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HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMANS SERVICES

SUBTITLE 6 BENEFIT, EMPLOYMENT AND SUPPORT SERVICES DIVISION

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Historical Note: This chapter is based substantially upon chapter 17-604 [Eff 7/19/82; R 3/19/93] chapter 17-722 [Eff 7/19/82; am 7/5/83; am 10/3/83; am 3/1/85; am 12/27/86; R 3/19/93]

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SUBCHAPTER 1

PURPOSE AND DEFINITIONS

§17-604.1-1 Purpose. The purpose of this chapter is to define conditions under which the department will investigate suspected fraud in financial assistance, social services and supplemental nutrition assistance program cases. [Eff 3/19/93; am 8/01/94; am and comp JUN 24 2013] (Auth: HRS §346-14; 45 C.F.R. §235.110) (Imp: HRS §346-14)

§17-604.1-2 Definitions. As used in this chapter:

"Access device" means any card, including EBT card, plate, code, account number, or other means of access that can be used alone or in conjunction with another access device to obtain payments, allotments, benefits, money, goods, or other things of value, or that can be used to initiate a transfer of funds under the Food Stamp Act of 1977, as amended.

"Authorization to participate (ATP) card" means a document which is issued to a certified household to show the allotment the household is authorized to receive. The ATP card may be issued by a computer or hand issued at the unit.

"Coupon" means any coupon, stamp, EBT card, access device or type of certificate printed by FNS and issued by the department to eligible households for the purchase of eligible food.

"EBT card" means the electronic benefit transfer (EBT) card issued by the department which will allow the holder to access benefits in an EBT account through an automated teller machine (ATM) or point of sale (POS) device.

"Food Stamp Act" means the Food Stamp Act of 1977, as amended (7 U.S.C. §§ 2011-2027).

"FNS" means the Food and Nutrition Service of the United States Department of Agriculture.

"Fraud" means a knowing false statement or misrepresentation of a fact which results in the receipt of a benefit that would not otherwise result

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without the false statement. For example, failing to report employment income is fraudulent when a recipient, or other party knowingly makes a false statement such as, "no income" or "no employment", to receive public assistance benefits that the recipient would not otherwise receive if the recipient reported the recipient's income.

"Intentional program violation" or "IPV" means any action by an individual, for the purpose of establishing or maintaining eligibility or for increasing or preventing a reduction in benefits, who intentionally:

(1) Made a false or misleading statement;

(2) Misrepresented, concealed, or withheld facts;

(3) Committed any act that constitutes a violation of the Food Stamp Act, the supplemental nutrition assistance program regulations, or any state statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of benefits, coupons, authorization cards, or reusable documents as part of an automated benefit delivery system (access device); or

(4) Violates the provisions of section 17-610-11.

"Nolo contendere" means "I do not contest it" and has the same effect as a plea of guilty as far as the proceedings on an indictment are concerned.

"Supplemental Nutrition Assistance Program" or "SNAP" means the nutrition assistance program formerly known as the food stamp program.

"Trafficking" means the buying or selling of coupons, ATP cards, EBT cards or other benefit instruments for cash or consideration other than eligible food; or the exchange of firearms, ammunition, explosives, or controlled substances, as defined in section 802 of title 21, United States Code, for coupons. [Eff 3/19/93; am 3/14/94; am 5/18/96; am and comp JUN 24 2013] (Auth: HRS §346-14; 45 C.F.R. §235.110) (Imp: HRS §§346-34, 7 C.F.R. §§271.2, 273.16(c); 45 C.F.R. §235-110)

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SUBCHAPTER 2

FINANCIAL ASSISTANCE, MEDICAL ASSISTANCE, SOCIAL SERVICES PROVISIONS

§17-604.1-3 Investigation of suspected fraud. (a) The department shall identify situations of suspected fraud such as but not limited to a recipient's receiving financial assistance or social services to which the individual is not entitled through the wilful misrepresentation of circumstances or intentional concealment of information.

(b) The department shall investigate suspected fraud and refer these cases to law enforcement officials.

(c) The methods of investigation shall not infringe on the legal rights of the persons involved and shall afford these individuals due process of law. [Eff 3/19/93; am 8/1/94; am and comp JUN 24 2013] (Auth: HRS §346-14; 45 C.F.R. §235.110) (Imp: 45 C.F.R. §235.110)

§17-604.1-4 Penalty. The department may initiate prosecution of an individual suspected of fraud. In addition, the individual may be subject to any other criminal, civil, or administrative sanction authorized by law. [Eff 3/19/93; comp JUN 24 2013] (Auth: HRS §346-14; 45 C.F.R. §235.110) (Imp: HRS §346-34)

§§17-604.1-5 to 17-604.1-7 (Reserved).

SUBCHAPTER 3

SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM GENERAL PROVISIONS

§17-604.1-8 Penalties. Any unauthorized issuance, redemption, use, transfer, acquisition,

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alteration, possession, or presentation of coupons or ATP cards, EBT cards or other access device may subject any individual, partnership, corporation, or other legal entity to prosecution under the Food Stamp Act of 1977, as amended, or under any other applicable federal, state, or local law, regulation, or ordinance. [Eff 3/19/93; am and comp JUN 24 2013] (Auth: HRS §346-14) (Imp: 7 C.F.R. §271.5(b))

§17-604.1-9 Intentional program violation disqualification penalties. (a) Individuals found by an administrative disqualification hearing or by a federal, state or local court to have committed an intentional program violation or who have signed either a waiver of right to an administrative disqualification hearing or a disqualification consent agreement in cases referred for prosecution shall be ineligible to participate in the program for:

(1) One year for the first violation, except as provided in subsections (b) and (c);

(2) Two years for the second violation, except as provided in subsections (b) and (c); and

(3) Permanently for the third violation.

(b) Individuals found by a federal, state, or local court to have used or received benefits in a transaction involving the sale of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. §802)) shall be ineligible to participate in SNAP:

(1) For a period of two years for the first violation; and

(2) Permanently upon the second violation.

(c) For the first violation, individuals found by a federal, state, or local court to have used or received benefits in a transaction involving the sale of firearms, ammunition, or explosives shall be permanently ineligible to participate in SNAP.

(d) Individuals convicted by a federal, state, or local court of trafficking SNAP benefits of an aggregate amount of $500 or more shall be permanently ineligible to participate in the SNAP.

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(e) For the first and second violation, individuals shall be ineligible to participate in SNAP as a member of any household for a ten-year period per violation, if the individual is found by the department to have made, or is convicted by a federal or state court of having made, a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple benefits simultaneously under SNAP. For the third violation, an individual shall be permanently ineligible to participate in SNAP.

(f) The penalties in subsections (b) and (c) shall also apply in cases of deferred adjudication as described in section 17-604.1-28 where the court makes a finding that the individual engaged in the conduct described in subsections (b) and (c).

(g) If the court fails to impose a disqualification or a disqualification period for any intentional program violation, the department shall impose the appropriate disqualification penalty specified in subsections (a) through (e) unless it is contrary to the court order.

(h) One or more intentional program violations which occurred prior to April 1, 1983, shall be considered as only one previous disqualification when determining the appropriate penalty to impose in a case under consideration.

(i) Regardless of when an action taken by an individual which caused an intentional program violation occurred, the disqualification periods specified in subsections (b) and (c) shall apply to an case in which the court makes its finding on or after September 1, 1994.

(j) Individuals found guilty of criminal or civil fraud by a court of appropriate jurisdiction shall be ineligible for participation as specified by the court order. However, if the court fails to impose a disqualification period for the intentional program violation, the branch shall impose the disqualification penalties specified in this section unless it is contrary to the court order.

(k) The branch shall disqualify only the individual found to have committed the intentional program violation, or who signed the waiver of right to

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an administrative disqualification hearing or disqualification consent agreement in cases referred for prosecution, and not the entire household. During the period of ineligibility, no household shall receive increased benefits as a result of a member of the household having been disqualified from SNAP.

(1) The remaining household members shall agree to make restitution within ten days of the date the branch's written demand letter is mailed or the household's monthly allotment shall be reduced. If the remaining household members agree to make restitution but fail to do so, the branch shall impose an allotment reduction on the household's monthly allotment. The remaining household members, if any, shall begin restitution during the period of disqualification imposed by the branch or a court of law. Restitution shall be made in accordance with chapter 17-683. [Eff 3/19/93; am 2/16/96; am 10/28/96; am and comp JUN 24 2013] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.16(b); Pub. L. No. 104-193 (1996))

§17-604.1-10 Administrative disqualifications. (a) The branch shall refer to the investigations office cases in which the branch has sufficient documentary evidence to substantiate that an individual has committed one or more acts of intentional program violation. The investigations office shall be responsible for investigating any case of alleged intentional program violation, and ensuring that appropriate cases are acted upon either through administrative disqualification hearings or referral to a court of appropriate jurisdiction. If the department does not initiate administrative disqualification procedures or refer for prosecution a case involving an overissuance caused by a suspected act of intentional program violation, the department shall take action to collect the overissuance by establishing an inadvertent household error claim against the household. The department shall conduct administrative disqualification hearings:

(1) In cases in which the branch believes the facts of the individual case do not warrant

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civil or criminal prosecution through the appropriate court system; or

(2) In cases previously referred for prosecution that were declined by the appropriate legal authority; and

(3) In previously referred cases where no action was taken within a reasonable period of time and the referral was formally withdrawn by the branch.

(b) The department may initiate an administrative disqualification procedure or refer a case for prosecution regardless of the current eligibility of the individual.

(c) For those persons not currently certified to participate in the program at the time of the administrative disqualification or court decision, the disqualification period shall be effective from the month following the month the administrative disqualification or court decision is rendered.

(d) The department shall not initiate an administrative disqualification hearing against an accused individual whose case is currently being referred for prosecution or subsequent to any action taken against the accused individual by the prosecutor or court of appropriate jurisdiction, if the factual issues of the case arise out of the same or related circumstances.

(e) The department shall base administrative disqualification for intentional program violations on the determinations of hearing authorities arrived at through administrative disqualification hearings or on determinations reached by courts or appropriate jurisdiction. However, the department may allow accused individuals either to waive their rights to administrative disqualification hearings or to sign disqualification consent agreements for cases of deferred acceptance. The department may base administrative disqualifications for intentional program violation on the waiver of the right to an administrative disqualification hearing or on the signed disqualification consent agreement in cases of deferred adjudication.

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(f) The department shall inform the household in writing of the disqualification penalties for intentional program violations each time it applies for program benefits. The penalties shall be in clear, prominent, and boldface lettering on the application form.

(g) The burden of proving intentional program violation shall be on the department.

(h) The department may combine an administrative disqualification hearing and a hearing into a single hearing if the factual issues arise out of the same or related circumstances and if the household receives prior notice that the hearings will be combined. If combined, the timeliness standards for conducting disqualification hearings shall be followed. If the hearings are combined for the purpose of settling the amount of the claim at the same time as determining whether or not an intentional program violation has occurred, the household shall lose its right to a subsequent hearing on the amount of the claim. However, the department, upon household request, shall allow the household to waive the thirty-day advance notice period when the disqualification hearing and hearing are combined in accordance with section 17-604.1-16. [Eff 3/19/93; am 2/16/96; am and comp JUN 24 2013] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.16(a)(1),(3),(e)(1))

§17-604.1-11 Reversed intentional program violation disqualifications. In cases where the determination of an intentional program violation is reversed by a court of appropriate jurisdiction, the branch shall reinstate the individual in the SNAP if the individual is eligible. The branch shall restore any benefits that were lost as a result of the disqualification in accordance with the procedures specified in section 17-683-17. [Eff 3/19/93; am 2/07/94; am and comp JUN 24 2013] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.16(j))

§17-604.1-12 Reporting requirement. (a) The department shall submit the required information on

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each individual disqualified for intentional program violation through a reporting system in accordance with procedures specified by FNS so that it is received by FNS no later than thirty days after the disqualification took effect.

(b) All the data submitted by state agencies shall be available for use by any state welfare agency.

(1) The department, at a minimum, shall use the data for the following purposes:

(A) To determine the eligibility of individual program applicants prior to certification in cases where the branch has reason to believe a household member is subject to disqualification in another political jurisdiction; and

(B) To ascertain the appropriate penalty to impose, based upon past disqualifications, in a case under consideration.

(2) The department may also use the data in other ways, such as the following:

(A) To screen all program applicants prior to certification; and

(B) To periodically match the entire list of disqualified individuals against their current caseloads.

(c) The disqualification of an individual for an intentional program violation in one jurisdiction shall be valid in another. However, one or more intentional program violations which occurred prior to April 1, 1983, shall be considered as only one previous disqualification when determining the appropriate penalty to impose in a case under consideration, regardless of where the disqualification or disqualifications took place. [Eff 3/19/93; am 2/16/96; am comp JUN 24 2013] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.16(i))

§§17-604.1-13 to 17-604.1-15 (Reserved).

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SUBCHAPTER 4

SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM
ADMINISTRATIVE DISQUALIFICATION HEARINGS

§17-604.1-16 Disqualification hearing procedures. (a) Once the investigations office decides to initiate a disqualification hearing, the hearing office shall be notified.

(b) At the disqualification hearing, the hearing official shall advise the household member or representative that they may refuse to answer questions during the hearing.

(c) Within ninety days of the date the household member is notified in writing that the hearing has been scheduled, the hearing office shall conduct the hearing, arrive at a decision, and notify the household member and the branch of the decision. The household member or its representative shall be entitled to a postponement of the scheduled hearing, provided that the request for postponement is made at least ten days in advance of the date of the scheduled hearing. However, the hearing shall not be postponed for more than a total of thirty days and the number of postponements shall be limited to one. If the hearing is postponed, the time limits shall be extended for as many days as the hearing is postponed.

(d) The department shall make written procedures for disqualification hearings available to any interested party.

(e) The hearing officer shall schedule a hearing and shall provide a written notice to the household member suspected of intentional program violation at least thirty days in advance of the scheduled hearing. If mailed, the notice shall be sent either first class mail or certified mail-return receipt requested. The notice may also be provided by any other reliable method. If the notice is sent using first class mail and is returned as undeliverable, the hearing may still be held. If no proof of receipt is obtained and a timely showing of non-receipt, as defined in section 17-604.1-17(e), is received from the individual, the

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department shall consider the following circumstances as good cause for not appearing at the hearing:

(1) The individual's current address was known by the department but the department incorrectly sent the notice to an old address;

(2) There is a breakdown in postal service, such as but not limited to the postmark date of the notice is after the hearing date; or

(3) There is a sudden or unexpected emergency due to an unforseen circumstance that makes contact with the individual difficult, such as but not limited to a natural disaster or the individual is incapacitated for an extended period.

(f) The notice shall contain the following information:

(1) The date, time, and place of the hearing;

(2) The charge against the individual;

(3) A summary of the evidence, and how and where the evidence may be examined;

(4) A warning that the decision shall be based solely upon information provided by the branch if the individual fails to appear at the hearing;

(5) A statement that the household member or representative shall have ten days from the date of the scheduled hearing to present good cause for failure to appear in order to receive a new hearing;

(6) A warning that a determination of an intentional program violation will result in disqualification periods as determined by section 17-604.1-9, and a statement of which penalty the department believes is applicable to the case scheduled for a hearing;

(7) A listing of the individual's rights as contained in section 17-602.1-40;

(8) A statement that the hearing shall not preclude the state or federal government from prosecuting the household member for intentional program violation in a civil or criminal court action, or from collecting the overissuance; and

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(9) A statement advising the household member of the availability of an individual or organization that provides free legal representation, if available.

(g) A copy of the hearing procedures shall be attached to the advance notice.

(h) The disqualification hearing shall be conducted by an impartial hearing officer.

(i) The hearing shall be attended by a representative of the branch which initiated the action, the state investigator, if involved in the case, and the household or its representative or both. The hearing may also be attended by friends or relatives of the household, and the public, upon household consent. The hearing officer shall have the right to limit attendance if space limitations exist.

(j) The household may not be familiar with the rules of order and it may be necessary to make particular efforts to arrive at the facts of the case in a way that makes the household feel most at ease. The household or its representative shall be given adequate opportunity to examine documents as specified in chapter 17-602.1.

(k) Decisions of the hearing officer shall comply with federal and state law, rules, or policy and the decision shall be factually based upon the hearing record. The verbatim transcript or recording of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding shall constitute the exclusive record for a final decision by the hearing officer. The record shall be retained for three years. The record shall be available to the household or its representative at a reasonable time for inspection or copying. Reproduced copies of the record shall be provided upon request at a cost related to the cost of reproduction. [Eff 3/19/93; am 4/01/96; am and comp JUN 24 2013] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.16(e)(2) and (3))

§17-604.1-17 Scheduling of hearing. (a) The hearing shall be scheduled at a time and place

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accessible to the household member suspected of intentional program violation.

(b) If the household member or its representative cannot be located or fails to appear at the hearing without good cause, the hearing shall be conducted without representation of the household member.

(c) Although the household member is not present, the hearing officer shall carefully consider the evidence and determine whether an intentional program violation was committed based upon clear and convincing evidence.

(d) If the household member is found to have committed an intentional program violation but a hearing officer later determines that the household member or representative failed to appear with good cause, the previous decision shall not be valid and a new hearing shall be conducted. The hearing officer who originally ruled on the case may conduct the new hearing.

(e) In instances where good cause for failure to appear is based upon a showing of non-receipt of the hearing notice as specified in section 17-604.1-16(e), the household member has thirty days after the date of the written notice of the hearing decision to claim good cause for failure to appear. If the household member shows non-receipt of the notice in a timely fashion, any previous decision determined in absentia shall no longer remain valid and the department shall conduct a new hearing. In all other instances, the household member has ten days from the date of the scheduled hearing to present reasons indicating a good cause for failure to appear. Good cause means death in the family, severe personal injury or illness (medical statement from a doctor must be submitted), or sudden and unexpected emergencies. The hearing officer shall enter the good cause decision into the record. [Eff 3/19/93; am 4/01/96; am and comp JUN 24 2013] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.16(e)4))

§17-604.1-18 Participation while awaiting hearing. (a) A pending disqualification hearing shall not affect the individual's or the household's right to be certified and to participate in SNAP. Since the

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branch cannot disqualify a household member for an intentional program violation until the hearing officer finds that the individual has committed intentional program violation, the branch shall determine the eligibility and benefit level of the household in the same manner as it would be determined for any other household.

(b) The household's benefits shall be terminated if the certification period has expired and the household, after receiving its notice of expiration, fails to reapply.

(c) The branch shall also reduce or terminate the household's benefits if the branch has documentation which substantiates that the household is ineligible or eligible for fewer benefits, even if these factors led to the suspicion of intentional program violation and the resulting disqualification hearing, and the household fails to request a hearing and continuation of benefits pending the hearing. For example, the branch may have facts which substantiate that a household failed to report a change in its circumstances even though the branch has not yet demonstrated that the failure to report involved an intentional act of program violation. [Eff 3/19/93; am and comp JUN 24 2013] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.16(e)(5))

§17-604.1-19 Criteria for determining intentional program violation. The hearing authority shall base the determination of an intentional program violation on clear and convincing evidence which demonstrates that the household member or members committed, and intended to commit, intentional program violation. [Eff 3/19/93; comp JUN 24 2013] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.16(e)(6))

§17-604.1-20 Decision format. The hearing officer's decision shall specify the reasons for the decision, shall identify the supporting evidence, shall identify the pertinent rule or policy, and shall respond to reasoned arguments made by the household member or the household's representative. [Eff

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3/19/93; comp JUN 24 2013] (Auth: HRS §346-14)
(Imp: 7 C.F.R. §273.16(e)(7))

§17-604.1-21 Notification of the household on administrative disqualification hearing decision. (a) Once the hearing decision is made, the hearing officer shall mail a written notice to the household informing it of the decision.

(b) If the hearing results in a finding that the household member did not commit an intentional program violation, no further action shall be taken except for collection of the overissuance as a claim, if appropriate.

(c) If a finding of intentional program violation is determined, a written notice shall be mailed to the household prior to disqualification. The notice shall include the following items:

(1) The hearing decision;
(2) The reason for the decision;
(3) How the claim was calculated;
(4) The intent to collect from all adults;
(5) The benefit amount the rest of the household members, if any, will receive during the period of disqualification of the fraudulent individual;
(6) The requirement that the remaining household members, if any, shall reapply in order to receive benefits for those situations in which the certification period has expired;
(7) When the disqualification of the fraudulent individual will take effect; and
(8) For those situations where the fraudulent individual is no longer participating, the information that the period of disqualification shall take effect from the month following the month the disqualification decision is rendered.

(d) If a finding of intentional program violation is determined, a written agreement letter for restitution shall also be mailed to the household. The written agreement letter shall include the following items:

(1) The amount owed by the individual;

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(2) The reason for the claim;
(3) How the claim was calculated;
(4) The intent to collect from all adults;
(5) The period of time the claim covers;
(6) Any offsetting that was done to reduce the claim;
(7) The types and terms of each restitution schedule which is offered;
(8) The household member's right to a hearing if the individual disagrees with the amount of the claim;
(9) The household's right to request renegotiation of any agreed upon repayment schedule should the household's economic circumstances change;
(10) Spaces for the individual to complete indicating the method of repayment desired; and
(11) Space for the individual's signature.

(e) If the hearing officer rules that the household member has committed an intentional program violation, the household member shall be disqualified in accordance with the disqualification periods specified in section 17-604.1-9 beginning with the first month which follows the date the household receives written notification of the hearing decision. However, if the act of an intentional program violation which led to the disqualification occurred prior to notification of the disqualification periods specified in section 17-604.1-9, the household member shall be disqualified in accordance with the disqualification periods in effect at the time of the offense. The same act of intentional program violation repeated over a period of time shall not be separated so that separate penalties can be imposed. No further administrative appeal procedure exists after an adverse state-level hearing. The determination of an intentional program violation made by a disqualification hearing official cannot be reversed by a subsequent hearing decision. The household member, however, is entitled to seek relief in a court having appropriate jurisdiction. The period of disqualification may be subject to stay by a court of appropriate jurisdiction or other injunctive remedy. If the individual is not certified to partici

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pate in the program at the time the disqualification period is to begin, the period shall take effect from the month following the month the disqualification decision is rendered.

(f) Once a disqualification penalty has been imposed against a currently participating household member, the period of disqualification shall continue uninterrupted until completed regardless of the eligibility of the disqualified member's household. However, the disqualified member's household shall continue to be responsible for repayment of the over-issuance which resulted from the disqualified member's intentional program violation regardless of its eligibility for program benefits. [Eff 3/19/93; am 2/16/96; comp JUN 24 2013] (Auth: HRS §346-14) (Imp: 7 C.F.R. §§273.16(e)(8) and (9), 273.18(e)(3))

§17-604.1-22 Waived hearings. (a) The department shall provide written notification to the household member suspected of an intentional program violation that the member may waive rights to an administrative disqualification hearing.

(1) Prior to providing this written notification to the household member, the department shall ensure that the evidence against the household member is reviewed by someone other than the eligibility worker assigned to the accused individual's household and a decision is obtained that the evidence warrants scheduling a disqualification hearing.

(2) The written notification which informs the household member of the possibility of waiving the administrative disqualification hearing shall include, at a minimum:

(A) The date the signed waiver must be received by the department to avoid the holding of a hearing and a signature block for the accused individual, along with a statement that the head of household shall also sign the waiver if the accused is not the head of household, with an appropriately designated signature block;

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(B) A statement of the accused individual's right to remain silent concerning the charge or charges, and that anything said or signed by the individual concerning the charge or charges can be used against the individual in a court of law;

(C) The fact that a waiver of the disqualification hearing will result in disqualification and a reduction in benefits for the period of disqualification, even if the accused individual does not admit to the facts as presented by the department;

(D) An opportunity for the accused to specify whether or not the individual admits to the facts as presented by the department;

(E) The telephone number and, if possible, the name of the person to contact for additional information; and

(F) The fact that the remaining household members, if any, will be held responsible for repayment of the resulting claim.

(3) The department shall develop a waiver of right to an administrative disqualification hearing form which contains the information required by section 17-604.1-16 for advance notice of a hearing. However, if the household member is notified of the possibility of waiving the member's right to an administrative disqualification hearing before the department has scheduled a hearing, the department shall not be required to notify the household member of the date, time, and place of the hearing at that point as required by section 17-604.1-16.

(b) If the household member suspected of an intentional program violation signs the waiver of right to an administrative disqualification hearing and the signed waiver is received within the time periods specified by the department, the household

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member shall be disqualified in accordance with the disqualification periods in section 17-604.1-9.

(1) The period of disqualification shall begin with the first month which follows the date the household member receives written notification of the disqualification. However, if the act of intentional program violation which led to the disqualification occurred prior to the written notification of the disqualification periods specified in section 17-604.1-9, the household member shall be disqualified in accordance with the disqualification periods in effect at the time of the offense. The same act of intentional program violation repeated over a period of time shall not be separated so that separate penalties can be imposed.

(2) No further administrative appeal procedure exists after an individual waives the individual's right to an administrative disqualification hearing and a disqualification penalty has been imposed. The disqualification penalty cannot be changed by a subsequent hearing decision. The household member, however, is entitled to seek relief in a court having appropriate jurisdiction. The period of disqualification may be subject to stay by a court of appropriate jurisdiction or other injunctive remedy.

(3) Once a disqualification penalty has been imposed against a currently participating household member, the period of disqualification shall continue uninterrupted until completed regardless of the eligibility of the disqualified member's household. However, the disqualified member's household shall continue to be responsible for repayment of the overissuance which resulted from the disqualified member's intentional program violation regardless of its eligibility for program benefits.

(c) The department shall provide written notice to the household member prior to disqualification. The

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department shall also provide written notice to any remaining household members of the allotment they will receive during the period of disqualification or that they must reapply because the certification period has expired. The notice shall conform to the requirements for notification of a hearing decision specified in section 17-604.1-21. A written demand letter for restitution shall also be provided. [Eff 3/19/93; am 2/16/96; am and comp JUN 24 2013] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.16(f))

§§17-604.1-23 to 17-604.1-25 (Reserved).

SUBCHAPTER 5

SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM PROSECUTIONS

§17-604.1-26 Court imposed disqualifications. (a) The department shall refer cases of an alleged intentional program violation for prosecution in accordance with an agreement with prosecutors or state law.

(b) The branch shall refer to the investigations office cases that are suspected of an intentional program violation. The investigations office shall determine which cases shall be referred to the prosecuting authority. The investigations office shall encourage prosecutors to recommend to the courts that a disqualification penalty as provided in section 6(b) of the Food Stamp Act of 1977 (7 U.S.C. §2015(b)) be imposed in addition to any other civil or criminal intentional program violation penalties for such violation.

(c) The branch shall disqualify an individual found guilty of fraud by a court for the length of time specified by the court.

(1) If the court fails to address or specify a disqualification period, the branch shall impose a disqualification period in ccordance with the provisions of section 17-604.1-9 unless contrary to the court order;

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(2) If the court orders a disqualification period but fails to specify a date for initiating the disqualification period, the branch shall initiate the disqualification period within forty-five days of the date the disqualification was ordered. Any other court imposed disqualification shall begin within fortyfive days of the date the court found a currently eligible individual guilty of civil or criminal misrepresentation or fraud;

(3) If the individual is not certified to participate in the program at the time the disqualification period is to begin, the period shall take effect from the month following the month the disqualificaiton decision is rendered;

(4) Once a disqualification penalty has been imposed against a currently participating household member, the period of disqualification shall continue uninterrupted until completed regardless of the eligibility of the disqualified member's household. However, the disqualified member's household shall continue to be responsible for repayment of the overissuance which resulted from the disqualified member's intentional program violation regardless of its eligibility for program benefits. [Eff 3/19/93; am 2/16/96; comp JUN 24 2013] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.16(g)(1) and (2))

§17-604.1-27 Notification of the household of court decision. (a) If the court finds that the household member committed intentional program violation, the department shall provide written notice to the household member. The notice shall be provided prior to disqualification, whenever possible. The notice shall inform the household member of the disqualification and the date disqualification will take effect. The department shall also provide written notice to the remaining household members, if any, of the allotment they will receive during the period of disqualification or that they must reapply because the

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certification period has expired.

(b) The procedures for handling the income and resources of the disqualified member shall be as described in chapter 17-663. In addition, the department shall provide the written demand letter for restitution. [Eff 3/19/93; comp JUN 24 2013] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.16(g)(3))

§17-604.1-28 Deferred adjudication. (a) The procedures in this section shall be used for cases in which a determination of guilt is not obtained from a court due to the accused having met the terms of a court order, or for cases which are not prosecuted due to the accused individual having met the terms of an agreement with the prosecuting attorney.

(1) The department shall enter into an agreement with the state attorney general or, where necessary, with county prosecuting attorneys, which provides for advance written notification to the household member of the consequences of consenting to disqualification in cases of deferred adjudication.

(2) The written notification provided for in paragraph (1) shall include, at a minimum:

(A) A statement for the accused individual to sign that the accused individual understands the consequences of consenting to disqualification, along with a statement that the head of household shall also sign the consent agreement if the accused individual is not the head of household, with an appropriately designated signature block;

(B) A statement that consenting to disqualification shall result in disqualification and a reduction in benefits for the period of disqualification, even though the accused individual was not found guilty of civil or criminal misrepresentation or fraud;

(C) A warning that the disqualification penalties for intentional program

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violation under the SNAP are as specified in section 17-604.1-9, and a statement of which penalty shall be imposed as a result of the accused individual having consented to disqualification;

(D) A statement of the fact that the remaining household members, if any, shall be held responsible for repayment of the resulting claim, unless the accused individual has already repaid the claim as a result of meeting the terms of the agreement with the prosecutor or the court order.

(b) If the household member suspected of an intentional program violation signs the disqualification consent agreement, the household member shall be disqualified in accordance with the disqualification periods specified in section 17-604.1-9, unless contrary to the court order.

(1) The period of disqualification shall begin within forty-five days of the date the household member signed the disqualification consent agreement. However, if the court imposes a disqualification period or specifies the date for initiating the disqualification period, the department shall disqualify the household member in accordance with the court order.

(2) If the individual is not certified to participate in the program at the time the disqualification period is to begin, the period shall take effect from the month following the month the disqualification is rendered.

(3) Once a disqualification penalty has been imposed against a currently participating household member, the period of disqualification shall continue uninterrupted until completed regardless of the eligibility of the disqualified member's household. However, the disqualified member's household hall continue to be responsible for repayment of the overissuance which resulted from the

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disqualified member's intentional program violation regardless of its eligibility for program benefits.

(c) If the household member suspected of an intentional program violation signs the disqualification consent agreement, the department shall provide written notice to the household member. The notice shall be provided prior to disqualification, whenever possible. The notice shall inform the household member of the disqualification and the date the disqualification will take effect. The department shall also provide written notice to the remaining household members, if any, of the allotment they will receive during the period of disqualification or that they must reapply because the certification period has expired. The procedures for handling the income and resources of the disqualified member are described in chapter 17-663. In addition, the department shall provide the written demand letter for restitution.

[Eff 3/19/93; am 2/16/96; am and comp JUN 24 2013]
(Auth: HRS §346-14) (Imp: 7 C.F.R. §273.16(h))

SUBCHAPTER 6

FINANCIAL ADMINISTRATIVE DISQUALIFICATION

§17-604.1-29 Intentional program violation disqualification penalties. (a) An individual who, on the basis of a plea of guilty or nolo contendere or otherwise, is found to have committed an intentional program violation by an administrative disqualification hearing or by a court of appropriate jurisdiction shall be treated in the following manner:

(1) The department shall not take the individual's needs into account when determining the assistance unit's need and amount of the assistance; and

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(2) Any resource and income of the disqualified individual shall be considered available to the assistance unit.

(b) The individual's needs shall not be taken into account for:

(1) Twelve months for the first violation;

(2) Twenty-four months for the second violation; and

(3) Permanently for the third or any subsequent violation.

(c) Any period for which a disqualification penalty is imposed shall remain in effect, without possibility of an administrative stay, unless and until the finding upon which the penalty was based is subsequently reversed by a court of appropriate jurisdiction but in no event shall the duration of the period for which such penalty is imposed be subject to review.

(d) Where an individual with a prior violation(s) moves from one state to another and has been found to have committed an intentional program violation(s), the department may impose the penalty based on the number of such violations committed in other states.

(e) The disqualification penalties shall be in addition to, and cannot be substituted for, any other sanctions or penalties which may be imposed by law for the same offenses.

(f) The disqualification penalties imposed only affect the individual concerned and cannot substitute for other sanctions under the financial assistance program e.g., failure to participate in the work program or to cooperate in obtaining child support.

[Eff 5/18/96; am 11/22/96; am 9/26/97; am and comp JUN 24 2013] (Auth: HRS §346-14) (Imp: 45 C.F.R. §235.110)

SUBCHAPTER 7

FINANCIAL ADMINISTRATIVE DISQUALIFICATION HEARINGS

§17-604.1-30 Disqualification hearing procedures.

(a) The department may consolidate an individual's

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fair hearing with a disqualification hearing based on the same or related circumstances provided that the individual receives prior notice of the consolidation.

(b) The department may designate the same hearing officer to preside at a consolidated hearing.

(c) The department shall provide a written notice to the individual alleged to have committed the program violation at least thirty days prior to the date of the disqualification hearing. The advance written notice to the individual shall include the following information:

(1) The date, time and location of the hearing;
(2) The charge(s) against the individual;
(3) A summary of the evidence, and how and where the evidence can be examined;
(4) A warning that the individual's failure to appear without good cause will result in a decision by the hearing officer based solely on the information provided by the department at the hearing;
(5) A statement that the individual may request a postponement of the hearing provided that such request is made to the department at least ten days in advance of the scheduled hearing;
(6) A statement that the individual will have ten days from the date of the scheduled hearing to present to the department good cause for failure to appear in order to receive a new hearing;
(7) A description of the penalties that can result from a determination that the individual has committed an intentional program violation and a statement of which penalty is applicable to the individual;
(8) A statement that the hearing does not preclude the State from prosecuting the individual for an intentional program violation in a civil or criminal court action, or from collecting an overpayment;
(9) A listing of individuals or organizations that provide free legal representation to the individuals alleged to have committed intentional program violations;

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(10) An explanation that the individual may waive the right to appear at an administrative disqualification hearing; and

(11) A statement of the accused individual's right to remain silent concerning the charge(s) and that anything said or signed by the individual concerning the charge(s) may be used against the individual in a court of law.

(d) The department shall require the hearing officer to postpone the scheduled hearing at the individual's request provided that the request for postponement is made at least ten days in advance of the date of the scheduled disqualification hearing. However, the hearing shall not be postponed for more than a total of thirty days, and the department may limit the number of postponements to one.

(e) A hearing shall be conducted by an impartial official of the department who has had no previous involvement in the case.

(f) Medical assessments shall be obtained at department expense and made part of the record if the hearing officer considers it necessary.

(g) The individual or representative, shall have adequate opportunity to:

(1) Examine the contents of the case file and all documents and records to be used by the department at the hearing, at a reasonable time before the date of the hearing and during the hearing;

(2) Present the case individually or with the aid of an authorized representative;

(3) Bring witnesses;

(4) Establish all pertinent facts and circumstances;

(5) Advance any arguments without undue influence; and

(6) Question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses.

(h) Decisions made by the hearing officer shall be based exclusively on evidence and other material introduced at the hearing. The transcript or recording of testimony, exhibits, or official reports introduced

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at the hearing, together with all papers and requests filed in the proceeding, and the decision of the hearing officer shall be made available to the individual or to his or her representative at a reasonable time and place.

(i) Decisions by the hearing officer shall:

(1) In the event of an evidentiary hearing, consist of a decision memorandum summarizing the facts and identifying the regulations supporting the decision;

(2) In the event of a department de novo hearing, specify the reasons for the decision and identify the supporting evidence and regulations; and

(3) Be made within ninety days of the date of the notice.

(j) The department may not disqualify an individual until the hearing officer finds that the individual has committed an intentional program violation. This does not mean, however, that the department is precluded from discontinuing, terminating, suspending, or reducing assistance, or changing the manner or form of payment to a protective, vendor, or two-party payment for other reasons.

(k) If the hearing officer finds that the individual committed an intentional program violation, the department shall provide adequate written notice to the individual prior to disqualification. The notice shall inform the individual of:

(1) The decision and the reason for the decision;

(2) The period of disqualification which shall begin no later than the first day of the second month which follows the date of notice; and

(3) The amount of payment the unit will receive during the disqualification period.

(l) In cases of an individual's disqualification resulting from a prior receipt of assistance, the disqualification shall be effective from the month following the month the administrative disqualification or court decision is rendered.

(m) If a hearing officer determines that an individual committed an intentional program violation, the notice of the hearing decision shall inform the

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individual of the right to appeal the decision to the department within fifteen days of the date of the notice. [Eff 5/18/96; am 11/22/96; am and comp JUN 24 2013] (Auth: HRS §346-14) (Imp: 45 C.F.R. §235.110)

§17-604.1-31 Waiver of the administrative disqualification hearing. (a) The department shall provide advance notice to the individual suspected of intentional program violation that he or she may waive rights to appear at an administrative disqualification hearing.

(b) The advance notice shall include a statement informing the individual of:

(1) The date that the signed waiver shall be received by the department and a signature block for the accused individual along with a statement that a caretaker relative shall also sign the waiver if the accused individual is not the caretaker relative, with an appropriately designated signature block;

(2) A statement of the accused individual's right to remain silent concerning the charge(s) and that anything said or signed by the individual concerning the charge(s) may be used against the individual in a court of law;

(3) The fact that waiver of the individual's right to appear at a disqualification hearing may result in a disqualification penalty and a reduction in the assistance payment for the appropriate period even if the accused individual does not admit to the facts as presented by the department; and

(4) An opportunity for the accused individual to specify whether or not the individual admits to the facts as presented by the department.

(c) When the individual waives the right to appear at a disqualification hearing, the disqualification and appropriate reduction of assistance shall result regardless of whether the individual admits or denies the charges.

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(d) The department shall send adequate written notice informing the individual of the period of disqualification which shall begin no later than the first day of the second month which follows the date of notice and the amount of payment the assistance unit will receive during the disqualification period.

(e) If an individual whose case has been terminated waives the disqualification hearing rights, the disqualification period shall take effect from the month following the month the disqualification decision is rendered. [Eff 5/18/96; am 11/22/96; comp JUN 24 2013] (Auth: HRS §346-14) (Imp: 45 C.F.R. §235.110)

§17-604.1-32 Court actions on consent agreements. (a) The department shall allow an accused individual to sign an agreement confirmed by a court in which he or she admits committing intentional program violation.

(b) The department shall enter into an agreement with the attorney general's Office which provides for advance written notification to the accused individual of the consequences of signing such an agreement.

(c) The written notification shall include, at a minimum:

(1) A statement for the accused individual to sign that the individual understands the consequences of signing the agreement, along with a statement that the caretaker relative must also sign the agreement if the accused individual is not the caretaker relative;

(2) A statement that signing the agreement will result in a reduction in payment for the appropriate period; and

(3) A statement of which disqualification period will be imposed as a result of the accused individual signing the agreement.

(d) After the court confirms the agreement, the department shall provide a written notice to the individual which specifies the period of disqualification which shall begin no later than the first day of the second month which follows the date of

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notice and the amount of payment the assistance unit will receive during the disqualification period.

(e) If the court specifies the date for initiating the disqualification period, the department shall disqualify the accused individual in accordance with the court order.

(f) If an individual whose case has been terminated signs a consent agreement, the disqualification period shall be effective from the month following the month the consent agreement is signed. [Eff 5/18/96; am 11/22/96; comp JUN 24 2013]
(Auth: HRS §346-14) (Imp: 45 C.F.R. §235.110)

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