

The Grievance and Informal Hearing Processes at Boston HA

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BHA's Department of Grievances and Appeals

- BHA Grievance Panel: Handles grievances for non-mixed finance public housing tenants (denial of a transfer, dispute over rent, denial to add a household member, denial of a reasonable accommodation, evictions) and for MRVP tenants. (Appeals from Grievance Panel go to BHA hearing officers; Mixed Finance Public Housing Grievances handled differently—see below.)
- BHA hearing officers: Handle tenant selection appeals (withdrawal from waiting list, denial of priority, denial of eligibility). Also handle informal hearings for Section 8 participants (dispute over how rent calculated, termination of assistance, denial of a reasonable accommodation)

How Do Tenant Selection Appeals Work?

- Applicant is notified of BHA's action and the right to request an appeal in writing within a deadline.
- Applicant (and anyone s/he wants to have at hearing) meets with DGA hearing officer. Leased Housing staff usually attend if Section 8/MRVP issue; Occupancy staff rarely attend if public housing issue.
- Review what action BHA took and why applicant thinks wrong. Evidence (testimony, documents) can be submitted at or after hearing (if after, hearing officer will give deadline).
- Hearing officer issues decision. See below on time frames.
- Applicant can request reconsideration. If state public housing involved, can appeal to DHCD. Otherwise, court review rights.

How Do BHA Grievances Work?

- Tenant first has opportunity for informal resolution with manager (private conference). Any resolution is put into writing. If not resolved, tenant has opportunity to request hearing (in writing, certain deadlines—see below.) Sometimes this is just “going through the motions”, but sometimes it can result in a workable settlement.
- DGA schedules grievance hearing. Panel has 3 tenants, 2 staff.
- Tenant explains why BHA action should/shouldn't be taken. BHA explains why action is correct. Testimony & documents taken.
- Panel usually meets right after hearing breaks up to decide. Written decision issued shortly afterward. Tenant can seek further review.

How Do BHA Grievances Work (continued)

- BHA can also appeal, but only if decision contrary to law (not just because BHA disagrees with what the panel did).
- Grievance appeal is before a DGA hearing officer. Officer will schedule a hearing date. Again, evidence can be taken (testimony & evidence), but the focus is on why the grievance panel did or did not decide the case correctly. Usually BHA staff opposing tenant's request will also appear.
- Written decision is issued. If the decision is in tenant's favor, BHA usually implements it. If decision is against tenant, then tenant can seek judicial review (either as part of a court case BHA is filing, or may file a court case if BHA won't be filing one).

How Do Section 8 Informal Hearings Work?

- Tenant/Participant is notified of BHA's action and the right to request an informal hearing in writing within a deadline. (If action concerns rent, notice says that tenant may meet with BHA staff to discuss, and if not resolved, can then make hearing request.)
- In some cases, BHA will offer opportunity for private conference to see if matter can be resolved prior to hearing (not required, however, unlike public housing and MRVP grievances)
- DGA hearing officer notifies tenant of hearing date, and of right to come in to review BHA records in advance of the hearing.

Section 8 Informal Hearings (continued)

- At hearing, evidence is taken (testimony, documents); BHA presents first, and explains why action taken. Tenant/Participant can ask questions and then present own side. Hearing officer can keep record open (with deadline) to consider additional documents if needed.
- Hearing officer writes decision (usually some delay—decisions often detailed as to facts and reasoning).
- If decision is against Tenant/Participant , no further appeal rights within BHA (or to DHCD/HUD). Tenant/Participant must file court action within deadlines to get further review. If subsidy terminated, Tenant/Participant will have to convince judge (or have BHA agree) to pay subsidy during judicial review.

Are Grievance/Hearing Rights in BHA Mixed Finance Housing Different?

Yes and no.

- If the tenant has a BHA Section 8 voucher, Section 8 informal hearing rights on any BHA action are the same as described above.
- If the person is an applicant, whether the tenant selection appeal rights are the same depends on whether this is through BHA or the owner, and that may differ.
- If the tenant is in a BHA public housing unit at the site, there are still public housing grievance rights, but how they work is different. See below.

BHA Mixed Finance Public Housing Grievance

- Still have opportunity for private conference to resolve with manager.
- Grievance hearings don't go to BHA Grievance Panel, but go to a senior person for private owner/manager (not involved in day to day operations at site, and not someone who was involved in original decision), who acts as the hearing officer.
- If decision involved eviction, and it's against tenant, no further review, but court can review matter as part of eviction process.
- Other decisions, tenant can request further review by BHA staff charged with oversight of Mixed Finance program.

What Are the Deadlines to Request a Hearing?

- In *tenant selection appeals*, in most cases, applicant must request a hearing within 20 days of the date of the BHA notice.
- In *public housing grievances*, deadline varies by the type of case. For nonpayment eviction, there is a 14-day deadline (same as notice period). For other evictions, or other cases, it's 30 days.
- In *MRVP grievances*, there is a 20-day deadline.
- In *Section 8 informal hearings*, in most cases, the tenant must request a hearing within 20 days of the date of the BHA notice.

What If the Applicant/Tenant Didn't Request a Timely Hearing, or Missed the Hearing? Can You Reschedule If There's a Good Reason?

- BHA does have a procedure to consider late hearing requests or to hold a new hearing, but the applicant or tenant must show that there were compelling circumstances as to why the request wasn't submitted on time, or why the hearing was missed. Sometimes there are outside deadlines for the request (see Section 8 Admin Plan).
- Applicants/tenants can notify BHA in advance of the hearing if there is a good reason why the matter needs to be rescheduled (scheduling conflict, emergency family/medical circumstances, etc.) This should be in writing and documented; BHA notice states what required.
- Good to have third party verification (doctor letter, etc.)

What Happens if There is a Need for Reasonable Accommodation for a Disability?

This depends on both what the need is and when it is brought to BHA's attention.

- If, for example, the problem is that the tenant is homebound or cannot come to a hearing (institutionalized), BHA can make arrangements to have a telephonic hearing, etc.
- If the tenant raises the issue with BHA staff prior to the hearing, BHA staff are to ask that the hearing be put on hold and go through an interactive process (as detailed in BHA's policies).
- If the tenant raises the issue at the hearing, the hearing officer may suspend the hearing to give BHA staff opportunity to review matter.

Reasonable Accommodation (continued)

- BHA has a process where reasonable accommodation denials are reviewed internally by Office of Civil Rights to insure consistency.
- If the reasonable accommodation request is denied, this can be reviewed by the hearing officer/grievance panel along with the original action by BHA.
- Reasonable accommodation requests may be made after the decision (or if there wasn't a timely hearing request) and BHA will consider based on facts presented and legal standards if disability was a factor in why relief wasn't sought earlier.

Limited English Proficiency (LEP) and Hearings

- BHA has a duty to assist applicants/tenants who aren't able to equally participate in its programs because of limited English proficiency(LEP), and to provide interpreters where needed.
- Applicant/tenant/participant should let BHA staff know if there is a need for an interpreter for a hearing. In addition, BHA will provide interpreter to see if matters can be resolved without a hearing (such as through a private conference).
- BHA decisions are not translated, but many Frequently Asked Questions (FAQs) about hearing process are available in Spanish and Chinese.

Tenant Selection Appeals and DHCD Review

- If BHA's decision affects applicant on any state public housing program, applicant can request DHCD review. Must be sought within 21 days of BHA decision.
- In some cases, particularly if the applicant only got help after the BHA hearing, it may make sense to first request reconsideration, which can be sought within 10 days of BHA decision. Person helping applicant may convince BHA to change decision.
- DHCD hearing officer holds an in-person hearing at the BHA, and issues decision. If applicant disagrees with decision, would have to file a court action within 30 days against DHCD.

Court Review of BHA Hearing Decisions

- In most cases, review must be sought within 60 days of BHA's decision. (As noted above, 30-day deadline if DHCD decision.)
- Most cases can be pursued in Boston Housing Court (Edward Brooke Courthouse, 24 New Chardon St., Government Center). However, if BHA Section 8 tenant lives outside of Boston, s/he may have to file in Superior Court or a different division of Housing Court.
- Court usually will ask for record of proceedings (transcript of hearing, any paperwork from hearing), and will not take new evidence. Court will not substitute its judgment for hearing panel/officers, but will determine if there was any legal error based on evidence considered.

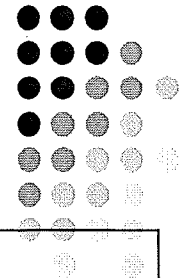
Court Review of Hearing Decision (continued)

- The Court may decide that the case needs to be remanded (sent back) to the BHA to consider certain matters that were not addressed.
- It's often a good idea for the applicant/tenant to explore mediation, and see if BHA is open to some resolution of the case short of a court decision. BHA won't always do this, but some cases can get resolved this way. For example, BHA may agree to hold a new hearing, or to reinstate assistance if recertification information comes in or if the tenant enters into an enforceable agreement to keep wrongdoer away.

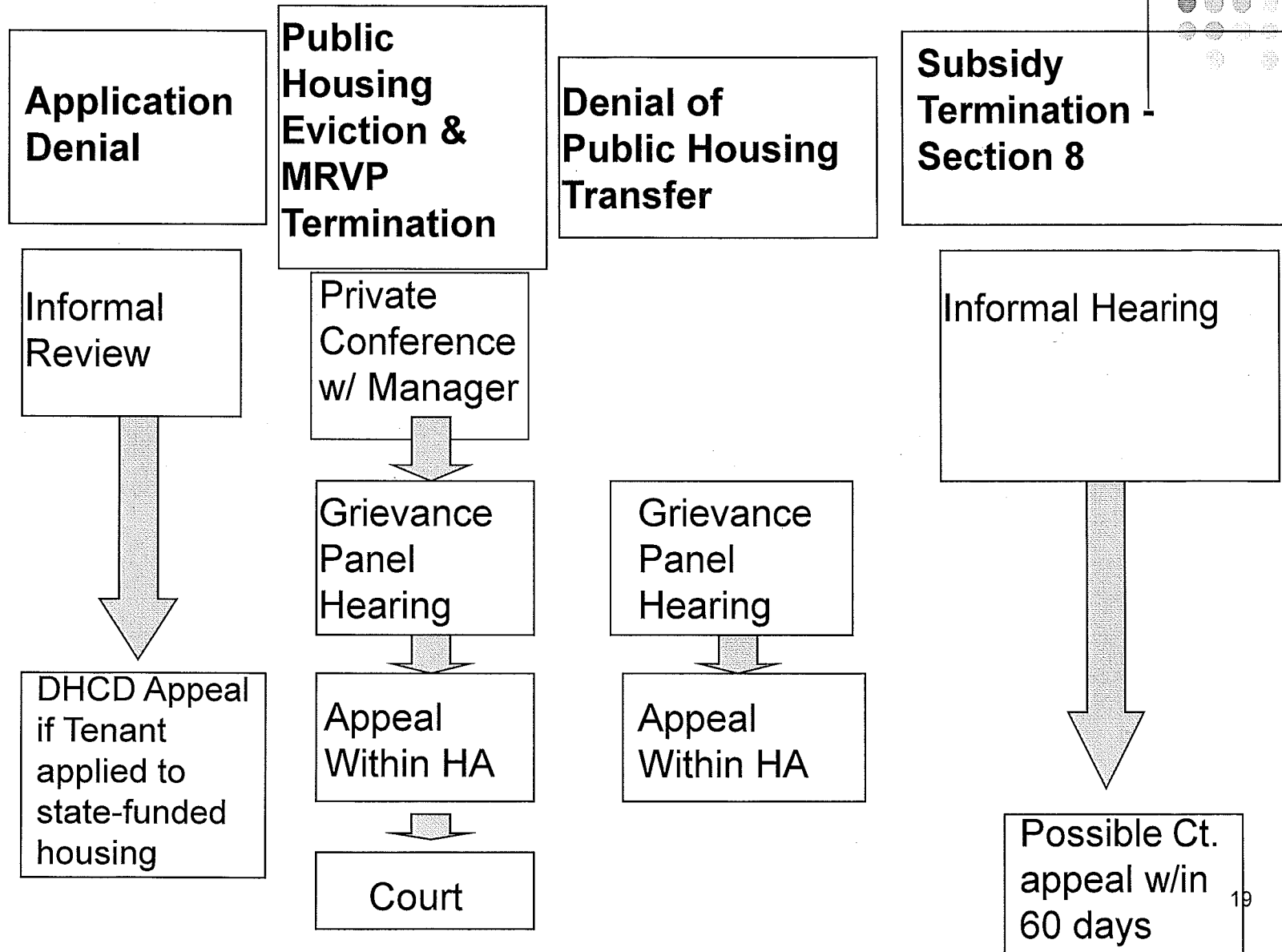
Help Available to Applicants/Tenants on Hearings

- Tenant Advocacy Project (TAP): Is a free legal services program operated out of Harvard Law School, where students represent applicants/tenants/participants at BHA hearings (they cannot handle court matters). Phone is (617) 495-4394.
- Greater Boston Legal Services (GBLS): Free legal services program, can handle a limited number of cases, but doesn't usually do the grievances or informal hearings; may assist with getting court review. As of 2016-2017, has special project to help preserve Section 8/MRVP subsidies for persons with disabilities. Phone is (617) 371-1234.

The Types of Hearings at HAs



Note: Procedures vary by Housing Authority



The Tenant Advocacy Project (TAP) is a student practice organization at Harvard Law School. TAP members provide free representation and advice to public housing and Section 8 housing tenants and applicants before local housing authorities. TAP members are trained and supervised by practicing attorneys who attend all hearings with the students.

Our clients are:

- current public housing tenants
- public housing applicants
- Section 8 or MRVP voucher recipients
- Section 8 or MRVP voucher applicants

TAP provides representation at administrative hearings at public housing agencies regarding:

- public housing eviction
- application denials for public housing, Section 8 and MRVP
- reasonable accommodation requests
- transfer denials
- subsidy termination (Section 8 and Mass Rental Voucher Program subsidies that are administered by housing agencies in which tenants have the right to a hearing at a public housing agency)

TAP provides advice on landlord-tenant issues for tenants who have Section 8 vouchers, MRVP assistance or who live in public housing, if the housing voucher or assistance is administered by a housing agency listed in this brochure.

TAP represents tenants or applicants whose public housing, Section 8 or MRVP is administered or was denied at the following public housing agencies:

Boston (BHA); Arlington, Belmont, Brookline, Cambridge, Chelsea, Dedham, Everett, Malden, Medford, Milton, Newton, Quincy, Revere, Waltham, Watertown, Wellesley, Winchester, Winthrop, Woburn; and the Metropolitan Boston Housing Partnership (MBHP).

TAP does not

- provide any representation in court
- accept cases where the housing subsidy is not administered by a public housing agency (for example, we don't handle HUD-subsidized cases)
- handle HomeBase cases
- provide landlord-tenant advice to tenants who do not have Section 8 or MRVP vouchers, or who do not live in public housing

Contacting TAP

You can reach TAP by calling 617-495-4394 or by email: tap@law.harvard.edu.

We are happy to discuss your situation over the telephone and conduct an intake interview for you. If you are not able to speak with someone when you call, please leave a message and someone will return your call as soon as possible. Unfortunately, we cannot take walk-ins.

Note: Please call us as soon as you know you have a housing problem.

Importante!

Si usted es un inquilino, y necesita consejo legal o representación gratis referente a problemas de alquiler de vivienda, puede conseguir ayuda de TAP. Para obtener más información con respecto a TAP, llame al 617-495-4394 o email: tap@law.harvard.edu.

TAP members often speak languages other than English. Call our office for more information.