**PART I**

**GRIEVANCES AND APPEALS**

**For Applicants**

**INTRODUCTION**

This chapter discusses grievances and appeals pertaining to BHP actions or failures to act that adversely affect Housing Choice Voucher or Project Based Voucher applicants.

**Reasonable Accommodation for Persons with Disabilities**

Persons with disabilities may request reasonable accommodations to attend and/or participate in the hearing process and BHP will consider such accommodations. BHP will also consider reasonable accommodation requests pertaining to the reasons for denial or removal if related to the person’s disability. See Chapter 2 for more detail pertaining to reasonable accommodation requests.

**OVERVIEW**

When BHP makes a decision that has a negative impact on an applicant, the applicant is entitled to appeal the decision. An applicant is someone who has applied for housing assistance from BHP but is not yet a participant or resident.

**DECISIONS OF NEGATIVE IMPACT FOR APPLICANTS**

Removal from the wait list.

Denial of Assistance.

 If the removal/denial is based on a criminal record or sex offender registration, BHP must give the applicant the ability to dispute the accuracy and relevance of the information.

 If the removal/denial is based on prior conduct, the applicant must be informed of BHP’s duty to consider evidence of rehabilitation, willingness to participate in appropriate programs/services, and/or evidence of willingness to increase income.

 If the removal/denial is based on conduct that may be related to a mental or physical disability, the notice must inform the applicant of BHP’s duty to provide reasonable accommodations in its procedures and standards for assistance to accommodate the disability. The applicant has a right to request that BHP make such reasonable accommodation/modification. BHP will respond to such request in writing and inform the applicant of his appeal rights through BHP as well as under the Vermont Human Rights Commission and the U .S. Department of Housing and Urban Developments’ Fair Housing Office.

After notification of an action of BHP to remove an applicant from the waiting list or deny assistance, the applicant has the right to grieve the decision. The notification of removal or denial will include information to the applicant of the procedure for presenting a grievance. The appeal is a two step process: an informal hearing and a formal hearing if the issue is not resolved in the informal review.

**THE INFORMAL HEARING**

**Request for an Informal Hearing**

A request for an informal hearing must be made within 10 calendar daysof the postmark on the notice of the action to be taken. The request may be presented to BHP either orally or in writing. If the applicant has a disability that requires reasonable accommodation in order to attend the hearing, they must notify BHP of the need when requesting the hearing.

**Failure to request Informal Hearing**

If the applicant does not request an informal hearing within the 10 calendar days, they waive their right to an informal hearing and BHP’s decision will become final. However, failure to request an informal hearing does not constitute a waiver by the applicant of the right to contest BHP’s action in an appropriate judicial proceeding.

**Hearing Officer**

The informal hearing will be conducted by a person who was not the same person who made the decision, nor anyone they supervise. It may be any other member of BHP staff or a non- affiliated person if no staff member is without a conflict in the particular case.

**Scheduling of informal hearing**

Within 7 calendar days of receipt of the applicant’s request for an informal hearing, BHP will mail notice to the applicant of the time, place, and date of the informal hearing. The informal hearing date shall be no later than 10 calendar after the date of mailing of the notice of the informal hearing.

**Accommodations of Persons with Disabilities**

BHP must provide reasonable accommodations for persons with disabilities to attend and/or participate in the informal hearing. Reasonable accommodations may include qualified sign language interpreters, readers, accessible locations, or attendants. If the applicant is visually impaired, any notice which is required in the grievance process must be in an accessible format.

**Failure to Appear**

If the applicant or representative fails to appear, the informal hearing will not be rescheduled unless the hearing officer determines there is cause to continue. If there is no determination of cause, BHP action will continue.

**Waived right to Informal Hearing**

A determination that the applicant has waived their right to an informal hearing will not constitute a waiver of any right the applicant may have to contest BHP’s disposition of the grievance in an appropriate judicial proceeding.

**Review of Documentation**

During the two business days prior to the informal hearing, the applicant or representative shall be allowed the opportunity to review and request copies, at their expense, of all the documents BHP relied on in taking the action. Any document not so made available after request by the applicant may not be relied upon by BHP at the informal hearing.

**Conducting the Informal Hearing**

The applicant has the right to be present and to have someone (counsel or other person) represent and/or accompany them at the informal hearing.

The applicant has the right to a private informal hearing unless they request a public informal hearing..

The informal hearing is not a judicial proceeding and will be conducted in an informal manner.

Informal hearings may be attended by the following applicable persons:

* The hearing officer(s) and any witnesses for BHP
* The applicant and any witnesses for the applicant
* The applicant’s counsel or other representative

***Conduct of Participants***

All persons present must conduct themselves in an orderly fashion. Failure to comply 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.

**Procedures for Further Information**

The hearing officer may ask the applicant for additional information and/or might adjourn the informal hearing in order to reconvene at a later date, before reaching a decision. Any additional information or additional sessions must be completed in order to allow thehearing officer to render a decision within 10 calendar days of the initial informal hearing date.

**Decision of the Informal Hearing**

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

* Was the reason for the decision factually stated in the notice.
* Was the applicant given the opportunity to examine any relevant documents in accordance with BHP policy.
* If the facts support BHP’s conclusion.
* If the applicant has complied with any conditions

The written report of the decision must be made within 7 calendar days of the informal hearing date or any extensions granted.

A copy of the decision must be sent to the applicant to the address provided at the informal hearing and to BHP. A copy of the decision with all names and identifying references redacted, must be maintained on file by BHP and made available for inspection by the affected applicant, his representative.

**The Report**

The written report of the decision will contain the following information:

* Name of the applicant
* Date the informal hearing was requested
* Date(s), time and place of the informal hearing
* Name of the hearing officer
* Name of applicant representative (if any)
* Names of witnesses (if any)
* A brief, impartial statement of the reason for the informal hearing
* A summary of the testimony
* Identify of any documents that a witness produced in support of his testimony and that are admitted into evidence
* 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.
* If additional time was granted in order for the applicant to submit additional documents/information, or for the applicant to otherwise address the decision, the report will include these details and any actions or resolutions resulting.
* The 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 BHP’s decision.
* A summary of the results of the informal hearing.

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If the applicant is dissatisfied with the result of the informal hearing, they may request a formal hearing.

**THE FORMAL HEARING**

**Request for a formal hearing**

A request for a formal hearing must be made within 10 calendar daysof the postmark on the notice of the result of the informal hearing. The request may be presented to BHP either orally or in writing. If the applicant has a disability that requires reasonable accommodation in order to attend the formal hearing, they must notify BHP of the need when requesting the formal hearing.

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**Failure to request formal Hearing**

If the applicant does not request a formal hearing within the 10 calendar days they waive their right to the formal hearing and BHP’s decision will become final. However, failure to request a formal hearing does not constitute a waiver by the applicant of the right to contest BHP’s action in an appropriate judicial proceeding.

**Hearing Officer**

The formal hearing will be conducted by a hearing officer who is not a member of BHP staff. A list of approved hearing officers is produced annually and is available at the BHP main office..

**Scheduling of formal Hearings**

Within 7 calendar days of receipt of the applicant’s request for a formal hearing, BHP will mail notice to the applicant of the time, place, and date of the formal hearing. The date shall be no later than 10 calendar days after the date of mailing of the notice of the informal hearing.

**Accommodations of Persons with Disabilities**

BHP must provide reasonable accommodations for persons with disabilities to attend and/or participate in the formal hearing. Reasonable accommodations may include qualified sign language interpreters, readers, accessible locations, or attendants. If the resident/participant is visually impaired, any notice which is required in the grievance process must be in an accessible format.

**Failure to Appear**

If the applicant or representative fails to appear, the formal hearing will not be rescheduled unless the hearing officer determines there is cause to continue. If there is no determination of cause, BHP action will continue.

**Waived right to formal Hearing**

A determination that the applicant has waived their right to a formal hearing will not constitute a waiver of any right the applicant may have to contest BHP’s disposition of the grievance in an appropriate judicial proceeding.

**Review of Documentation**

During the two business days prior to the formal hearing, the applicant or representative shall be allowed the opportunity to review and request copies, at their expense, of all the documents BHP relied on in taking the action.

Any document not so made available after request by the applicant may not be relied upon by BHP at the formal hearing.

**Conducting the formal Hearing**

The applicant has the right to be present and to have someone (counsel or other person) represent and/or accompany them at the formal hearing.

The applicant has the right to a private formal hearing unless they request a public formal hearing.

The formal hearing is not a judicial proceeding and will be conducted in an informal manner.

Formal Hearings may be attended by the following applicable persons:

* A BHP representative(s) and any witnesses for BHP
* The applicant and any witnesses for the applicant
* The applicant’s counsel or other representative

***Conduct of Participants***

All persons present must conduct themselves in an orderly fashion. Failure to comply 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.

 ***Presentation of the Case***

At the formal hearing, BHP shall first produce evidence to support its proposed decision. The applicant will then be permitted to question information BHP relied upon in making its initial decision. The applicant will then have the opportunity to present witnesses and documents to support their position.

 ***Evidence***

In general, all evidence is admissible and may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

Any evidence to be considered by the hearing officer must be presented at the time of the hearing.

Any document not made available after request by the applicant as defined above, may not be presented by BHP at the formal hearing.

**Procedures for Further Time**

The hearing officer may ask the applicant for additional information and/or might adjourn the formal hearing in order to reconvene at a later date, before reaching a decision. Any additional information or additional sessions of the formal hearing must be completed so as to allow thehearing officer to render a decision within 10 calendar days of the initial formal hearing date.

**Decision of the Hearing Officer**

In rendering a decision, the Hearing Officer will consider the following matters:

*BHP Notice to the Applicant*:

The Hearing Officer will determine if the reasons for BHP’s decision are factually stated in the notice.

*Discovery***:**

The Hearing Officer will determine if the applicant was given the opportunity to examine any relevant documents in accordance with BHP policy.

*BHP Evidence to Support BHP Decision*:

The evidence consists of the facts presented. The Hearing Officer will evaluate the facts to determine if they support BHP’s conclusion.

The Hearing Officer must issue a written report of the decision within 7 calendar days of the formal hearing date or any extensions granted.

A copy of the decision must be sent to the applicant to the address provided at the formal hearing and to BHP. A copy of the decision with all names and identifying references redacted, must be maintained on file by BHP and made available for inspection by the affected applicant, his representative, or a Hearing Officer.

**The Report**

The written report of the decision will contain the following information:

*Hearing information***:**

Name of the applicant

Date, time and place of the formal hearing

Name of the hearing officer

Name of BHP representative(s)

Name of applicant representative (if any)

Names of witnesses (if any)

*Background:*

A brief, impartial statement of the reason for the formal hearing and the date(s) on which the formal hearing was held, who held it, who attended, and a summary of the results of the formal hearing. It will also include the date the applicant requested the formal hearing.

*Summary of the Evidence*:

The Hearing Officer will summarize the testimony and identify any documents that a witness produced in support of his 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.

*Additional information*

If additional time was granted in order for the applicant to submit additional documents/information , or for the applicant to otherwise address the decision, the report will include these details and any actions or resolutions resulting.

*Conclusions:*

The HearingOfficer 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 BHP’s decision.

*Order****:***

The formal hearing report will include a statement of whether BHP’s decision is upheld or overturned~~.~~

The decision of the Hearing Officer shall be binding on BHP which shall take all actions necessary to carry out the decision unless BHP’s Board of Commissioners determines that:

* The grievance does not concern BHP action or failure to act in accordance with BHP regulations which adversely affect the applicant’s rights, duties, welfare or status; or
* The decision of the Hearing Officer is contrary to applicable Federal, State, or local law, HUD regulations or requirements of the Annual Contributions Contract between HUD and BHP.

If BHP determines that the decision is not binding, the applicant must be notified immediately stating the reasons.

**Appeal**

If the applicant is unsatisfied with the decision of the hearing officer, they may file an appeal in an appropriate judicial proceeding.

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**PART II**

**GRIEVANCES AND APPEALS**

**For Residents/Participants**

**INTRODUCTION**

This chapter discusses grievances and appeals pertaining to BHP actions or failures to act that adversely affect Housing Choice Voucher or Project Based Voucher residents/participants.

**Reasonable Accommodation for Persons with Disabilities**

Persons with disabilities may request reasonable accommodations to attend and/or participate in the hearing process and BHP will consider such accommodations. BHP will also consider reasonable accommodation requests pertaining to the reasons for denial or removal if related to the person’s disability. See Chapter 2 for more detail pertaining to reasonable accommodation requests.

**OVERVIEW**

When BHP makes a decision that has a negative impact on a resident/participant, they are entitled to appeal the decision.

A resident/participant is someone who is receiving housing assistance from BHP.

**DECISIONS NOT AFFORDED A HEARING**

* Discretionary administrative determinations by BHP
* General policy issues or class grievances
* Establishment of the BHP schedule of utility allowance for families.
* A determination not to approve an extension of the voucher term.
* A determination not to approve a unit or tenancy
* A determination that as assisted unit is not in compliance with HQS
* A BHP determination that the unit is not in accordance with HQS because of the family size.
* A determination to exercise or not to exercise any right or remedy against the owner under a HAP contract.

After notification of an action by BHP the resident/participant family has the right to grieve the decision. The notification of action will include information to the family of the procedure for presenting a grievance.

**THE HEARING**

**Request for a Hearing**

A request for a hearing must be made within 10 calendar days of the postmark on the notice of the action to be taken. The request may be presented to BHP either orally or in writing. If the resident/participant has a disability that requires reasonable accommodation in order to attend the hearing, they must notify BHP of the need when requesting the hearing.

**Failure to request Hearing**

If the resident/participant does not request a hearing within the 10 calendar days, they waive their right to such hearing and BHP’s decision will become final. However, failure to request a hearing does not constitute a waiver by the resident/participant of the right to contest BHP’s action in an appropriate judicial proceeding.

**Hearing Officer**

The hearing will be conducted by a person who was not the same one who made the decision, nor anyone they supervise. It may be any other member of BHP staff or a non- affiliated person if no staff member is without a conflict in the particular case.

**Scheduling of Hearing**

Within 7 calendar days of receipt of the resident/participant’s request for a hearing, BHP will mail notice to the resident/participant of the time, place, and date of the hearing. The date shall be no later than 10 calendar days after the date of mailing of the notice of the hearing.

**Accommodations of Persons with Disabilities**

BHP must provide reasonable accommodations for persons with disabilities to attend and/or participate in the hearing. Reasonable accommodations may include qualified sign language interpreters, readers, accessible locations, or attendants. If the resident/participant is visually impaired, any notice which is required in the grievance process must be in an accessible format.

**Failure to Appear**

If the resident/participant or representative fails to appear, the hearing will not be rescheduled unless the hearing officer determines there is cause to continue. If there is no determination of cause, BHP action will continue.

**Waived right to Hearing**

A determination that the resident/participant has waived their right to a hearing will not constitute a waiver of any right the resident/participant may have to contest BHP’s disposition of the grievance in an appropriate judicial proceeding.

**Review of Documentation**

During the two business days prior to the hearing, the resident/participant or representative shall be allowed the opportunity to review and request copies, at their expense, of all the documents BHP relied on in taking the action. Any document not so made available after request by the resident/participant may not be relied upon by BHP at the hearing.

**Conducting the Hearing**

The resident/participant has the right to be present and to have someone (counsel or other person) represent and/or accompany them at the hearing.

The resident/participant has the right to a private hearing unless they request a public hearing.

The hearing is not a judicial proceeding and will be conducted in an informal manner.

Hearings may be attended by the following applicable persons:

* The hearing officer(s) and any witnesses for BHP
* The resident/participant and any witnesses for the resident/participant
* The resident/participant’s counsel or other representative

***Conduct of Participants***

All persons present must conduct themselves in an orderly fashion. Failure to comply 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.

**Procedures for Further Information**

The hearing officer may ask the resident/participant for additional information and/or might adjourn the hearing in order to reconvene at a later date, before reaching a decision. Any additional information or additional sessions of the hearing must be completed in order to allow thehearing officer to render a decision within 10 calendar days of the initial hearing date.

**Decision of the Hearing officer**

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

* Was the reason for the decision factually stated in the notice.
* Was the resident/participant given the opportunity to examine any relevant documents in accordance with BHP policy.
* If the facts support BHP’s conclusion.
* If the resident/participant has complied with any conditions

The written report of the decision must be made within 7 calendar days of the hearing date or any extensions granted.

A copy of the decision must be sent to the resident/participant to the address provided at the hearing. A copy of the decision with all names and identifying references redacted, must be maintained on file by BHP and made available for inspection by the affected resident/participant, his representative.

**The Report**

The written report of the decision will contain the following information:

* Name of the resident/participant
* Date the hearing was requested
* Date(s), time and place of the hearing
* Name of the hearing officer
* Name of resident/participant representative (if any)
* Names of witnesses (if any)
* A brief, impartial statement of the reason for the hearing
* A summary of the testimony
* Identify of any documents that a witness produced in support of his testimony and that are admitted into evidence
* 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.
* If additional time was granted in order for the resident/participant to submit additional documents/information , or for the resident/participant to otherwise address the decision, the report will include these details and any actions or resolutions resulting.
* The 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 BHP’s decision.
* A summary of the results of the hearing.

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If the resident/participant is dissatisfied with the result of the review, they may file an appeal in an appropriate judicial proceeding.

**PART III**

**HEARINGS FOR NONCITIZENS**

**HEARING AND APPEAL PROVISIONS FOR NONCITIZENS**

Denial or termination of assistance based on immigration status is subject to special hearing and notice rules.

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 BHA 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 BHP noncitizen 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**

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 participant, the criteria and procedures for obtaining relief under the provisions for preservation of families.
* 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 BHP 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**

BHP 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 BHP 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.

BHP will send written notice to the family of its right to request a hearing within 10 business days of receiving notice of the USCIS decision regarding the family’s immigration status.

**Hearing Procedures for Applicants**

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

The hearing procedures for applicant families are described below.

***Hearing Officer***

BHP must provide a 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 will 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 BHP 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.

The family must request discovery of BHP documents no later than two business days 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 BHP, and to confront and cross-examine all witnesses on whose testimony or information BHP 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 BHP, as may be agreed upon by the two parties. If the family does not arrange for their own interpreter, BHP 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 audio equipment. An audio recording of the hearing is considered a transcript and BHP will not provide a written transcript. The family may do so at its own expense.

***Hearing Decision***

BHP will 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**

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

**Hearing Procedures for Residents**

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