



Terminations and Hearings

Tips and Techniques to Avoid Legal Challenges

Quadel Consulting and Management, LLC



Three Guiding Principles

- House families
- Run a credible program
- Be fair

“Do the small things – the basic things – right every day...sometimes we try to overcomplicate things. Be brilliant to the basics.”

Buck Showalter



Denial Of Assistance (24 CFR 982.552)

- Can result from several actions
 - Refusal to place on waiting list
 - Refusal to issue voucher
 - Withdrawal of assistance
 - Refusal to enter into a HAP agreement
 - Refusal to process a portability request



Assistance MUST be Denied When:

- Household is not eligible
- Refuses to sign forms
- Does not need assistance
- Fails to meet mandatory screening requirements
 - Drug and Criminal activity



Assistance MAY Be Denied When:

- Family violates program obligations
- Any member was evicted from public housing/Section 8 assistance was terminated
- Owes money to any HA
- Breaches a repayment agreement
- Engages in/threatens abusive or violent behavior toward HA personnel
- Violent or drug-related criminal activity



Assistance MUST Be Terminated When:

- Household member convicted of producing methamphetamine in Section 8 unit or building
- Refusal to sign consent forms
- Failure to comply with non-citizen reporting requirements
- Family not eligible due to immigration status



Assistance MAY Be Terminated When:

- Family violates program obligations
- Member commits fraud, bribery, or other corrupt criminal act
- Family owes money to the PHA or is in breach of repayment agreement
- Family engaged in/threatened abusive or violent behavior to PHA personnel
- Member commits drug-related or violent criminal activity



Special Rules Apply

- Non-Citizens
- Victims of Violence (VAWA)
- Certain Crimes
- Alcohol Abuse



Characteristics of a Well Written Denial/Termination Notice

- Regulatory citation
- Plain English description of the violation
- Any attempted remedial actions before denial/termination
- Reports, evidence or other documents to include with denial/termination notice
- Includes easy to understand instructions on how to request an informal review of hearing



When Reviews and Hearings are Required (24 CFR 982.554 and 982.555)

- The PHA must give an applicant an opportunity for an informal review of the PHA decision denying assistance to the applicant
- The administrative plan must state the PHA procedures for conducting an informal review



When Reviews and Hearings are Not Required

- Discretionary administrative determinations by the PHA
- General policy issues or class grievances
- A determination of the family unit size under the PHA subsidy standards
- An PHA determination not to approve an extension or suspension of a voucher term
- A PHA determination not to grant approval of the tenancy
- A PHA determination that a unit selected by the applicant is not in compliance with HQS
- An PHA determination that the unit is not in accordance with HQS because of the family size or composition



Requests for Informal Review/Hearing

- Only accept requests that are received in accordance with your administrative plan
- Making exceptions opens the door to challenge



Discovery

- What is discovery?
- When is discovery required?
- Why discovery is important?
- PHA responsibilities
- Client responsibilities



Hearings and Reviews

- The review may be conducted by any person or persons designated by the PHA
 - Cannot be the person who made or approved the decision under review or a subordinate of this person
- The applicant/participant must be given an opportunity to present written or oral objections to the PHA decision
- The applicant/participant may be represented during the hearing
- The PHA must notify the applicant of the final decision after the informal review/hearing



Legal Definition of Preponderance of the Evidence

- The burden of proof required in a civil (non-criminal) action to convince the court that a given proposition is true
- The plaintiff must convince the judge or jury by a preponderance of the evidence that the plaintiff's version is true
- More than 50% of the believable evidence is in the plaintiff's favor

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Preponderance of the Evidence in Informal Review or Informal Hearing

- It is the responsibility of the housing agency to prove that the applicant/participant does not qualify for participation in the program
- Best forms of evidence include:
 - File documents
 - Application forms
 - Third Party Verification/EIV reports



Evidence

Good Evidence

- File documents
- Application/Personal declaration
- Third party verification/EIV
- Public records
- Witness with first hand knowledge

Bad Evidence

- Unverified or unverifiable verbal reports/allegations/complaints
- Assumptions/conclusions based upon unverified fact
 - Drives a luxury car, must be committing fraud



Characteristics of Well Written Review and Hearing Decisions

- Brief overview of the grounds for denial/termination, including regulatory citation
- Factual determinations
- Decision
 - Uphold PHA determination
 - Overturn PHA determination
- Reasons for the decision



When a PHA is not bound by the hearing officer's decision (24 CFR 982.555 (f))

- When a hearing is not required
 - When the decision exceeds the authority of the hearing officer
 - When the decision is contrary to HUD regulations/requirements
 - When the decision is contrary to federal, state or local law
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- If the PHA determines that it is not bound by a hearing decision, the PHA must promptly notify the family of the determination, and of the reasons for the determination.



Questions?

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Thank you Texas NAHRO

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