

HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 9 ADULT AND COMMUNITY CARE PROGRAMS

CHAPTER 1402

HEARINGS

§17-1402-1	Purpose
§17-1402-2	Definitions
§17-1402-3	Informal review
§17-1402-4	Right to a hearing
§17-1402-5	Rights of the claimant
§17-1402-6	Action on request for hearing
§17-1402-7	Unit responsibility
§17-1402-8	Responsibility of hearing office
§17-1402-9	Denial or dismissal of a request for hearing
§17-1402-10	Status of social services recipients pending hearing
§17-1402-11	The hearing
§17-1402-12	Group hearings
§17-1402-13	Hearing decision
§17-1402-14	Decisions pending over ninety days
§17-1402-15	Recovery of aid paid pending

§17-1402-1 Purpose. The purpose of this chapter is to establish the administrative provisions of the hearing process including the responsibilities of the department to the applicant, recipient, or claimant, as well as the rights and benefits of these individuals between the time the individuals express dissatisfaction with any adult and community services branch action or inaction and the time a final hearing decision is implemented. [Eff 12/5/97] (Auth: HRS §346-14) (Imp: HRS §§346-12, 346-14)

§17-1402-2 Definitions. As used in this chapter: "Adverse action" means denial of or failure to act with reasonable promptness on a claim for public

assistance, or the suspension, reduction, termination, or withholding of public assistance.

"Aid paid pending a hearing decision" means the continuation or reinstatement of public assistance paid to or for recipients between the date of timely request for a hearing and the date the hearing decision is made.

"Authorized representative" means an individual who has been authorized in a written statement by the claimant to act for and represent the claimant in any and all aspects of a hearing.

"Claimant" means an applicant or recipient who has requested a hearing in writing due to dissatisfaction with adult and community services branch action or inaction. A claimant with a court appointed guardian of the person shall be considered to be represented by the guardian. The guardian shall have all rights and duties of the incapacitated claimant.

"Date of hearing request" means the date of the department's receipt of a signed written request for a hearing by the claimant or authorized representative which meets all the criteria of a request for hearing as defined in this section. When there is no prior written request by the claimant, and no written authorization naming an authorized representative, the date of hearing request shall be the date the authorization is received.

"Hearing" means an administrative proceeding which affords an aggrieved person an opportunity to present an appeal before an impartial departmental representative for formal decision.

"Hearing officer" means an impartial person assigned by the department to conduct hearings and to render a final decision. The hearing officer shall not have been directly involved in the initial determination of the action in question.

"Informal review" means a review conducted by the department at the written or oral request of a dissatisfied individual. An informal review is not the same as the administrative hearing procedure provided the individual after a written request for a hearing is received.

"Request for hearing" means a clear written expression, documenting the appeal, by the claimant or authorized representative that the claimant wants a hearing because the claimant is dissatisfied with an adult and community care services branch action of

denying, reducing, discontinuing, terminating, suspending, withholding assistance, not acting on a claim for assistance with reasonable promptness, or determining an overpayment amount. [Eff 12/5/97] (Auth: HRS §346-14) (Imp: HRS §346-12)

§17-1402-3 Informal Review. (a) A dissatisfied individual may request an informal review from the department before or after filing a request for a hearing. However, the individual is not required to seek that action before filing a request for a hearing. (b) Request for informal review may be made of the following individuals:

- (1) The social services worker;
- (2) Unit supervisor;
- (3) Section administrator; or
- (4) Branch administrator.

(c) When the request for an informal review is received, orally or in writing, the individual shall be given the opportunity to discuss reasons for the proposed action and to present information to show that the proposed action is incorrect. Corrective action shall be made as necessary. If the individual remains dissatisfied after the review is completed and the individual had not filed a request for a hearing, the individual may request a hearing subject to the limitations for filing requests for hearing as specified in this chapter. [Eff 12/5/97] (Auth: HRS §346-14) (Imp: HRS §346-12)

§17-1402-4 Right to a hearing. (a) Every applicant for or recipient of public assistance shall be provided an opportunity for a hearing if dissatisfied with any adult and community care services branch adverse action affecting the assistance claim.

(b) Every applicant or recipient filing for a hearing shall have the right to submit a written request naming an authorized representative for hearing purposes. The written authorization shall be received by the department before the department acknowledges any action taken by the authorized representative on the applicant's or recipient's behalf.

(c) Every applicant or recipient shall be informed in writing at the time of application for any form of public assistance and at the time of an adult

and community care services branch action affecting the individual's assistance claim:

- (1) Of the individual's right to a hearing;
- (2) Of the method for obtaining a hearing; and
- (3) That the individual may present the appeal independently or be represented by an authorized representative such as legal counsel, relative, friend, or any other person of the individual's choice. [Eff 12/5/97] (Auth: HRS §346-14) (Imp: HRS §346-12)

§17-1402-5 Rights of the claimant. The claimant or the authorized representative shall have an opportunity to:

- (1) Examine the case record as well as all documents and records to be used at the hearing at a reasonable time before the date of the hearing as well as during the hearing;
- (2) Present the case independently or with the aid of others including legal counsel;
- (3) Bring witnesses, including an interpreter if the claimant is non-English speaking. If the claimant does not have an interpreter, an interpreter shall be obtained by the department;
- (4) Establish all pertinent facts and circumstances;
- (5) Advance any arguments appropriate to the issue being heard without undue interference; and
- (6) Question or refute any testimony or evidence, and to confront and cross examine any witness. [Eff 12/5/97] (Auth: HRS §346-14) (Imp: HRS §346-12)

§17-1402-6 Action on request for hearing. (a) When a claimant's written request for a hearing is received by the department, the department shall immediately determine whether the request was received within the time period specified in this section and shall submit the request to the hearing officer. The department shall enter on the request the claimant's name, case number, and date the request was received. When the claimant is a court appointed guardian, the

department shall require verification by the appropriate court documents. The department shall indicate the claimant's guardian status on the request.

(b) When the request is received by the hearing office, the request shall be date stamped and immediately forwarded to the unit which initiated the adverse action. The unit shall immediately determine whether the request was received within the period specified in this section.

(c) The request shall be received by the department within ninety calendar days of the date on which the notice informing the client of an adult and community care services branch decision was mailed to the claimant and shall refer to that specific decision. If the ninetieth day falls on a weekend or holiday, the ninetieth day shall then be the working day following the weekend or holiday.

(d) If the request was not filed within ninety calendar days of the date the notice was mailed to the claimant, the request shall be denied and the unit shall mail a notice of denial to the claimant.

(e) When the requirements specified in section 17-1402-10 are met, the unit shall reinstate or continue assistance. [Eff 12/5/97] (Auth: HRS §346-14) (Imp: HRS §346-12)

§17-1402-7 Unit responsibility. (a) When the unit assists the applicant or recipient in filing for the hearing, the unit shall inform the applicant or recipient of the person's right to legal counsel, and inform the individual of legal resources in the community.

(b) The unit shall review all requests for hearing to assure that all facts are properly considered. If any basis for the grievance is found prior to the hearing, the unit shall promptly take necessary corrective action.

(c) The unit shall remain in touch with the claimant and shall immediately notify the hearing officer of any change in address or circumstances which may affect the need for the hearing. [Eff 12/5/97] (Auth: HRS §346-14) (Imp: HRS §346-12)

§17-1402-8 Responsibility of hearing office. (a) The hearing office shall accept:

- (1) Any request directly at the hearing office;
and
- (2) All requests cleared through social services units.

(b) The hearing office shall acknowledge the request for the hearing by a written communication to the claimant within fifteen calendar days of the date of hearing request.

(c) In addition to the foregoing, the hearing office shall give the claimant a written notice that the individual has a right to:

- (1) Prompt administrative action;
- (2) Implementation of a hearing decision within ninety calendar days of the request; and
- (3) Receive any assistance or service which had been reduced or denied if a final decision has not been made and implemented within ninety calendar days of the request and the individual is not already receiving aid paid pending.

(d) The hearing office shall also provide a written notice of the hearing to the claimant or to the authorized representative and the unit not less than fifteen calendar days prior to the hearing. The notice shall:

- (1) Be sent by certified or registered mail to the claimant or authorized representative with return receipt requested. A copy shall be sent to the unit;
- (2) Specify the date, time, place, and nature of the hearing;
- (3) Specify the legal authority under which the hearing is to be held;
- (4) Specify the sections of the statutes and rules involved;
- (5) Specify the issues involved and the basis for the unit's action; and
- (6) Specify the claimant's right to retain legal counsel.

(e) When it becomes apparent to the hearing officer through facts presented by the department or other persons that a claimant lacks the ability or understanding to make or communicate decisions regarding the hearing appeal or to authorize another individual to act on the claimant's behalf, the hearing officer may designate one of the following persons to represent the claimant in the hearing process:

- (1) A spouse or other adult relative who has actual custody of the claimant or demonstrates a close, continuing concern for the claimant's well being; or
- (2) An adult friend who has demonstrated a continuing and current interest, by overt acts, in the claimant's well being. In situations in which the hearing officer questions the ability of the claimant to participate in the hearing process, the hearing officer may request and authorize a medical evaluation at department's expense before designating an authorized representative. [Eff 12/5/97] (Auth: HRS §346-14) (Imp: HRS §§91-9, 91-9.5, 346-12)

§17-1402-9 Denial or dismissal of a request for hearing. (a) A hearing shall not be granted by the department when either federal or state law requires automatic grant adjustment for classes of recipients unless the appeal is for incorrect grant computation.

(b) A hearing shall not be granted by the department when the claimant has withdrawn the request in writing. Where the claimant verbally reports a desire to withdraw the hearing request, the claimant shall be advised that the withdrawal shall be submitted in writing. If the claimant prefers, the department shall confirm the claimant's request to withdraw in writing to the claimant.

(c) The unit shall determine whether the request for hearing is based on action taken by the department as a result of subsection (a). These requests shall be denied by the unit.

(d) A hearing shall not be granted by the hearing officer when the claimant has abandoned the request. Abandonment occurs when the claimant or the authorized representative, without good cause, fails to appear at the hearing scheduled for the claimant.

- (1) The hearing officer shall send the claimant a letter stating that the appeal is considered abandoned unless there was good cause for the claimant's failure to appear. The claimant shall be notified that the request shall continue only if the claimant presents good cause for the failure to appear and contacts the agency within ten calendar days of the

notice. If no reply is received within the ten calendar days, the hearing request shall be considered abandoned. If the tenth day falls on a weekend or holiday, the tenth day shall then be the working day after the weekend or the holiday.

- (2) Good cause may be established on the basis of one of the following factors:
 - (A) Death in the family;
 - (B) Personal injury or illness which reasonably prohibits the claimant from attending the hearing; or
 - (C) Sudden and unexpected emergencies.

(e) When a request for a hearing is denied or dismissed, the department shall inform the claimant in writing, stating the reasons for the denial or dismissal. Written notice shall be provided the claimant within ninety calendar days of the date of hearing request. [Eff 12/5/97] (Auth: HRS §346-14) (Imp: HRS §346-12)

§17-1402-10 Status of social services recipients pending hearing. (a) When a signed written request for a hearing is received from a social services recipient, entitled to timely notice, before the date of action, the date on which services shall be reduced or terminated, no action shall be taken to reduce or terminate social services until a hearing decision is rendered, unless:

- (1) The claimant withdraws or abandons the request for hearing as specified in section 17-1402-9;
- (2) A determination is made at the hearing that the sole issue involved is one of state or federal law or policy, or change in state or federal law and not one of incorrect service cost computation;
- (3) Another change affecting the claimant's services occurs during the hearing process and the claimant fails to request a hearing after notice of the change; or
- (4) The recipient specifically requests not to receive continued service pending a hearing decision.

(b) The department shall notify the claimant in writing if service is to be reduced or discontinued

pending the hearing decision for reasons, specified in subsection (a), other than withdrawal or abandonment of the request by the claimant.

(c) In any case where only adequate notice is required, if the recipient requests a hearing within ten calendar days of the mailing of the adequate notice of the action, assistance shall be reinstated and continued until a decision is rendered after the hearing unless:

- (1) Action was due to application of state or federal law or policy or a change in state or federal law; or
- (2) The recipient specifically requests that continued assistance not be paid pending the hearing decision.

If the tenth day falls on a weekend or holiday, the tenth day shall be the working day following the weekend or holiday.

(d) If, while receiving aid paid pending, the claimant:

- (1) Becomes eligible for additional assistance, services shall be increased; or
- (2) Provides a written request for but is denied additional assistance, aid paid pending shall continue and a notice of the denial shall be provided. The notice shall include a statement of the denial, reason for the denial, specific rule supporting the denial and the person's right to appeal the decision. [Eff 12/5/97] (Auth: HRS §346-14) (Imp: HRS §346-12)

§17-1402-11 The hearing. (a) The hearing shall include consideration of:

- (1) Any adult and community care services branch adverse action on a claim for social services which includes the department's:
 - (A) Failure to determine eligibility or make a payment within time limits set by the specific public assistance programs;
 - (B) Refusal to consider a request for or failure to make a payment adjustment within time limits set by the specific public assistance programs; or

- (C) Discontinuance, termination, suspension, withholding, or reduction of the assistance; and
- (2) Any adult and community care services branch decision regarding:
 - (A) Eligibility for public assistance in both initial and subsequent determinations;
 - (B) Amount of public assistance or change in payment;
 - (C) The method of payment, including restricted or protective payments; or
 - (D) Conditions of payment.
- (b) The claimant shall be required to appear in person at the hearing unless authorization for an authorized representative was received by the department. When mutually agreed upon by the applicant or recipient and the department, a hearing may be conducted over the telephone. Unless both the department and the claimant agree to the presence of other individuals, the hearing officer or other person conducting the hearing shall limit attendance to the following individuals necessary for the conduct of the hearing:
 - (1) The claimant, the authorized representative, or both, interpreter, if any, legal counsel, and witnesses;
 - (2) Representatives of the adult and community care services branch;
 - (3) Representatives of the social services division; and
 - (4) Hearing officer and members of the hearing office staff.
- (c) An interpreter shall be provided by the department when requested by the claimant.
- (d) The claimant or the authorized representative shall, upon request, be able to examine the case record as well as all available documentary evidence that shall be used by the department at the hearing as specified in section 17-1402-5.
- (e) The hearing shall be conducted at a reasonable time, date, and place and shall generally be held in the geographic area where the claimant is living at the time of the hearing. The hearing shall be conducted at a location specified by the hearing officer unless the claimant is unable to travel to the site because of health or transportation problems.

(f) The decision of the hearing officer shall be based exclusively on evidence and other material introduced at the hearing. If, after a hearing has begun, additional evidence is necessary for the proper determination of the case, the hearing officer may:

- (1) Continue the hearing at a later date. The hearing officer may order further investigation and may direct either party to produce additional evidence; or
- (2) Close the hearing and hold the record open for a period not to exceed thirty days to permit the receipt of additional documentary evidence. [Eff 12/5/97] (Auth: HRS §346-14) (Imp: HRS §346-12)

§17-1402-12 Group hearings. A series of individual requests for a hearing may be consolidated into a single group hearing when the sole issue involved is one of state or federal law or policy, or changes in state or federal law. Each individual shall be permitted to present the individual's own case or be represented by an authorized representative. [Eff 12/5/97] (Auth: HRS §346-14) (Imp: HRS §346-12)

§17-1402-13 Hearing decision. (a) All matters relating to the hearing shall be heard and disposed of within ninety calendar days from the date of request for a hearing except when the hearing is continued or the record is held open as specified in section 17-1402-11. The time limit shall be extended only for the period of the continuance.

(b) Unless the record is held open for additional documentary evidence, after closing the hearing, the hearing officer shall prepare the decision in writing. The decision shall contain a statement concerning the claimant's right to judicial review, the reasons for the decision, the evidence, and the rules supporting the decision. A copy of the written decision shall be provided the claimant or the authorized representative and the adult and community care services branch.

(c) The transcript, recording, or an official record containing the substance of the hearing proceedings, together with all papers filed in the proceeding and the hearing officer's decision shall constitute the exclusive record and shall be maintained

in the hearing office. The record shall be made available to the claimant or the authorized representative during normal business hours through the hearing office.

(d) The unit shall comply with the hearing decision immediately upon receipt of the decision.

(1) When the hearing decision is favorable to the claimant, the unit shall promptly make necessary corrective payments, retroactive to the date the incorrect action was taken, and shall notify the hearing office, in writing, of the action and the date the action was taken.

(2) If the hearing decision is in favor of the claimant on the issue involved but, for technical reasons such as computer problems, immediate corrective payments are not made, the notice to the hearing officer shall include a statement of why the unit could not immediately comply with the decision.

(3) The hearing officer shall review the notice to assure that the unit has correctly complied with the decision.

(e) All hearing decisions shall be accessible to the public, subject to provision of safeguarding public assistance information stated in section 346-10, HRS, and the confidentiality provisions specified in chapter 17-1401. [Eff 12/5/97] (Auth: HRS §346-14) (Imp: HRS §346-12)

§17-1402-14 Decisions pending over ninety days.

(a) When a final decision has not been made and implemented within ninety calendar days of the request, the department shall restore any amount by which the individual's monthly assistance had been reduced, grant any assistance which had been denied, or restore or grant any service which was reduced or denied, if the individual is not already receiving aid paid pending. When the hearing decision is pending over ninety days, aid paid shall be determined in accordance with subsections (d) and (e).

(b) The hearing officer shall notify the social services worker orally on the ninety-first day when a final decision is not reached within ninety days. If the ninety-first day falls on a weekend or holiday, the ninety-first day shall then be the working day

following the weekend or holiday. A written confirmation shall be sent within three working days.

(c) In situations where a claimant has requested or is otherwise responsible for a delay in the hearing process, the time period shall be tolled only for the period of the delay.

(d) The social services worker shall review current need and eligibility factors exclusive of the issue on appeal. If the claimant is found to be currently eligible, the amount of help by which the monthly assistance was reduced or denied shall be restored or provided from the ninety-first day within five working days after oral notice is received from the hearing officer. The following action shall be taken to restore the assistance or social services:

- (1) When assistance is denied or payment terminated, the amount of assistance shall be determined as follows:
 - (A) When the ninety-first day is between the first and fifteenth day of the month, the monthly assistance payment shall be provided; or
 - (B) When the ninety-first day is between the sixteenth and the end of the month, one-half the monthly assistance payment shall be provided;
- (2) When assistance or social services are reduced, the amount of assistance or social services shall be restored to the previous level until a final decision is made, provided the claimant remains eligible and no other payment changes become necessary; and
- (3) Assistance shall continue until a final decision is made.

(e) If, for reasons exclusive of the issue pending hearing, the department determines that the claimant is ineligible to receive assistance or social services, the department shall reduce or deny the assistance or social services on or after the ninety-first day of the hearing request. The social services worker shall prepare and mail a notice indicating the reasons for not restoring assistance or social services pending the final hearing decision. [Eff 12/5/97]
(Auth: HRS §346-14) (Imp: HRS §346-12)

§17-1402-15 Recovery of aid paid pending. (a) Aid paid pending a hearing decision from the date aid paid pending begins through the ninetieth day shall be recoverable by the department if the department's action is sustained. For social services, the overpayment and recoupment provisions of chapter 17-1416 shall apply.

(b) If, for reasons other than a settlement negotiated by the state attorney general's office, the individual withdraws or abandons the request as specified in section 17-1402-9, the department shall recover the aid paid pending the hearing decision. [Eff 12/5/97] (Auth: HRS §346-14) (Imp: HRS §§346-12, 346-44)