COMMERCE

Montana Department of Commerce

Housing Choice Voucher Program – Informal Hearing Procedures

Notice to the Family *[24 CFR 982.555(c)]*

When the PHA makes a decision that is subject to informal hearing procedures, the PHA must inform the family of its right to an informal hearing at the same time that it informs the family of the decision.

For decisions related to the family's annual or adjusted income, the determination of the appropriate utility allowance, and the determination of the family unit size, the PHA must notify the family that they may ask for an explanation of the basis of the determination, and that if they do not agree with the decision, they may request an informal hearing on the decision.

For decisions related to the termination of the family's assistance, or the denial of a family's request for an exception to the PHA's subsidy standards, the notice must contain a brief statement of the reasons for the decision, a statement that if the family does not agree with the decision, the family may request an informal hearing on the decision, and a statement of the deadline for the family to request an informal hearing.

Commerce Policy

In cases where Commerce makes a decision for which an informal hearing must be offered, the notice to the family will include all the following:

- The proposed action or decision of Commerce;
- A brief statement of the reasons for the decision, including the regulatory reference;
- The date the proposed action will take place;

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- A statement of the family's right to an explanation of the basis for Commerce's decision;
- A deadline for the family to request the informal hearing;
- To whom the hearing request should be addressed;
- A copy of Commerce's hearing procedures; and
- That the family may request a remote informal hearing.

If Commerce will require that the hearing be conducted remotely, at the time the notice is sent to the family informing them of the right to request an informal hearing, the family will be notified that the informal hearing will be conducted remotely. The family will be informed of the processes involved in a remote informal hearing and that Commerce will provide technical assistance, if needed, before the informal hearing.

Scheduling an Informal Hearing *[24 CFR 982.555(d)]*

When an informal hearing is required, the PHA must proceed with the hearing in a reasonably expeditious manner upon the request of the family.

Commerce Policy

A request for an informal hearing must be made in writing and delivered to Commerce in person by first class mail, or electronic transmission by close of the business day, no later than 20 calendar days from the date of Commerce's decision or notice to terminate assistance.

Commerce must schedule and send written notice, to the family's last known address, of the informal hearing to the family within 20 calendar days of the family's request.

The family 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

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welfare of the family. Requests to reschedule a hearing must be made orally or in writing prior to the hearing date. At its discretion, Commerce may request documentation of the "good cause" prior to rescheduling the hearing.

If the family does not appear within 10 minutes of the scheduled time, and was unable to reschedule the hearing in advance due to the nature of the conflict, the family must contact Commerce within 24 hours of the scheduled hearing date, excluding weekends and holidays. Commerce will reschedule the hearing only if the family can show good cause for the failure to appear, or if it is needed as a reasonable accommodation for a person with disabilities. If the family cannot show good cause for the failure to appear, or a rescheduling is not needed as a reasonable accommodation, Commerce's decision will stand.

Pre-Hearing Right to Discovery *[24 CFR 982.555(e)]*

Participants and the PHA are permitted pre-hearing discovery rights. The family must be given the opportunity to examine before the hearing any PHA documents that are directly relevant to the hearing. The family must be allowed to copy any such documents at their own expense. If the PHA does not make the document available for examination on request of the family, the PHA may not rely on the document at the hearing.

For the purpose of informal hearings, *documents* include records and regulations.

Commerce 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 Commerce documents no later than 10 business days prior to the scheduled hearing date. The parties may agree to share documents electronically and change the 10 business days rule outlined above.

Commerce will compile a hearing packet, consisting of all documents the PHA intends to produce at the informal hearing. Commerce will mail copies of the

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hearing packet to the family's last known address, the family's representatives, if any, and the hearing officer at least ten days before the scheduled informal hearing. Commerce will provide an electronic version of the hearing packet if requested. The original hearing packet will be in the possession of the Commerce representative and retained by Commerce.

The PHA hearing procedures may provide that the PHA must be given the opportunity to examine at the PHA offices before the hearing any family documents that are directly relevant to the hearing. The PHA must be allowed to copy any such document at the PHA's expense. If the family does not make the document available for examination on request of the PHA, the family may not rely on the document at the hearing.

Commerce Policy

For informal hearings, Commerce will require the family to provide any documents directly relevant to the informal hearing at least 10 business days before the scheduled hearing. Commerce will promptly scan and email copies of these documents to the hearing officer and Commerce representative.

The parties may agree to share documents electronically and change the 10 business days rule, outlined above.

If a participant provides a document at the time of the informal hearing, they may request that the hearing officer permit the document be admitted into evidence even though it was not exchanged according to the pre-hearing discovery process.

Participant's Right to Bring Counsel *[24 CFR 982.555(e)(3)]*

At its own expense, the family may be represented by a lawyer or other representative at the informal hearing.

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Informal Hearing Officer *[24 CFR 982.555(e)(4)]*

Informal hearings will be conducted by a person or persons approved by the PHA, other than the person who made or approved the decision or a subordinate of the person who made or approved the decision.

Commerce Policy

Commerce has designated the following to serve as hearing officers:

Montana Department of Commerce Legal Counsel,

Housing Division Operations Manager,

Or other qualified individual other than the person or subordinate to the person who made the decision.

Attendance at the Informal Hearing

Commerce Policy

Hearings may be attended by a hearing officer and the following applicable persons:

- A Commerce representative(s) and any witnesses for Commerce,
- The participant and any witnesses for the participant,
- The participant's counsel or other representative, and
- Any other person approved by Commerce as a reasonable accommodation for a person with a disability.

Conduct at Hearings

The person who conducts the hearing may regulate the conduct of the hearing in accordance with the PHA's hearing procedures [24 CFR 982.555(4)(ii)].

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Commerce Policy

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

Evidence *[24 CFR 982.555(e)(5)]*

The PHA and the family must be given the opportunity to present evidence and question any witnesses. In general, all evidence is admissible at an informal hearing. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

Commerce 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 Commerce. Writings include all forms of recorded communication or representation, including letters, 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; and
- 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

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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 either Commerce or the family fail to comply with the discovery requirements described above, the hearing officer will refuse to admit such evidence.

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

Procedures for Rehearing or Further Hearing

Commerce 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 Commerce will take effect and another hearing will not be granted.

Hearing Officer's Decision *[24 CFR 982.555(e)(6)]*

The person who conducts the hearing must issue a written decision, stating briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the family must be based on a preponderance of evidence presented at the hearing.

Commerce Policy

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

- Commerce Notice to the Family: The hearing officer will determine if the reasons for Commerce's decision are factually stated in the Notice;
- Discovery: The hearing officer will determine if Commerce and the family were given the opportunity to examine any relevant documents in accordance with Commerce policy;

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- Commerce Evidence to Support Commerce's 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 Commerce's conclusion; and
- Validity of Grounds for Termination of Assistance (when applicable): The hearing officer will determine if the termination of assistance is for one of the grounds specified in the HUD regulations and Commerce policies. If the grounds for termination are not specified in the regulations or in compliance with Commerce policies, then the decision of Commerce will be overturned.

The hearing officer will issue a written decision to the family and Commerce no later than 20 calendar days after the hearing. The report will contain the following information:

Hearing information:

Name of the participant;
Date, time and place of the hearing;
Name of the hearing officer;
Name of Commerce representative; and
Name of family representative (if any).

Background: A brief, impartial statement of the reason for the hearing.

Summary of 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 with is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a

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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 Commerce's decision.

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

Issuance of Decision *[24 CFR 982.555(e)(6)]*

A copy of the hearing must be furnished promptly to the family.

Commerce Policy

The hearing officer will mail a "Notice of Hearing Decision" to Commerce and to the participant on the same day. This notice will be sent by first-class mail to the mailing address on file. The participant will be mailed the original "Notice of Hearing Decision" and a copy of the proof of mailing. A copy of the "Notice of Hearing Division" will be maintained in Commerce's file.

Effect of Final Decision *[24 CFR 982.555(f)]*

The PHA is not bound by the decision of the hearing officer for matters in which the PHA is not required to provide an opportunity for a hearing, decisions that exceed the authority of the hearing officer, decisions that conflict with or contradict HUD regulations, requirements, or are otherwise contrary to federal, state, or local laws.

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If the PHA determines it is not bound by the hearing officer's decision in accordance with HUD regulations, the PHA must promptly notify the family of the determination and the reason for the determination.

Commerce Policy

The Administrator or Section 8 Program Manager has the authority to determine that Commerce is not bound by the decision of the hearing officer because Commerce was not required to provide a hearing, the decision exceeded the authority of the hearing officer, the decision conflicted with or contradicted HUD regulations, requirements, or the decision was otherwise contrary to federal, state, or local laws.

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