

HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

CHAPTER 4

DECLARATORY RULINGS

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Historical Note: Chapter 17-4 is partially based on Parts I and II of Rule 6 of the department of social services and housing. [Eff 3/26/64; R 6/4/84]

§17-4-1 Definitions. As used in this chapter:
"Department" means the department of human services.

"Director" means the director or deputy directors of the department of human services.

"Party" means:

- (1) The department, if it participates in a proceeding;
- (2) Each person named in a proceeding; and
- (3) Any interested or aggrieved person permitted or entitled to participate in a proceeding before the department in the capacity other than as a witness.

"Person" means individuals, partnerships, corporations, associations, or organizations of any character, except for the department.

"Relief" means the department's declaration as to whether a rule or order of the department, or a statute which the department is required to administer or enforce, applies to a factual situation.

"Respondent" means any party who contests a proceeding.

"Rule" shall have the same meaning as specified in section 91-1, HRS. [Eff 6/4/84; am and comp
ADD '13 1995] (Auth: HRS §§26-38, 91-2, 346-14, 348-3) (Imp: HRS §§26-38, 91-2, 346-14, 348-3)

§17-4-2 Contents of petition for declaratory relief. Any person or agency may petition for declaratory relief by the department in accordance with section 91-8, HRS. A petitioner shall file a memorandum of authorities supporting its petition, discussing thoroughly the factors and legal authorities supporting the petitioner's position. [Eff 6/4/84; comp APR '13 1995] (Auth: HRS §§91-8, 346-14, 348-3) (Imp: HRS §§91-8, 346-14, 348-3)

§17-4-3 Disposition of petition. (a) The department may decline to consider any petition for declaratory relief, including, but not limited to, where:

- (1) The petition is not supported by a memorandum of authorities;
 - (2) The petition is frivolous;
 - (3) The department has no jurisdiction over the matter discussed in the petition;
 - (4) The petition is based on hypothetical or speculative facts; or
 - (5) A controversy of material fact exists which needs to be resolved before any declaratory relief may be granted.
- (b) For each petition, the department shall:
- (1) Deny the petition in writing, giving the reasons for the denial and advising the petitioner of the petitioner's right to request judicial relief;

- (2) Grant the petition, in whole or modified form, giving the reasons for the action and advising respondents, if any, of the respondents' right to request judicial relief; or
- (3) Assign the petition to a hearings officer for further proceedings in accordance with this chapter. [Eff 6/4/84; comp APR 13 1995] (Auth: HRS §§91-8, 346-14, 348-3) (Imp: HRS §§91-8, 346-14, 348-3)

§17-4-4 Notice of refusal to consider petition. The department shall notify the petitioner of a determination not to consider the petition within thirty days of receipt of the petition. [Eff 6/4/84; comp APR 13 1995] (Auth: HRS §§91-8, 346-14, 348-3) (Imp: HRS §§91-8, 346-14, 348-3)

§17-4-5 Service of petition. (a) Where the department decides not to dismiss the petition, it shall:

- (1) Serve each respondent; or
- (2) Require the petitioner to serve each respondent with a copy of the petition and the memorandum in support of the petition and file a certificate of service with the department.

(b) Where the department is not the petitioner, it shall be a party respondent and shall be served in accordance with this section. [Eff 6/4/84; comp APR 13 1995] (Auth: HRS §§91-8, 346-14, 348-3) (Imp: HRS §§91-8, 346-14, 348-3)

§17-4-6 Memorandum in opposition. Within fifteen days of receiving a copy of the petition, each respondent may file and serve upon the petitioner a memorandum in opposition to the petition, stating the respondent's position and factors supporting that position, including legal authorities. [Eff 6/4/84; comp APR 13 1995] (Auth: HRS §§91-8, 346-14, 348-3) (Imp: HRS §§91-8, 346-14, 348-3)

§17-4-7 Intervention and intervenor's memorandum of authorities. Where, subject to section 17-2-11 an interested person requests intervention in a proceeding for declaratory relief, the intervenor may file and serve upon the petitioner a memorandum of authorities, stating the intervenor's position and factors supporting that position, including legal authorities. [Eff 6/4/94; comp APR 13 1995] (Auth: HRS §§91-8, 346-14, 348-3) (Imp: HRS §§91-8, 346-14, 348-3)

§17-4-8 Request for additional facts or supplemental memorandum. The director or hearings officer may request a party to clarify a factual issue by submitting a statement or memorandum of additional facts. The request shall not unduly delay the proceedings or unreasonably prejudice any party. [Eff 6/4/84; comp APR 13 1995] (Auth: HRS §§26-38, 91-8, 346-14, 348-3) (Imp: HRS §§26-38, 91-8, 346-14, 348-3)

§17-4-9 Argument. A hearings officer shall hear all arguments. Parties shall have a full opportunity to argue on all issues involved. The argument shall be at the time and place stated in the notice of argument, but may be continued to a later day or adjourned to a different place without notice other than an announcement at the hearing. [Eff 6/4/84; comp APR 13 1995] (Auth: HRS §§26-38, 346-14, 348-3) (Imp: HRS §§26-38, 91-9, 346-14, 348-3)

§17-4-10 Material issue of fact, public interest. If a genuine controversy of material fact exists which must be resolved before an order for declaratory relief may be issued or the petition raises issues that a proceeding for rule relief would more fairly and effectively address, the director or the hearings officer may:

- (1) Dismiss the petition for declaratory relief and allow its refiling as a petition for hearing or rule relief; or
- (2) Convert the proceeding to a contested case or petition for rule relief and proceed under the requirements for these types of relief. If the proceeding is converted the issues may

be restricted to those material facts of issue. [Eff 6/4/84; comp APR 13 1995]
(Auth: HRS §§26-38, 91-2, 346-14, 348-3)
(Imp: HRS §§26-38, 91-2, 346-14, 348-3)

§17-4-11 Proposed findings of fact and conclusion of law. Parties may file and serve upon all parties to the proceeding proposed findings of fact and conclusions of law, together with reasons for the proposals. This shall take place within fifteen days of the hearing and whenever possible, shall specifically refer to the record and authorities relied upon. [Eff 6/4/84; comp APR 13 1995] (Auth: HRS §§26-38, 91-2, 346-14, 348-3) (Imp: HRS §§26-38, 91-2, 346-14, 348-3)

§17-4-12 Recommended decision. After argument, the hearings officer shall file with the director the hearings officer's findings of fact and recommended decision and any recommended order. [Eff 6/4/84; comp APR 13 1995] (Auth: HRS §§26-38, 91-12, 346-14, 348-3) (Imp: HRS §§26-38, 91-12, 346-14, 348-3)