HUD regulations, and Superior Housing Authority policies:

- a. A determination of the family's annual or adjusted income, and the use of such income to compute the housing assistance payment.
 - b. A determination of the appropriate utility allowance (if any) for tenant- paid utilities from the Superior Housing Authority utility allowance schedule.
 - c. A determination of the family unit size under the Superior Housing Authority subsidy standards.
 - d. A determination to terminate assistance for a participant family because of the family's action or failure to act.
 - e. A determination to terminate assistance because the participant family has been absent from the assisted unit for longer than the maximum period permitted under the Superior Housing Authority policy and HUD rules.
 - f. Denial of a hardship exemption to the minimum rent requirement.
2. In cases described in paragraphs 16.3(A)(1)(d), (e), and (f) of this Section, the Superior Housing Authority will give the opportunity for an informal hearing before the Superior Housing Authority terminates housing assistance payments for the family under an outstanding HAP contract.

B. When a Hearing is not Required

The Superior Housing Authority will not provide a participant family an opportunity for an informal hearing for any of the following reasons:

1. Discretionary administrative determinations by the Superior Housing Authority.
2. General policy issues or class grievances.
3. Establishment of the Superior Housing Authority schedule of utility allowances for families in the program.
4. A Superior Housing Authority determination not to approve an extension or suspension of a housing choice voucher term.

5. A Superior Housing Authority determination not to approve a unit or lease.
6. A Superior Housing Authority determination that an assisted unit is not in compliance with HQS. (However, the Superior Housing Authority will provide the opportunity for an informal hearing for a decision to terminate assistance for a breach of the HQS caused by the family.)
7. A Superior Housing Authority determination that the unit is not in accordance with HQS because of the family size.
8. A determination by the Superior Housing Authority to exercise or not exercise any right or remedy against the owner under a HAP contract.

C. Notice to the Family

1. In the cases described in paragraphs 16.3(A)(1)(a), (b), and (c) of this Section, the Superior Housing Authority will notify the family that the family may ask for an explanation of the basis of the Superior Housing Authority's determination, and that if the family does not agree with the determination, the family may request an informal hearing on the decision.
2. In the cases described in paragraphs 16.3(A)(1)(d), (e), and (f) of this Section, the Superior Housing Authority will give the family prompt written notice that the family may request a hearing within 10 business days of the notification. The notice will:
 - a. Contain a brief statement of the reasons for the decision; and
 - b. State if the family does not agree with the decision, the family may request an informal hearing on the decision within 10 business days of the notification.

D. Hearing Procedures

The Superior Housing Authority and participants will adhere to the following procedures:

1. Discovery
 - a. The family will be given the opportunity to examine before the hearing any Superior Housing Authority documents that are directly relevant to the hearing. The family will be allowed to

copy any such document at the family's expense. If the Superior Housing Authority does not make the document(s) available for examination on request of the family, the Superior Housing Authority may not rely on the document at the hearing.

- b. The Superior Housing Authority will be given the opportunity to examine, at the Superior Housing Authority's offices before the hearing, any family documents that are directly relevant to the hearing. The Superior Housing Authority will be allowed to copy any such document at the Superior Housing Authority's expense. If the family does not make the document(s) available for examination on request of the Superior Housing Authority, the family may not rely on the document(s) at the hearing.

Note: The term **document** includes records and regulations.

2. Representation of the Family

At its own expense, a lawyer or other representative may represent the family.

3. Hearing Officer

- a. The hearing will be conducted by any person or persons designated by the Superior Housing Authority, other than a person who made or approved the decision under review or a subordinate of this person.
- b. The person who conducts the hearing will regulate the conduct of the hearing in accordance with the Superior Housing Authority hearing procedures.

4. Evidence

The Superior Housing Authority and the family must have the opportunity to present evidence and may question any witnesses. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

5. Issuance of Decision

The person who conducts the hearing must issue a written decision within 14 calendar days from the date of the hearing, stating briefly the reasons for the decision. Factual

determinations relating to the individual circumstances of the family shall be based on a preponderance of the evidence presented at the hearing.

6. Effect of the Decision

The Superior Housing Authority is not bound by a hearing decision:

- a. Concerning a matter for which the Superior Housing Authority is not required to provide an opportunity for an informal hearing under this Section, or that otherwise exceeds the authority of the person conducting the hearing under the Superior Housing Authority hearing procedures.
- b. Contrary to HUD regulations or requirements, or otherwise contrary to Federal, State, or local law.
- c. If the Superior Housing Authority determines that it is not bound by a hearing decision, the Superior Housing Authority will notify the family within 14 calendar days of the determination, and of the reasons for the determination.

E. Considering Circumstances

In deciding whether to terminate assistance because of action or inaction by members of the family, the Housing Authority may consider all of the circumstances in each case, including the seriousness of the case, the extent of participation or culpability of individual family members, and the effects of denial or termination of assistance on other family members who were not involved in the action or failure.

The Housing Authority may impose, as a condition of continued assistance for other family members, a requirement that family members who participated in or were culpable for the action or failure will not reside in the unit. The Housing Authority may permit the other members of a participant family to continue receiving assistance.

If the Housing Authority seeks to terminate assistance because of illegal use, or possession for personal use, of a controlled substance, or pattern of abuse of alcohol, such use or possession or pattern of abuse must have occurred within one year before the date that the Housing Authority provides notice to the family of the Housing Authority determination to deny or terminate assistance. In determining whether to terminate assistance for these reasons the Superior Housing Authority will consider evidence of whether the household member:

1. Has successfully completed a supervised drug or alcohol rehabilitation program (as applicable) and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol;
2. Has otherwise been rehabilitated successfully and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol; or
3. Is participating in a supervised drug or alcohol rehabilitation program and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol.

F. Informal Hearing Procedures for Denial of Assistance on the Basis of Ineligible Immigration Status

The participant family may request that the Superior Housing Authority provide for an informal hearing after the family has notification of the INS decision on appeal, or in lieu of request of appeal to the INS. This request must be made by the participant family within 30 calendar days of receipt of the *Notice of Denial or Termination of Assistance*, or within 30 calendar days of receipt of the INS appeal decision.

For the participant families, the Informal Hearing Process above will be utilized with the exception that the participant family will have up to 30 calendar days of receipt of the *Notice of Denial or Termination of Assistance*, or of the INS appeal decision.