

## Chapter 14

### GRIEVANCES AND APPEALS

#### INTRODUCTION

This chapter discusses grievances and appeals pertaining to PHA 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 CKHA'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 CKHA 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 CKHA 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 CKHA 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 CKHA must offer the opportunity of an informal hearing to applicants who have been determined as ineligible for admission, CKHA could make the informal hearing

process available to applicants who wish to dispute other PHA actions that adversely affect them.

#### CKHA Policy

CKHA will only offer informal hearings to applicants for the purpose of disputing denials of admission.

#### **Notice of Denial [24 CFR 960.208(a)]**

CKHA must give an applicant prompt notice of a decision denying eligibility for admission. The notice must contain a brief statement of the reasons for CKHA 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.

When denying eligibility for admission, the PHA must provide the family a notice of VAWA rights as well as the HUD VAWA self-certification form (form HUD-50066) 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**

##### CKHA Policy

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

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

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

##### CKHA 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 CKHA.

The person conducting the informal hearing will make a recommendation to CKHA, but CKHA is responsible for making the final decision as to whether admission should be granted or denied.

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

##### CKHA Policy

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

In rendering a decision, CKHA 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 CKHA 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. CKHA will evaluate whether the facts presented prove the grounds for denial of admission. If the facts prove that there are grounds for denial, and the denial is required by HUD, CKHA will uphold the decision to deny admission.

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

CKHA 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 CKHA must consider such accommodations. CKHA 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 CKHA hearing is pending, but assistance to an applicant may be delayed pending the completion of the informal hearing.

A decision against a family member, issued in accordance with the USCIS appeal process or CKHA 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 CKHA 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 CKHA receives notification that the USCIS secondary verification failed to confirm eligible immigration status, CKHA 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 CKHA with a copy of the written request for appeal and proof of mailing.

##### CKHA Policy

CKHA 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 CKHA 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 CKHA, of its decision. When the USCIS notifies CKHA of the decision, CKHA must notify the family of its right to request an informal hearing.

#### CKHA Policy

CKHA 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 CKHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of CKHA 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***

CKHA 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 or 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 CKHA 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.

#### CKHA 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 PHA 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 CKHA, and to confront and cross-examine all witnesses on whose testimony or information CKHA 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 arrange for an interpreter to attend the hearing, at the expense of the family, or CKHA, as may be agreed upon by the two parties. If the family does not arrange for their own interpreter, CKHA is still obligated to provide oral translation services in accordance with its LEP Plan.

### ***Recording of the Hearing***

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

#### CKHA Policy

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

### ***Hearing Decision***

CKHA 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 [24 CFR 5.514(h)]**

CKHA must retain for a minimum of 5 years the following documents that may have been submitted to CKHA by the family, or provided to CKHA as part of the USCIS appeal or CKHA 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

### **Informal Hearing Procedures for Residents [24 CFR 5.514(f)]**

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, a resident family may request that CKHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of CKHA notice of termination, or within 30 days of receipt of the USCIS appeal decision.

The informal hearing procedures for resident families whose tenancy is being terminated based on immigration status is the same as for any grievance under the grievance procedures for resident families found in Part III below.

## **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 PHA action or failure to act involving the lease or PHA policies which adversely affect their rights, duties, welfare, or status.

CKHA 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.

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

#### CKHA Policy

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

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

#### CKHA Policy

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

CKHA 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 tenant may have with respect to PHA action or failure to act in accordance with the individual tenant's lease or PHA regulations which adversely affect the individual tenant's rights, duties, welfare or status
- **Complainant** – any tenant whose grievance is presented to CKHA 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 CKHA for any grievance or termination that involves:
  - Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of CKHA's public housing premises by other residents or employees of CKHA; or
  - Any drug-related criminal activity on or off the premises.

- **Elements of Due Process** – an eviction action or a termination of tenancy in a state or local court in which the following procedural safeguards are required:
  - Adequate notice to the tenant of the grounds for terminating the tenancy and for eviction
  - Right of the tenant to be represented by counsel
  - Opportunity for the tenant to refute the evidence presented by CKHA including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense which the tenant may have
  - A decision on the merits
- **Hearing Officer** – an impartial person selected by CKHA and approved by the Board of Commissioners, 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 CKHA 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** – includes a resident management corporation

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

Grievances could potentially address most aspects of a PHA'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 CKHA. It is not applicable to disputes between tenants not involving CKHA. 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 CKHA.

If HUD has issued a due process determination, a PHA may exclude from its grievance procedure any grievance concerning a termination of tenancy or eviction that involves:

- Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises of other residents or employees of CKHA
- Any violent or drug-related criminal activity on or off such premises

In states without due process determinations, PHAs must grant opportunity for grievance hearings for all lease terminations, regardless of cause, with the following exception: PHAs may use expedited grievance procedures for the first two of the three

excluded categories listed above. These expedited grievance procedures are described in Section 14-III.E.below.

If HUD has issued a due process determination, CKHA may evict through the state/local judicial eviction procedures. In this case, CKHA is not required to provide the opportunity for a hearing under CKHA's grievance procedure as described above.

#### CKHA Policy

CKHA is located in a due process state; therefore it will exclude from its grievance hearings:

- Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises of other residents or employees of CKHA
- Any violent or drug-related criminal activity on or off such premises

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 CKHA 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.

#### CKHA Policy

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

If a tenant fails to attend the scheduled meeting without prior notice, CKHA 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 CKHA's tenant file.

The summary must specify the names of the participants, 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.

### CKHA Policy

CKHA will prepare a summary of the informal settlement within 10 business days; one copy to be given to the tenant and one copy to be retained in CKHA's tenant file.

For PHAs who have the option to establish an expedited grievance procedure, and who exercise this option, the informal settlement of grievances is not applicable to those grievances for which the expedited grievance procedure applies.

## **14-III.E. PROCEDURES TO OBTAIN A HEARING [24 CFR 966.55]**

### **Requests for Hearing and Failure to Request [24 CFR 966.55(a), (c), and (d)]**

#### CKHA Policy

The resident must submit a written request for a grievance hearing to CKHA within 5 business days of the tenant's receipt of the summary of the informal settlement.

If the complainant does not request a hearing, CKHA'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 the CKHA'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 CKHA. A written notification specifying the time, place and the procedures governing the hearing must be delivered to the complainant and the appropriate PHA official.

#### CKHA 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 CKHA.

CKHA may wish to permit the tenant to request to reschedule a hearing for good cause.

#### CKHA Policy

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, CKHA may request documentation of the "good cause" prior to rescheduling the hearing.

### **Expedited Grievance Procedure [24 CFR 966.52(a)]**

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

- Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents or employees of CKHA, or
- Any drug-related criminal activity on or near such premises

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

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

CKHA Policy

CKHA will not use an expedited grievance procedure.

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

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

CKHA Policy

CKHA grievance hearings will be conducted by a single hearing officer and not a panel. Management staff will recruit hearing officers from among community members residing in the agency's operating jurisdiction of Kanawha, Putnam and Clay Counties. These persons should have a reputation for being impartial and have no recent affiliation with CKHA. At least five persons should be recruited to serve as officers during a calendar year term. A person may only serve as a hearing officer for three consecutive terms (years) before rotating off for at least one year. The names and a brief background of prospective candidates will be presented to CKHA community leaders at the Quarterly Resident Council Meeting in October of each year for their comment. The Board of Commissioners will consider and vote on the list of officers at their December Board Meeting.

PHAs must describe their policies for selection of a hearing officer in their lease forms. Changes to the public housing lease are subject to a 30-day comment period (24 CFR 966.4)

**14-III.G. 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 PHA 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 CKHA does not make the document available for examination upon request by the complainant, CKHA may not rely on such document at the grievance hearing.

CKHA Policy

The tenant will be allowed to copy any documents related to the hearing at a cost of \$.25 per page. The family must request discovery of PHA 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.

CKHA Policy

Hearings may be attended by the following applicable persons:

A PHA representative(s) and any witnesses for CKHA

The tenant and any witnesses for the tenant

The tenant's counsel or other representative

Any other person approved by CKHA 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 CKHA or project management, and to confront and cross-examine all witnesses upon whose testimony or information CKHA or project management relies.
- A decision based solely and exclusively upon the facts presented at the hearing.

~~Decision without Hearing [24 CFR 966.56(c)]~~

~~The hearing officer/panel may render a decision without proceeding with the hearing if the hearing officer/panel determines that the issue has been previously decided in another proceeding.~~

## **Failure to Appear [24 CFR 966.56(~~dc~~)]**

If the complainant or CKHA fails to appear at a scheduled hearing, the hearing officer/panel may make a determination to postpone the hearing for not to exceed five business days or may make a determination that the party has waived his/her right to a hearing. Both the complainant and CKHA 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 CKHA'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.

### CKHA 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 CKHA 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(~~ed~~), (~~fe~~), and (~~g~~)]**

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

The hearing must be conducted informally by the hearing officer. CKHA 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. ~~In general, all evidence is admissible and may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings [24 CFR 966.56(f)].~~

### CKHA Policy

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 CKHA. 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 of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter. Even though evidence, including hearsay, is generally admissible, hearsay evidence alone cannot be used as the sole basis for the hearing officer's decision.

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

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

The hearing officer/panel must require CKHA, the complainant, counsel and other participants or spectators to conduct themselves in an orderly fashion. Failure to comply with the directions of the hearing officer/panel to obtain order may result in exclusion from the proceedings or in a decision adverse to the interests of the disorderly party and granting or denial of the relief sought, as appropriate [24 CFR 966.56(f)].

The complainant or CKHA 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(g)].

#### CKHA Policy

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

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

#### **Accommodations of Persons with Disabilities [24 CFR 966.56(h)]**

CKHA must provide reasonable accommodation for persons with disabilities to participate in the hearing. Reasonable accommodation 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 CKHA's responsibilities pertaining to reasonable accommodation.

**Limited English Proficiency (24 CFR 966.56(g))**

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

**14-III.H. DECISION OF THE HEARING OFFICER/PANEL [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 tenant and CKHA. CKHA must retain a copy of the decision in the tenant's folder. A copy of the decision, with all names and identifying references deleted, must also be maintained on file by CKHA and made available for inspection by a prospective complainant, his/her representative, or the hearing officer/panel [24 CFR 966.57(a)].

**CKHA Policy**

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

**PHA Notice to the Family:** The hearing officer will determine if the reasons for CKHA'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 CKHA Policy.

**PHA Evidence to Support CKHA 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 CKHA'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 PHA policies. If the grounds for termination are not specified in the regulations or in compliance with PHA policies, then the decision of CKHA will be overturned.

The hearing officer will issue a written decision to the family and CKHA 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 CKHA representative(s)

Name of family representative (if any)

Names 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 CKHA's decision.

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

## **Procedures for Further Hearing**

### CKHA 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 CKHA will take effect and another hearing will not be granted.

## **Final Decision [24 CFR 966.57(b)]**

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

- The grievance does not concern PHA action or failure to act in accordance with or involving the complainant's lease on PHA policies which adversely affect the complainant's rights, duties, welfare, or status; or

- The decision of the hearing officer is contrary to Federal, state, or local law, HUD regulations or requirements of the annual contributions contract between HUD and CKHA

#### CKHA Policy

When CKHA considers the decision of the hearing officer to be invalid due to the reasons stated above, it will present the matter to CKHA 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/panel, or Board of Commissioners in favor of CKHA 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)].