

Department of Human Services

Adoption of Chapter 17-1602

Hawaii Administrative Rules

March 31, 2025

1. Chapter 17-1602, Hawaii Administrative rules, entitled "Hearings", is adopted to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 11

CHILD WELFARE SERVICES BRANCH

CHAPTER 1602

HEARINGS

§17-1602-1	Purpose
§17-1602-2	Definitions
§17-1602-3	Informal review
§17-1602-4	Right to a hearing
§17-1602-5	Rights of the claimant
§17-1602-6	Request for hearing
§17-1602-7	Unit responsibility
§17-1602-8	Responsibility of hearing office

§17-1602-1

§17-1602-9 Denial or dismissal of a request for
hearing
§17-1602-10 Status pending hearing decision
§17-1602-11 The hearing
§17-1602-12 Group hearings
§17-1602-13 Hearing decision
§17-1602-14 Hearing decisions pending over one
hundred and twenty days
§17-1602-15 Recovery of aid paid pending a hearing
decision

§17-1602-1 Purpose. The purpose of this chapter is to set forth the process for administrative hearings to dispute adverse actions taken by the Child Welfare Services (CWS) Branch. [Eff]
(Auth: HRS §346-14) (Imp: HRS §§346-12, 346-14; 42 U.S.C §5106a(b) (2) (B) (XV))

§17-1602-2 Definitions. As used in this chapter:

"Adverse action" means, unless prohibited by federal law:

- (1) The denial or failure to act with reasonable promptness on an application submitted under title 17, subtitle 11, for child welfare services payments;
- (2) The suspension, reduction, or termination of child welfare services payments provided as a result of an application approved under title 17, subtitle 11;
- (3) The denial, suspension, or revocation of a certificate of approval as a resource family home, child placing organization, or child caring institution;
- (4) Confirmation by the department that an individual is the perpetrator of child abuse

- or neglect, harm, or threatened harm as part of the department's disposition of a report the department received pursuant to chapter 350 or 587A, Hawaii Revised Statutes (HRS);
- (5) The denial of a request for expungement of an individual's name from the child abuse and neglect central registry pursuant to chapter 17-1605; or
 - (6) The decision of the department that an individual does not have a right to a hearing consistent with this chapter.
 - (7) Any other determinations for which the department is obligated by law or regulation to provide a notice and opportunity to be heard in accordance with chapter 91, HRS, for programs under title 17, subtitle 11.

"Aid paid pending a hearing decision" means the continuation or reinstatement of child welfare services payments between the date of timely request for a hearing and the date the hearing decision is made.

"Applicant" means an individual applying for or requesting child welfare services payments or a certificate of approval as a resource family home, a child placing organization, or a child caring institution.

"Authorized representative" means a person designated in writing by the claimant to act for and represent the claimant in any and all aspects of an administrative hearing under this chapter. A guardian appointed by court order shall be considered a claimant's authorized representative upon showing proof of the appointment.

"Child welfare services" means the same as defined in section 346-1, HRS, and shall include any actions taken by the department consistent with this chapter.

"Child welfare services payments" means payments provided as a result of an application approved under title 17, subtitle 11, for the protection, care, and permanency of abused and neglected children. This

includes, but is not limited to, difficulty of care and permanency payments.

"Claimant" means an applicant, recipient, or perpetrator who has requested, in writing, an informal review or a hearing to dispute an adverse action.

"Confirmed" means that, following an investigation conducted by the department, the department determined by a preponderance of the evidence that a person was a perpetrator of child abuse or neglect, harm, or threatened harm.

"Date of hearing request" means the date of the department's receipt of a signed written request for a hearing by the claimant or the claimant's authorized representative.

"Department" means the department of human services.

"Hearing" or "administrative hearing" means an administrative proceeding that affords a claimant an opportunity to dispute an adverse action before an impartial hearing officer in accordance with chapter 91, HRS.

"Hearing office" means the administrative appeals office of the department of human services.

"Hearing officer" means an impartial person authorized by the director of human services to conduct hearings on behalf of the department. The hearing officer shall not have been involved in the adverse action.

"Informal review" means a review conducted pursuant to 17-1602-3.

"Perpetrator" means a person the department has confirmed to have harmed a child or threatened a child with harm.

"Recipient" means any person receiving child welfare services payments or a child welfare service the person is legally entitled to receive.

"Request for hearing" means a clear, written statement by the claimant or authorized representative that the claimant wants a hearing to dispute a CWS Branch adverse action.

"Unit" means an office within the CWS Branch that provides child welfare services. [Eff]

(Auth: HRS §§346-14) (Imp: HRS §346-12; 42 U.S.C §5106a(b) (2) (B) (XV))

§17-1602-3 Informal review. (a) A claimant may request an informal review from CWS Branch before or after filing a request for a hearing. A claimant is not required to seek an informal review before filing a request for a hearing and a request for an informal review does not toll or suspend the time period within which to request a hearing.

(b) A request for an informal review may be made to the following individuals at CWS Branch:

- (1) The child welfare services worker;
- (2) The unit supervisor; or
- (3) The section administrator.

(c) When the request for an informal review is received, orally or in writing, the claimant shall be given the opportunity to discuss the reasons for the adverse action and to present information to show that the adverse action is incorrect. CWS Branch shall take corrective action if necessary.

(d) If claimant wants to complete the informal review prior to a hearing, then claimant must make a timely request for a hearing pursuant to 17-1602-6 and request a continuance of the hearing to complete the informal review. The hearing is not required to be continued to complete the informal review and any continuance is at the discretion of the hearing officer. [Eff] (Auth: HRS §346-14)
(Imp: HRS §346-14)

§17-1602-4 Right to a hearing. (a) Every claimant shall be provided an opportunity for a hearing if dissatisfied with any CWS Branch adverse action.

(b) Every claimant filing a request for hearing shall have the right to submit a written statement 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 claimant's behalf.

(c) A claimant shall be informed in writing at the time of any adverse action:

- (1) Of the action taken by CWS Branch and the status of any case or payment resulting from the adverse action;
- (2) Of the claimant's right to a hearing;
- (3) Of the method for obtaining a hearing; and
- (4) That a claimant may present the appeal independently or be represented by an authorized representative such as legal counsel, relative, friend, or any other person of the claimant's choice. [Eff
] (Auth: HRS 346-14) (Imp:
HRS §§91-9, 346-12; 42 U.S.C §671(a)(12))

§17-1602-5 Rights of the claimant. (a) The claimant or the authorized representative shall have an opportunity to:

- (1) Examine the claimant's case file, and any 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, in accordance with the department's confidentiality provisions specified in chapter 17-1601;
- (2) Present the case independently or with the aid of others including legal counsel;
- (3) Bring witnesses;
- (4) Request an interpreter which shall be provided by the department during the hearing process if the claimant has limited English language proficiency;
- (5) Establish all pertinent facts and circumstances;

- (6) Advance any arguments appropriate to the issue being heard without undue interference;
- (7) Question or refute any testimony or evidence, and to confront and cross-examine any witness present at the hearing; and
- (8) Request that the assigned hearing officer issue a subpoena for a witness or for documents.

(b) Nothing in this section creates any obligation on the department to have present any witnesses at the hearing. [Eff]
(Auth: HRS §346-14) (Imp: HRS §§91-9, 91-10, 346-12)

§17-1602-6 Request for hearing. (a) Unless otherwise provided by law or rule, a request for a hearing shall be received by the department within ninety calendar days of the date of the notice informing the claimant of a CWS Branch adverse action and shall refer to that specific adverse action. If the ninetieth day falls on a weekend or holiday, the ninetieth day shall then be the working day following the weekend or holiday.

(b) If a CWS Branch unit receives a claimant's written request for a hearing, the unit shall immediately determine whether the request was received within the time period specified in this section and shall submit the request to the hearing office. The unit shall enter on the request the claimant's name, case number, and date the request was received. If the claimant is a court appointed guardian, the unit shall require verification of the guardian's legal status. The unit shall indicate the claimant's guardian status on the request.

(c) If the hearing office receives a claimant's written request for a hearing, the request shall be date-stamped and immediately forwarded to the unit

§17-1602-6

that initiated the adverse action. The unit shall immediately determine whether the request was received within the time period specified in this section.

(d) If the request was not filed within ninety calendar days of the date of the notice, the department shall deny the request pursuant to section 17-1602-9.

(e) The unit shall notify the hearing office and verify whether the request for hearing will be denied pursuant to section 17-1602-9, has reached satisfactory resolution through informal review, or will have a hearing proceed forward. [Eff

] (Auth: HRS §346-14) (Imp: HRS §346-12)

§17-1602-7 Responsibility of the CWS Branch units. (a) When the unit assists the claimant in requesting a hearing, the unit shall inform the claimant of the right to legal counsel and inform the claimant of legal resources in the community.

(b) The unit shall review all requests for hearing to assure that the department's determination on the adverse action was correct. If the department determines that there is insufficient basis for the adverse action and the department's determination should be changed, the unit shall promptly take necessary corrective action.

(c) The unit shall remain in contact with the claimant and shall immediately notify the hearing office of any change in address or circumstances that may affect the need for a hearing. [Eff

] (Auth: HRS §346-14) (Imp: HRS §346-12)

§17-1602-8 Responsibility of the hearing office. (a) The hearing office shall accept:

- (1) Any request for hearing received at the hearing office; and
 - (2) All requests for hearing received by the CWS Branch units.
- (b) The hearing office shall acknowledge the request for a hearing in writing to the claimant, within fifteen calendar days of the date the hearing request was received, that shall inform the claimant of a right to:
- (1) Prompt administrative action;
 - (2) Issuance of a hearing decision within one hundred and twenty calendar days of the date of the hearing request; and
 - (3) Receive any child welfare services payments that had been reduced or denied if a final decision has not been made within one hundred and twenty calendar days of the date of hearing request and the claimant is not already receiving aid paid pending a hearing decision pursuant to section 17-1602-10(a).
- (c) The hearing office shall 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 to the claimant or authorized representative by registered or certified mail 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. [Eff _____] (Auth: HRS §346-14) (Imp: HRS §§91-9, 91-9.5)

§17-1602-9 Denial or dismissal of a request for hearing. (a) The department shall deny a request for hearing:

- (1) When either federal or state law requires an automatic adjustment for classes of recipients of child welfare services payments, unless the appeal is for an incorrect computation of the adjustment consistent with federal or state law;
- (2) Due to a denial, reduction, suspension, or termination of child welfare services payments by the department when the department's action is a result of a loss of funding to the department requiring the department to reallocate available funds to different budget priorities;
- (3) When the claimant has withdrawn the request in writing. When a claimant verbally requests to withdraw the hearing request, the claimant shall be advised to submit the withdrawal in writing; provided that if the claimant prefers, the department shall confirm the claimant's request to withdraw in writing to the claimant;
- (4) For matters falling under the provisions of chapter 587A, HRS, or any other matters within the exclusive original jurisdiction of the family court pursuant to 571-11, HRS, that have been heard in family court, are pending before the family court, or relate to a family court proceeding. The person requesting a hearing shall be informed that the family court has jurisdiction of the matter;
- (5) If the request is not received within ninety days of the adverse action pursuant to section 17-1602-6 or other time specified in rules for a specific program;
- (6) If the hearing was requested through an authorized representative and the claimant

fails to confirm with the department, in writing, within thirty days of the request for hearing, that the authorized representative is authorized to act on their behalf;

- (7) If the claimant is not entitled to a hearing pursuant to section 17-1605-23; or
- (8) If the person requesting a hearing is not entitled to a hearing because the person is not the subject of an adverse action.

(b) The unit shall determine whether the request for hearing is based on action taken by the department as a result of subsection (a) and, if so, the unit shall send written notice to the claimant that their request for a hearing has been denied and that claimant can request a hearing regarding whether the department's denial of the request was proper. The unit shall provide a copy of the written notice to the hearing office.

(c) The hearing office shall dismiss a hearing 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 office shall send the claimant a notice stating that the hearing request is considered abandoned unless there was good cause for the claimant's failure to appear. The claimant shall be notified that the hearing shall be rescheduled only if the claimant contacts the agency within ten calendar days of the date of the notice and presents good cause for the failure to appear or for the departure from the hearing that had commenced. If no reply is received within the ten calendar days, the hearing request shall remain 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 that one of the following factors has been verified:
- (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.
- (d) When a request for a hearing is denied or dismissed, the claimant shall be informed in writing of the reasons for the denial or dismissal within ninety calendar days of the date of hearing request.
- [Eff _____] (Auth: HRS §346-14) (Imp: HRS §346-12)

§17-1602-10 Status pending hearing decision.

- (a) When a signed written request for a hearing is received from a claimant before the date on which child welfare services payments shall be reduced, suspended, or terminated, no adverse action shall be taken until a written decision is rendered after the hearing, unless:
- (1) The claimant withdraws or abandons the request for hearing as specified in section 17-1602-9;
 - (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 child welfare services payment amount computation;
 - (3) Another change affecting the claimant's child welfare services payments occurs and the claimant fails to request a hearing after receiving a notice of adverse action regarding this change;
 - (4) The claimant specifically requests not to receive continued child welfare services payments pending a hearing decision.
- (b) If the hearing request relates to the suspension or revocation of a license or

certification, the unit shall notify the claimant in writing if the license or certification will be suspended or revoked pending the hearing decision. In the event of a suspension or revocation of a license or certification, foster board maintenance payments shall be terminated when the child is no longer residing in the placement, in accordance with section 17-1617-13.

(c) If, while receiving aid paid pending a hearing, the claimant:

- (1) Becomes eligible for additional child welfare services payments, the payments shall be increased; or
- (2) Provides a written request for but is denied additional child welfare services payments, aid paid pending a hearing decision shall continue and a notice of the denial of the request for additional child welfare services payments 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
] (Auth: HRS §346-14)
(Imp: HRS §346-12)

§17-1602-11 The hearing. (a) For the hearing, the claimant shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion; provided that for a hearing to contest the confirmation by the department that an individual is the perpetrator of child abuse or neglect, harm, or threatened harm, pursuant to chapter 350 or 587A, HRS, the department shall have the burden of proof. The degree or quantum of proof in any administrative hearing shall be a preponderance of the evidence, unless otherwise required by law or administrative rule.

(b) The claimant shall be required to appear in person at the hearing; provided that the claimant

shall not be required to appear in person if authorization for an authorized representative was received by the department, and the claimant delegates the authorized representative to attend in lieu of the claimant. When the authorized representative appears in lieu of the claimant the authorized representative shall be subject to questioning from the department and the hearing officer. Appearing in person may include the claimant's participation by video conference or telephone conference, as specified by the hearing office.

(c) 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 and the claimant's authorized representative, interpreter, legal counsel, and witnesses;
- (2) Representatives of the department, and the department's legal counsel and witnesses; and
- (3) The hearing officer and members of the hearing office staff.

(d) The department shall provide an interpreter when requested by the claimant.

(e) At a reasonable time, but no less than five working days prior to the hearing, the claimant or the claimant's authorized representative shall provide to the department all evidence that may be used at the hearing, including the names of witnesses and any person who will attend the hearing and copies of all exhibits, documents, or other tangible evidence.

(f) The hearing shall be conducted at a reasonable time, date, and place. The hearing shall be conducted at a location or in a manner specified by the hearing office.

(g) Except as provided in subsection (h), the decision of the hearing officer shall be based exclusively on testimony and evidence and other material introduced at the hearing, including

judicially recognizable facts, and a review of the applicable statutes and department rules.

(h) If, after a hearing has begun, the hearing officer determines that additional time is necessary for the proper determination of the case, the hearing officer may:

- (1) Continue the hearing to a later date. The hearing officer may order further investigation and may direct either party to produce additional evidence; or
- (2) Close the hearing but hold the record open for a reasonable time to permit the receipt of additional evidence. [Eff]
(Auth: HRS §§91-9, 91-10, and 346-14) (Imp: HRS §§91-9, 91-10, and 346-12)

§17-1602-12 Group hearings. A series of claimants' requests for a hearing may be consolidated into a single group hearing at the discretion of the department when the sole issue involved is one of state or federal law or policy, or changes in state or federal law. Each claimant shall be permitted to present their own case or be represented by an authorized representative. [Eff]
(Auth: HRS §346-14) (Imp: HRS §346-14)

§17-1602-13 Hearing decision. (a) All matters relating to the hearing shall be heard and disposed of within one hundred and twenty calendar days from the date of hearing request or the date the claimant or the authorized representative submits a confirmation of the authorized representative's authority, whichever is later. The one hundred and twenty calendar days can be extended when the hearing is continued or the record is held open as specified in section 17-1602-11. The time limit for the decision shall be extended only for the period of the continuance or the period the record is held open.

(b) Unless the record is held open for additional evidence, the hearing officer shall prepare the decision in writing after closing the hearing. The decision shall contain a statement concerning the claimant's right to judicial review, the reasons for the decision, an explanation of the significant evidence upon which the hearing officer relied, and the rules supporting the decision. A copy of the written decision shall be provided to the claimant or the claimant's authorized representative, and the department.

(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 by the hearing office. The record shall be made available to the claimant or the claimant's 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; provided that the timeframes in this subsection shall not apply if any party appeals the decision for judicial review pursuant to section 91-14, HRS.

- (1) When the hearing decision is favorable to the claimant, the unit shall promptly make necessary corrections, after the time for appeal has passed and no stay is granted by the circuit court. The corrective action shall be retroactive to the date the incorrect action was taken, and the unit shall notify the hearing office, in writing, of the action and the date the action was taken; provided that if there are technical reasons such as computer problems that prevent immediate corrective action, the notice to the hearing office shall include a statement of why the unit could not immediately comply with the decision. The hearing office shall review the notice to

ensure that the unit has correctly complied with the decision.

- (2) When the hearing decision is in favor of the department, any overpayment made to the

claimant shall be recovered in accordance with department rules and procedures.

(e) All hearing decisions shall be accessible to the public, subject to the safeguarding of information specified in section 346-10, HRS, and the department's confidentiality provisions specified in chapter 17-1601. [Eff] (Auth: HRS §346-14)
(Imp: HRS §346-12)

§17-1602-14 Hearing decisions pending over one hundred and twenty days. (a) When a final hearing decision on the denial, suspension, or termination of child welfare services payments has not been made and implemented within one hundred and twenty calendar days of the request for hearing, and the claimant is not already receiving aid paid pending a hearing decision for child welfare services payments specified under section 17-1602-10(a), the department shall restore any amount by which the claimant's child welfare services payments were reduced, suspended, terminated, or denied, until a final decision is made.

(b) The hearing office shall notify the child welfare services worker orally on the one hundred and twenty-first day when a final decision is not reached within one hundred and twenty days. If the one hundred and twenty-first day falls on a weekend or holiday, the one hundred and twenty-first day shall then be the working day following the weekend or holiday. A written confirmation shall be sent within three working days.

(c) If the record is held open by the hearing officer, or there is a delay in the hearing process, the one hundred and twenty-day deadline shall be extended for an equal time period.

terminate, suspend, or deny child welfare services payments is sustained by a hearing decision, the amount of aid paid pending a hearing decision which has been paid to the claimant shall be recoverable by the department.

(b) If the claimant withdraws or abandons the request for a hearing to challenge a termination, suspension, or denial of child welfare services payments as specified in section 17-1602-9, the department shall recover the aid paid pending, except when there is a settlement negotiated to the effect that the claimant does not have to repay the department for aid paid pending." [Eff
] (Auth: HRS §346-14) (Imp: HRS
§§346-12, 346-44).