

To: Danielle Bastarache and Danielle Garcia
From: Deborah Thrope, Deputy Director, NHLP
Re: Remote Hearings
Date: August 10, 2020

Thanks again for having an initial discussion about remote PHA hearings. Along with the background material I sent last week, below are a number of anecdotes from the field to give you a snapshot of some of the PHA practices we have been hearing about. It is important to note that the hearings described below are all hearings where tenants have been represented by counsel. We don't yet know how remote hearings are playing out for unrepresented tenants. In addition, PHAs have been postponing a number of hearings so I think we will begin seeing more as the pandemic continues.

Some of the key concerns identified by our advocates re: remote hearings include:

- Technology access (devices, internet, etc.)
- Accessibility concerns for people with a range of disabilities
- Availability of interpreters during a hearing
- How can tenants examine documents prior to and during the hearing? How can advocates confer with clients during the hearing?
- How are tenants notified of the hearings?

As you will see from these stories, without uniform guidance from HUD, PHAs are implementing a range of remote hearing practices. Hearings have been performed using a number of different formats, technology, and with a range of accessibility options. In some cases, tenants' right to due process is being violated because they cannot access documents being used against them, present witnesses, or even appear at their own termination hearing.

Finally, I've included a short list of recommendations for remote hearings, just to get us started. We still have a lot of research to do about what works best for tenants but at the least, the list addresses basic due process concerns that could be incorporated into subsequent guidance.

Housing Authority of Cook County

An attorney in our network represented a voucher holder in a termination hearing. The client was properly informed of her right to request a hearing and the attorney subsequently provided notice to the PHA that he would be representing the tenant. The hearing was conducted via zoom in July. The housing authority provided electronic copies of the client's file to the attorney prior to the hearing. At the hearing, the attorney was present on zoom but the client called in via phone. The hearing officer reviewed all of the exhibits and asked for objections to each entry. Each side then presented its case. The hearing officer was careful to ask the tenant questions about what was presented, even though the tenant was not able to see what was on the screen. However, because the tenant was on the phone, the tenant could not view any of the documents presented.

Broward County, FL

Housing Authority of the City of Fort Lauderdale is holding termination hearings via phone. Clients receive notice of the hearing via phone with the date and time, followed by an email that also includes dial-in information. An attorney in our network represented a client at a phone hearing. The hearing officer had documents provided by the PHA but it was not clear how the hearing officer received the documents. The tenant did not receive copies of the documents. Nonetheless, the client was questioned about the documents at the hearing. A witness joined the call mid-way through the hearing and began providing testimony which was very confusing for all parties.

In another case, a tenant received a decision upholding his termination when he did not appear for a phone hearing. The reason he did not appear was because he got a phone message with the date and time of the hearing and went to appear in person. The tenant does not have email and therefore did not know or understand that the hearing was by phone.

Miami, Florida

In Miami-Dade County the PHA initially sent out notice of in-person hearings but eventually offered telephone and now zoom calls as well. But at the request of the tenant which means that unrepresented tenants may still be required to appear in person. An attorney in our network represented a tenant who was able to access zoom on her phone. The attorney appeared from his computer. The PHA staff was present in the same room as the hearing officer. They all used screen sharing to present evidence.

The same attorney had a grievance hearing scheduled in mid-March at a senior building. Client did not want to go to the hearing but client did not have access to video conferencing. Ultimately, the hearing was delayed and the case settled.

Galveston

The Administrative Law Judge in Galveston has been conducting zoom hearings since June, predominantly for termination of housing benefits. If the tenant doesn't have zoom, they call into the hearing via the court coordinator. If the tenant calls in then they can't view any of the documents that are being presented at the hearing because the judge uses screen sharing during the hearing to share documents. The ALJ controls different waiting rooms during the hearing. The Court requires parties to submit documents five business days before the hearing. The ALJ requires all tenants to dress appropriately even if appearing via zoom. There is an opportunity for a tenant to request a translator.

Boston

In Boston, Section 8 hearings are about to start up again (they were previously on hold). BHA has said it will use zoom to conduct remote hearings. If a hearing is scheduled but the participant/applicant states they don't have the ability to participate remotely, then the hearing is postponed. If someone has a hearing, BHA will scan documents and send to parties. File reviews are not permitted in person since the building is closed to the public.

NYCHA

Currently has an eviction moratorium so no termination hearings yet although control dates are being scheduled. Most tenants don't have access to technology but also don't feel safe to attend an in-person hearing. We have heard that NYCHA is drafting remote hearing guidance.

Initial Recommendations for Remote PHA Hearings

- Only video is acceptable unless the parties freely consent to telephonic (tenants who consent to a telephonic hearing should do so with complete knowledge of their rights and the risks and benefits and not be pressured in any way);
- PHA should have full written procedures covering every aspect of how the remote hearings are handled, and the procedures should be freely and readily available to the public;
- PHAs need to have practical and effective procedures for making sure tenants can participate even if they don't own proper devices, don't have access to high-speed internet, etc. There are a number of approaches that PHAs could use such as buying one or two devices that could be delivered or otherwise made available at the tenants' residence for the hearing. A device could also be purchased for a multifamily building and space could be made available for a hearing.
- If the tenant does not have the proper technology access, then the hearing should be postponed.
- There must be a practical procedure for presenting documents into evidence and for allowing witnesses to appear and present.
- Adequate provisions must be made to afford language access for LEP participants. Bear in mind the need for interpretation of ancillary conversations (e.g., between tenants and their counsel) as well as the official court proceedings.
- Adequate options must be made available for people with a range of disabilities.
- PHAs should anticipate that participants will have difficulty using the technology, that equipment and connection failures will arise, etc., and have tech help and troubleshooting available and take steps to avoid defaulting people who fail to appear because of a bad connection or device error.