

## Chapter 14 APPEALS

If an applicant or tenant disagrees with a decision or action of the CHA, the following opportunities for review apply:

Category of Decision by CHA	Review
Application denied after reconsideration	Conference Panel
Emergency status denied by Emergency Committee	Conference Panel
Hardship denial by Hardship Committee	Conference Panel
Tenant Dispute of CHA action or inaction related to individual resident's lease, or individual application of CHA rules or regulations	Grievance Panel
Transfer: Public Housing	Grievance Panel
Reasonable Accommodation (Including RA Transfer Requests)	Reasonable Accommodation Appeals Officer

### A. Conference Panels

1. A conference panel is available for dispute of CHA determinations relating to applicants denied admission, those applicants or tenants that have been denied emergency status by the Emergency Review Committee and tenants who have been denied a Hardship Exemption by the Hardship Review Committee.
  - a. The purpose of the conference panel is to determine whether CHA's decision(s) related to the household's circumstances are in accordance with the law, HUD regulations and CHA policies.
2. A request for a conference panel hearing must be made in writing and delivered in person to the Legal Department or by first class mail within fifteen (15) days of the date of notice of adverse action by CHA.
3. Requests are received and listed chronologically on a waitlist, with denials of emergency status prioritized over other types of requests.
4. Once the household reaches the top of the list, CHA will schedule the hearing.
  - a. Households will be notified of a scheduled hearing via first class mail.
  - b. The household must receive notice at least thirty (30) business days prior to the hearing date unless the household agrees to an earlier date.
  - c. The notice must inform the household that they have the right to discovery, meaning that they will:
    - Be given the opportunity to examine any and all documents that CHA will rely upon at the hearing; and
    - Be given access to the entire household file if requested; and
    - Be allowed to make copies of any and all documents related to the hearing (at their own expense); and

- Be supplied with an overview of any proposed testimony from CHA witnesses; and
- The household may initiate discovery requests and access will not be unreasonably delayed by CHA.

d. The notice must also inform the household that any documents that they plan to utilize and rely upon at the hearing should be submitted to CHA no later than two (2) business days prior to the scheduled hearing. But see Section 6 below. Where possible, the CHA and the household shall prepare a joint packet of documents for consideration by the Panel members.

5. Once the hearing is scheduled and the notice sent, the household may only request to reschedule a hearing for good cause or as a reasonable accommodation for a person with disabilities.

a. Good cause includes an unavoidable conflict that seriously affects the health, safety or welfare of the household; the unavailability of a witness or advocate; a scheduling conflict with work or school; and illness. Requests to reschedule a hearing must be made orally or in writing prior to the hearing date. CHA may request documentation of the good cause.

b. Failure to obtain counsel is not considered good cause. Written requests by an advocate for postponement due to unavailability will be considered grounds to reschedule.

c. Failure to attend a scheduled hearing without prior notice is considered a default.

- In cases where the household had good cause for the default and contacts CHA within two (2) business days of a missed hearing, CHA may, at its discretion, place the household back on the bottom of the chronological list for another hearing.

6. Households have the right to seek and retain counsel at their own expense or may have another representative accompany them.

## B. Organization of the Conference Panel

1. The Conference Panel is made up of three (3) individuals as follows:

a. An impartial person who shall act as the Chairperson of the Panel

- The CHA shall recruit and maintain a pool of impartial persons (for both the Conference and Grievance Hearing Panels). In advance of having any such person act as an impartial person on a Panel, the CHA shall provide ACT with his/her name and credentials and allow ACT two weeks to provide any comments and objections to CHA.

b. An employee of CHA (from a department with no direct involvement or contact with the case and, where possible, not from the Leased Housing or Operations Departments) appointed by the Executive Director; and

c. A public housing tenant or a participant of the Housing Choice Voucher program.

2. The Chairperson is responsible to manage the order of business and ensure that hearings are conducted in a professional and businesslike manner. Attendees are expected to comply with all hearing procedures established by the Chairperson. Any person demonstrating disruptive, abusive or otherwise inappropriate behavior will be excused from the hearing at the discretion of the Chairperson.

- 3. All conference panels heard at CHA are recorded and stored for a period of twelve (12) months after the hearing. If requested, CHA will make a copy for a household or the household's representative at his/her request and expense.**
- 4. At the start of every conference panel, the Chairperson will introduce the members of the panel and will then elicit introductions from other individuals in the room. Any member of the panel that has prior knowledge of the case or the household must disclose said knowledge, as soon as practicable. In the event that a panel member does have prior knowledge of the case or household, the following may occur:**
  - a. The panel member may recuse himself/herself from the hearing and both parties (CHA and the household) may consent to a panel of only two (2) members; or**
  - b. The household or CHA may request that the panel member recuse himself/herself and consent to a panel of only two (2) members; or**
  - c. Both parties may agree that the panel member participate; or**
  - d. Both parties agree that the hearing will be continued to another date.**
- 5. If the decision is to proceed with less than three (3) panel members or with the panel member in question, it is Chairperson's responsibility to assure that the household understands the implications of proceeding and agrees to do so while on the record. In the event that the hearing proceeds with two (2) panel members, and the result is a split panel, then CHA's decision will be upheld.**
- 6. Once the parties have been introduced, it is CHA's responsibility to present the case to the panel and explain its position or action toward the household. In doing so, CHA must rely only on documents and witnesses that were previously disclosed to the household or the household's representative. Once CHA has completed its presentation, the household is then given the opportunity to present the case, and explain why s/he disagrees with CHA's decision, and why the action against them should be overturned. If the household submits evidence that was not previously disclosed to the CHA, the CHA (at its option) may either proceed with the hearing as scheduled or obtain a postponement of the hearing.**
- 7. If either party presents witness testimony, the other party is free to cross-examine the witness. The timing of the cross-examination shall be at the discretion of the Chairperson.**
- 8. Evidence may be considered without regard to admissibility under the rules of evidence that are applicable to judicial proceedings. While panel members are free to ask questions at any point in the presentation, both the household and CHA may only direct questions to the other party at the end of their respective presentation.**
- 9. At the end of both presentations, either party may make a closing statement.**
- 10. Once complete, the recording is ended, both CHA and the household are asked to leave the room, and the panel members are given the opportunity to deliberate and make a decision. Any documents submitted by the CHA or household shall not be retained by the panelists.**
- 11. The Chairperson is responsible to issue a written decision within seven (7) business days of the hearing, which decision accurately reflects the Panel's decision and includes the panelists' signature. In rendering a decision, the Panel will consider the following matters:**

- a\_ Were the reasons for CHA's action stated in the original notice to the household?
- b. Was the household given a fair opportunity to examine any relevant documents prior to the hearing in accordance with CHA policy?
- c. Did CHA present sufficient evidence to support its conclusion that the household violated a regulation or a policy using the preponderance of the evidence standard?
- d. Has CHA shown that the decision is supported by either the regulations of the program or the policies of CHA?
- e. In a written decision, the Panel will include the following information:
- Name of the household;
  - Date, time and place of the hearing;
  - Name of Chairperson as well as the other two (2) panel members;
  - Names of all other individuals in attendance;
  - A brief impartial statement of the reason for the hearing;
  - A summary of the evidence;
  - Findings of fact; and
  - a conclusion and order.
- f. Any finding of fact must be based on a preponderance of the evidence. This is defined as evidence that 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 facts 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 the evidence.

12. The decision of the conference panel is final; there are no further in-house remedies available to the household.

### C. Grievance Panels

1. The Grievance Procedure, which is part of CHA Public Housing Lease and Grievance Procedure, is applicable to all individual grievances between a resident and the Cambridge Housing Authority. A grievance is any dispute which a resident may have with respect to CHA action or failure to act in accordance with the individual resident's lease or CHA rules and regulations which adversely affects the individual resident's rights, duties, welfare or status.
2. The Grievance Procedure shall not apply to disputes between residents not involving CHA or to class grievances. The Grievance Procedure is not intended as a forum for initiating or negotiating policy changes. Establishing policy is the responsibility of CHA's Board of Commissioners, and at its direction, CHA staff in cooperation with local tenant councils and citywide tenant organizations.
3. The Grievance Procedure, as relates to evictions, shall not apply in the following circumstances:

a. In the event CHA has a reason to believe that a resident, household member, or guest or other person under resident's control has:

- Unlawfully caused serious physical harm to another tenant or an employee of CHA or any other person lawfully on CHA property.
- Unlawfully threatened to seriously physically harm another tenant or an employee of CHA or any other person lawfully on CHA property.
- Unlawfully destroyed, vandalized or stolen property of a tenant or employee of CHA or of any person lawfully on CHA property, if such conduct creates or maintains a serious threat to the health and safety of a tenant, a CHA employee, or any other person lawfully on CHA property.
- Unlawfully possessed, carried, or kept a weapon on or adjacent to CHA property in violation of MGL c. 269 s. 10.
- Unlawfully possessed or used an explosive or incendiary device on or adjacent to CHA property or otherwise violated MGL c. 266 ss. 101, 2012, 102A, or 102B.

Unlawfully possessed, sold, or possessed with intent to distribute a Class A, 13, or C controlled substance as defined in MGL c. 94C s. 31 on or adjacent to CHA property.

- Engaged in behavior which behavior that would be cause for voiding their lease pursuant to the provisions of MGL c. 139 s. 19.
- Engaged in any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises of other residents or employees of the CHA,
- Engaged in any violent or drug-related criminal activity on or off CHA property.
- Engaged in any criminal activity that resulted in a felony conviction of a household member.

4. Any grievance shall be presented in writing, to CHA's Operations Department, or to CHA's Legal Department within thirty (30) days of CHA's action or failure to act. The grievance shall first be discussed informally and may be settled without a grievance panel hearing. Residents who are unable to come to CHA's office without difficulty may request that a CHA representative come to their apartment.

5. Following the informal discussion, a summary shall be prepared within a reasonable time and one copy shall be given to the resident and one retained in CHA's resident file,

The summary shall specify:

- The names of the participants;
- Date of meeting;
- The nature of the proposed disposition of the grievance by the CHA and the specific reasons therefore; and

- The procedures by which a grievance panel hearing may be obtained if the resident is not satisfied with the proposed disposition.
6. A request for a grievance panel hearing must be made in writing and delivered in person to CHA's Legal Department or by fax, or email with acknowledgement of receipt by CHA, or sent by first class mail for evictions, within seven (7) business days after the Summary of Informal Conference (as detailed above) is sent. For non-eviction related grievances, the request must be made within 30 calendar days of CHA's action or failure to act.
- a. The written request shall specify:
- The reason(s) for the grievance; and
  - The action or relief sought.
7. If the matter is not resolved through pre-grievance, a hearing shall be scheduled (scheduling is subject to availability of the panel).
8. A written notification specifying the time, place and the procedure governing the hearing shall be delivered to the resident no less than five (5) business days prior to the time the hearing is scheduled.
- a. The notice must inform the household that they have the right to discovery, meaning that they will:
- Be given the opportunity to examine any and all documents that CHA will rely upon at the hearing; and
  - Be given access to the entire household file if requested; and
  - Be allowed to make copies of any and all documents related to the hearing (at their own expense); and
  - Be supplied with an overview of any proposed testimony from CHA witnesses; and
  - The household may initiate discovery request and access will not be unreasonably delayed by CHA.
9. Once the hearing is scheduled and the notice has been sent, the household may only request to reschedule a hearing for good cause or as a reasonable accommodation for a person with disabilities.
- a. Good cause includes an unavoidable conflict that seriously affects the health, safety or welfare of the household; the unavailability of a witness or advocate; a scheduling conflict with work or school; and illness. Requests to reschedule a hearing must be made orally or in writing prior to the hearing date. CHA may request documentation of the good cause.
- b. Failure to obtain counsel is not considered good cause. Written requests by an advocate for postponement due to unavailability will be considered grounds to reschedule.
- c. Failure to attend a scheduled hearing without prior notice is considered a default.
- In cases where the resident has good cause for the default and contacts CHA within two (2) business days, CHA will reschedule the hearing.

- In cases where the resident does not have good cause or fails to contact CHA within two (2) business days, CHA will determine that the resident has waived the right to a hearing and CHA's disposition of the grievance shall be final.

10. Households have the right to seek and retain counsel at their own expense or may have another representative accompany them.

11. The determination that the resident has waived the right to a hearing shall not constitute a waiver of any right the complainant may have to contest CHA's disposition of the grievance in an appropriate judicial proceeding.

#### D. Organization of Grievance Panel

1. The Grievance Panel is made up of five individuals as follows:
  - a. Two (2) employees of CHA (from a department with no direct involvement or contact with the case and where possible, not from the Leased Housing or Operations Departments);
  - b. Two (2) public housing residents or participants of the Housing Choice Voucher Program;
  - c. And one (1) impartial person,
2. CHA together with the citywide tenant organization and local tenant councils, shall recruit and maintain a pool of public housing residents and voucher participants shall to serve on the grievance panel. The impartial person shall serve as the Chairperson of the Hearing Panel. The CHA shall recruit and maintain a pool of impartial persons (for both the Conference and Grievance Hearing Panels). In advance of having any such person act as an impartial person on a Panel, the CHA shall provide ACT with the his/her name and credentials and allow ACT two weeks to provide any comments and objections to CHA.
3. All grievance panel hearings heard at CHA are recorded and stored for a period of twelve (12) months after the hearing. The recordings shall be kept by CHA in a confidential manner. If requested, CHA will make a copy for the resident or the resident's representative at their request and expense.
4. At the start of every grievance panel, the Chairperson will introduce the members of the panel and then elicit introductions from other individuals in the room. Any member of the panel that has prior knowledge of the case or the household must disclose said knowledge, as soon as practicable.
  - a. No member of the Hearing Panel shall hear a grievance if s/he resides in the same development as the complainant, is a relative of the complainant, is personally involved in the grievance at issue, is a CHA employee of the affected department, or if it is otherwise inappropriate for s/he to adjudicate the pending grievance\_
  - b. All matters relating to disqualification of a member shall be decided by the Chairperson. If the qualifications of the Chairperson are at issue, s/he may be disqualified solely by unanimous vote of the remaining four (4) members,

**Depending upon the situation:**

- **The panel member may recuse himself/herself from the hearing and both the resident and CHA consent to a panel of only four (4) members: or**
  - **The resident or CHA may request that the panel member recuse himself/herself and consent to a panel of only four (4) members; or**
  - **Both parties may agree that the panel member participate; or**
  - **Both parties agree that the hearing will be continued to another date.**
  - **In the instance that a panelist is recused and the parties are unable to agree on whether or not to proceed or reschedule, the default will be to continue the hearing to another date.**
- d. If the decision is to proceed with less than five panel members or with the panel member in question, it is the Chairperson's responsibility to assure that the household understands the implications of proceeding and agrees to do so while on the record. In the event that the hearing proceeds with four (4) panel members, and the result is a split panel, the hearing will be rescheduled before a new five (5) person panel.**

#### **E. Conduct of the Hearing**

- 1. Once the parties have been introduced, it is CHA's responsibility to present the case to the panel and explain its position or action toward the household. CHA has the burden of justifying its action or failure to act against which resulted in the grievance. In doing so, CHA must rely on documents and witnesses that were previously disclosed to the resident or the resident representative(s). Once CHA has completed its presentation, the resident is given the opportunity to present evidence and argument in support of their grievance, to contradict evidence relied on by CHA, and to confront and cross-examine all witnesses on whose testimony or information CHA relies, unless doing so would trigger a substantial threat to his/her safety or property.**
- 2. If the Resident submits evidence that was not previously disclosed to the CHA, the CHA (at its option) may either proceed with the hearing as scheduled or obtain a postponement of the hearing.**
- 3. Evidence may be considered without regard to admissibility under the rules of evidence that are applicable to judicial proceedings.**
- 4. While panel members are free to ask questions at any point in the presentation, both the household and CHA may only direct questions to the other party at the end of their respective presentation.**
- 5. At the end of both presentations, either party may make a closing statement.**
- 6. CHA and tenant representatives shall not discuss the grievance with panelists or in the presence of the panelists prior to and after the Grievance Hearing. The hearing shall be private unless the tenant requests a public hearing. Any documents submitted by the CHA or the Resident shall not be retained by the panelists.**

#### **F. Grievance Panel Decision**



- 1. CHA shall take no administrative or court action against any resident involving any pending matter before the grievance panel until the resident has received notification of the grievance panel's final decision on the matter.**
- 2. The decision of the grievance panel is final. There are no further in-house remedies available to the resident.**
- 3. The grievance panel shall prepare a written decision with the reasons therefore within a reasonable time after the hearing.**
- 4. The decision shall be based solely and exclusively upon the facts presented at the hearing. A copy of the decision shall be sent to CHA, the resident, and placed in CHA's resident file.**
- 5. The decision of the grievance panel shall be binding on CHA which shall take all actions, or refrain from any actions, necessary to carry out the decision unless CHA's Board of Commissioners determines to the contrary within a reasonable time, and promptly notifies the resident of its determination that: (a) a grievance does not concern CHA's action or failure to act in accordance with or involving the complainant's lease or CHA rules or regulations, which adversely affects the complainant's rights, duties, welfare, or status; or (b) the decision of the grievance panel is contrary to applicable federal, state or local law, HUD (for federally-aided developments) or DHCD (for state-aided developments) regulations, or requirements of the Annual Contributions Contract between HUD (for federally-aided developments) and CHA or the Contract for Financial Assistance between DHCD (for state-aided developments) and CHA.**
- 6. A decision by the Panel or CHA's Board of Commissioners in favor of CHA or which denies the relief requested by the resident in whole or in part shall not constitute a waiver of, nor affect in any manner whatever, any rights the resident may have to a trial de novo or judicial review in any judicial proceedings, which may thereafter be brought in the matter,**

#### **G. Reasonable Accommodation Appeals**

- 1. Appeals of decisions of the 504/ADA Coordinator of Requests for Reasonable Accommodation are governed by the Reasonable Accommodation Policy of 0-1A in Chapter 11, They are heard by the Reasonable Accommodations Appeals Officer,**