

HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 6 BENEFIT, EMPLOYMENT AND SUPPORT SERVICES
DIVISION

CHAPTER 602.1

HEARINGS

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Historical Note: This chapter is based substantially upon chapter 17-602 [Eff 7/19/82; am 7/6/83; am 7/18/83; am 9/29/86; R 3/19/93; am and comp 9/18/06] chapter 17-724 [Eff 7/19/82; am 10/2/82; am 7/5/83; am 10/1/53; am 7/23/84; am 8/25/90; R 3/19/93]

SUBCHAPTER 1

PURPOSE

§17-602.1-1 Purpose. The purpose of this chapter shall be to establish the administrative provisions of the hearing process including the responsibilities of the DHS-BESSD 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 DHS-BESSD action or inaction and the time a final hearing decision is implemented. [Eff 3/19/93; am and comp 9/18/06] (Auth: HRS §346-14) (Imp: HRS §§346-12, 346-14(9); 45 C.F.R. §205.10; 7 C.F.R. §273.15)

SUBCHAPTER 2

FINANCIAL ASSISTANCE AND SUPPORT SERVICES PROVISIONS

§17-602.1-2 Definitions. As used in this subchapter:

"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, or a change to protective or vendor payments as specified in chapter 17-680.

"Aid paid pending a hearing decision" means the continuation or reinstatement of public assistance paid to 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 DHS-BESSD's 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.

"DHS-BESSD" means department of human services, benefit, employment and support services division.

"Date of hearing request" means the date of DHS' 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 branch welfare office 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 a DHS-BESSD action of denying, reducing, discontinuing, terminating, suspending, withholding assistance, changing the method of payment to protective or vendor payments, not acting on a claim for assistance with reasonable promptness, or determining an overpayment amount.

"Support service" means child care, transportation and work expenses. [Eff 3/19/93; am and comp 9/18/06] (Auth: HRS §346-14; 45 C.F.R. §205.10) (Imp: HRS §346-12; 45 C.F.R. §205.10)

§17-602.1-3 Informal Review. (a) A dissatisfied individual may request an informal review from the branch welfare office 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 eligibility or support 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 subchapter. [Eff 3/19/93; am and comp 9/18/06] (Auth: HRS §346-14(9); 42 U.S.C. §601-610; 45 C.F.R. §205.10) (Imp: HRS §346-12)

§17-602.1-4 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 DHS-BESSD 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 DHS-BESSD 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 3/19/93; am and comp 9/18/06] (Auth: HRS §346-14(9); 42 U.S.C. §601-610; 45 C.F.R. §205.10) (Imp: HRS §346-12; 42 U.S.C. §601-610; 45 C.F.R. §205.10)

§17-602.1-5 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 3/19/93; comp 9/18/06] (Auth: HRS §346-14(9); 42 U.S.C. §601-610; 45 C.F.R. §205.10) (Imp: HRS §346-12; 42 U.S.C. §601-610; 45 C.F.R. §205.10)

§17-602.1-6 Action on request for a hearing. (a) When a claimant's written request for a hearing is received by the branch, the branch 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 branch 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 branch shall require verification by the appropriate court documents. The branch 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 branch and the branch 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 a DHS-BESSD 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 branch shall mail a notice of denial to the claimant.

(e) When the requirements specified in sections 17-602.1-10, 17-602.1-11, or 17-602.1-12 are met, the branch shall reinstate or continue assistance. [Eff 3/19/93; am and comp 9/18/06] (Auth: HRS §346-14(9); 42 U.S.C. §601-610; 45 C.F.R. §205.10) (Imp: HRS §346-12; 42 U.S.C. §601-610; 45 C.F.R. §205.10)

§17-602.1-7 Branch responsibility. (a) When the branch assists the applicant or recipient in filing for the hearing, the branch 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 branch 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 branch shall promptly take necessary corrective action.

(c) The branch 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 3/19/93; am and comp 9/18/06] (Auth: HRS §346-14(9); 42 U.S.C. §601-610; 45 C.F.R. §205.10) (Imp: HRS §346-12; 42 U.S.C. §601-610; 45 C.F.R. §205.10)

§17-602.1-8 Responsibility of the hearing office.

(a) The hearing office shall accept:

- (1) Any request directly at the hearing office;
and

(2) All requests cleared through income maintenance or support 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 an 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 branch 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 branch;
- (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 DHS-BESSD 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 3/19/93; am and comp 9/18/06] Auth: HRS §346-14(9); 42 U.S.C. §601-610; 45 C.F.R. §205.10) (Imp: HRS §§91-9, 91-9.5, 346-12; 42 U.S.C. §601-610; 45 C.F.R. §205.10)

§17-602.1-9 Denial or dismissal of a request for a 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 branch 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 branch.

(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 3/19/93; comp 9/18/06] (Auth: HRS §346-14(9); 42 U.S.C. §601-610; 45 C.F.R. §205.10) (Imp: HRS §346-12; 42 U.S.C. §601-610; 45 C.F.R. §205.10)

§17-602.1-10 Payment status of financial assistance recipients pending hearing. (a) Unless the provisions of subsection (b) apply, no adverse action shall be taken until a hearing decision is rendered when a signed written request for a hearing is received from a:

- (1) Financial assistance recipient, subject to reporting as described in chapter 17-650, if the request is received within ten calendar

- days from the date of the notice of adverse action to be taken on the basis of information obtained from the completed report. If the tenth day falls on a weekend or holiday, the tenth day shall be the working day following the weekend or holiday;
- (2) General Assistance (GA) or Assistance to the Aged, Blind, or Disabled (AABD) recipient if the request is received within ten calendar days of the date of notice of adverse action to be taken on the basis of information secured from sources other than the report described in chapter 17-650. If the tenth day falls on a weekend or holiday, the tenth day shall be the working day following the weekend or holiday; or
 - (3) Recipient of financial assistance other than GA or AABD, if the request is received on or before the last day of the month preceding the effective month of an adverse action to be taken on the basis of information secured from sources other than the simplified report as described in chapter 17-650. The provisions of this paragraph apply only to individuals entitled to timely notice as specified in chapter 17-649. If the last day of the month falls on a weekend or holiday, the last day shall be the working day following the weekend or holiday.
- (b) When a signed written request for a hearing is received within the periods specified in subsection (a), no adverse action shall be taken until a hearing decision is rendered, unless:
- (1) The claimant withdraws or abandons the request for hearing as specified in section 17-602.1-9;
 - (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 grant computation;
 - (3) Another change affecting the claimant's grant occurs during the hearing process and the

claimant fails to request a hearing after notice of the change;

- (4) The recipient specifically requests not to receive continued assistance pending a hearing decision;
- (5) The household is ineligible due to receipt of a total of sixty calendar months of assistance under the aid to families with dependent children (AFDC) program as specified in section 17-656.1-3;
- (6) The issue involved is a change in monthly assistance allowance as specified in 17-678-3.01, and not one of incorrect grant computation;
- (7) The household is ineligible due to receipt of a total of four months of assistance under the grant diversion program as specified in section 17-656.2-33;
- (8) The household is ineligible for a Grant Diversion payment due to non-compliance with participation requirements;
- (9) The household is ineligible due to receipt of a total of sixty months of assistance under the employment subsidy program as specified in section 17-656.2-8; or
- (10) The household is denied eligibility for the following non-assistance programs:
 - (A) Grant+ program;
 - (B) Self-sufficiency program;
 - (C) Supporting employment empowerment program; or
 - (D) Employment bonus program.

(c) The department shall promptly notify the claimant in writing if assistance is to be reduced or discontinued pending the hearing decision for reasons, specified in subsection (b), other than withdrawal or abandonment of the request by the claimant.

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

- (1) Becomes eligible for additional assistance, payment 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.

- (e) 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;
 - (2) The recipient refuses to submit a report as described in chapter 17-650 by department's deadline;
 - (3) The recipient fails to submit a completed report as described in chapter 17-650 by department's deadline; or
 - (4) 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. [Eff 3/19/93; am 7/24/95; am 12/15/95; am 1/25/97; am 9/26/97; am and comp 9/18/06; am 1/17/08; am 8/07/09] (Auth: HRS §346-14; 42 U.S.C. §601-610; 45 C.F.R. §205.10) (Imp: HRS §346-12; 42 U.S.C. §601-610; 45 C.F.R. §§205.10, 233.37)

§17-602.1-11 REPEALED [R 8/01/94]

§17-602.1-12 Status of support services recipients pending hearing. Aid paid pending a hearing decision shall not be provided in support services payment cases. [Eff 3/19/93; am and comp 9/18/06] (Auth: HRS §346-14(9)) (Imp: HRS §346-12)

§17-602.1-13 The hearing. (a) The hearing shall include consideration of:

- (1) Any DHS-BESSD adverse action on a claim for financial assistance, or support services which includes the DHS-BESSD'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 DHS-BESSD 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, including work requirement.

(b) The claimant shall be required to appear in person at the hearing unless authorization for an authorized representative was received by the department. Appearing in person may include the claimant's participation in a video or telephone conference. Unless both DHS-BESSD 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 branch or unit office;
- (3) Representatives of DHS-BESSD; 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 17-602.1-5.

(e) The hearing shall be conducted at a reasonable time, date, and place and shall generally be held in the jurisdiction of the branch in which 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 3/19/93; am 8/1/94; am and comp 9/18/06](Auth: HRS §346-14(9); 42 U.S.C. §601-610; 45 C.F.R. §205.10) (Imp: HRS §346-12; 42 U.S.C. §601-610; 45 C.F.R. §205.10)

§17-602.1-14 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 3/19/93; comp 9/18/06] (Auth: HRS §346-14(9); 42 U.S.C. §601-610; 45 C.F.R. §205.10) (Imp: HRS §346-12; 42 U.S.C. §601-610; 45 C.F.R. §205.10)

§17-602.1-15 Hearing involving medical issues. When the hearing involves medical issues such as issues concerning a diagnosis, an examining physician's report, or a medical review team's decision, the hearing officer may require an additional medical assessment of the claimant. The assessment shall be conducted by someone other than the persons involved in making the original decision. The additional medical assessment shall be obtained at DHS-BESSD expense and shall be made part of the record. [Eff 3/19/93; am and comp 9/18/06] (Auth: HRS §346-14(9); 42 U.S.C. §601-610; 45 C.F.R. §205.10) (Imp: HRS §346-12; 42 U.S.C. §601-610; 45 C.F.R. §205.10)

§17-602.1-16 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 17-602.1-13(f). 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 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 branch shall comply with the hearing decision immediately upon receipt of the decision.

(1) When the hearing decision is favorable to the claimant, the branch 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 branch could not immediately comply with the decision.
- (3) The hearing officer shall review the notice to assure that the branch 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 department's confidentiality provisions specified in chapter 17-601. [Eff 3/19/93; comp 9/18/06] (Auth: HRS §346-14(9); 42 U.S.C. §601-610; 45 C.F.R. §205.10) (Imp: HRS §346-12; 42 U.S.C. §601-610; 45 C.F.R. §205.10)

§17-602.1-17 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 eligibility worker or support 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 eligibility or support 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 support 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 financial 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 financial assistance payment shall be provided;
- (2) When assistance or support services are reduced, the amount of assistance or support 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 support services, the department shall reduce or deny the assistance or support services on or after the ninety-first day of the hearing request. The EW or support services worker shall prepare and mail a notice indicating the reasons for not restoring assistance or support services pending the final hearing decision. [Eff 3/19/93; am 8/1/94; am and comp 9/18/06] (Auth: HRS §346-14(9); 42 U.S.C. §601-610; 45 C.F.R. §205.10) (Imp: HRS §346-12; 42 U.S.C. §601-610; 45 C.F.R. §205.10)

§17-602.1-18 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. The overpayment provisions of chapter 17-683 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 17-602.1-9, the department shall recover the aid paid pending the hearing decision. [Eff 3/19/93; am and comp 9/18/06] (Auth: HRS §346-14(9); 42 U.S.C. §601-610; 45 C.F.R. §205.10) (Imp: HRS §§346-12, 346-44; 42 U.S.C. §601-610; 45 C.F.R. §§205.10, 233.20)

§§17-602.1-19 to 17-602.1-22 (Reserved).

SUBCHAPTER 3

FOOD STAMP PROVISIONS

§17-602.1-23 Definitions. As used in this subchapter:

"Documentary evidence" means material contained or certified in writing that tends to establish the truth or falsity of the matter in issue.

"Hearing request" means any clear expression, oral or written, by the household or its authorized representative to the effect that it wishes to appeal a decision or that an opportunity to present its case to a higher authority is desired. [Eff 3/19/93; comp 9/18/06] (Auth: HRS §346-14) (Imp: 7 C.F.R. §271.2)

§17-602.1-24 Basis for hearings. (a) A household which feels aggrieved by any branch action which affects the household's participation in the food stamp program (FSP) may request a hearing. The request may be made orally or in writing by a household member, the household's authorized representative, or some

other person acting on the household's behalf, such as a legal representative, relative, or friend.

(b) The branch shall not limit or interfere with the household's right to request a hearing in any way.

(c) Hearing requests may be made on occasions, including but not limited to the following, when the household has:

- (1) Been denied the opportunity to complete an application for food stamps;
- (2) Completed an identifiable application but has not received a decision regarding eligibility within thirty days of the receipt of the application;
- (3) Been denied food stamps but feels that the household is eligible;
- (4) Received notice that its food stamps have been, or may be, reduced or terminated;
- (5) Been notified of entitlement to restoration of benefits lost within the previous twelve months and disagrees with the amount of entitlement; or
- (6) Disagrees with the amount of the fraudulent claim.

(d) Hearing requests to contest the setoff of State income tax refunds shall be processed as specified in chapter 17-606. [Eff 3/19/93; comp 9/18/06] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.15(a))

§17-602.1-25 Notification of right to request hearings. (a) At the time of application, each household shall be informed in writing of its right to a hearing, of the method by which a hearing may be requested, and that its case may be presented by a household member or a representative, such as a legal counsel, a relative, a friend, or other spokesperson.

(b) In addition, at any time the household expresses to the branch that it disagrees with a department action, the household shall be reminded of the right to request a hearing.

(c) If there is an individual or organization available that provides free legal representation, the household shall also be informed of the availability of

that service. [Eff 3/19/93; comp 9/18/06] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.15(a))

§17-602.1-26 Time period for requesting hearing.
 A household shall be allowed to request a hearing on any action by the branch or loss of benefits which occurred in the prior ninety days. Action by the branch shall include a denial of a request for restoration of any benefits lost more than ninety days but less than a year prior to the request. A household may also contact the branch at any time and request that the household's case file be reviewed to determine if a loss of benefits occurred within the past twelve months. If there is a disagreement between the branch and the household regarding the amount of lost benefits, the household shall have ninety days from that date to request a hearing. The request for hearing shall be based upon the disagreement resulting from the findings of the case file review. The hearing decision may rule on losses more than ninety days prior to the request for hearing. In addition, at any time within the certification period a household may request a hearing to dispute its current level of benefits. [Eff 3/19/93; comp 9/18/06] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.15(g) and (h))

§17-602.1-27 Timely action on hearings. (a)
 Within sixty days of receipt of a request for a hearing, the department shall conduct the hearing, make a decision, and notify the household and branch of the decision.

(b) Decisions which result in an increase in household benefits shall be reflected in the [coupon] allotment within ten days of the receipt of the hearing decision even if the branch must provide a supplementary ATP card or otherwise provide the household with an opportunity to obtain the allotment outside of the normal issuance cycle.

(c) The branch may take longer than ten days to implement the decision if it elects to make the decision effective in the household's normal issuance

cycle within sixty days from the household's request for the hearing.

(d) Decisions which result in a decrease in household benefits shall be reflected in the next issuance following receipt of the hearing decision.

(e) The household may request and is entitled to receive a postponement of the scheduled hearing. The postponement shall not exceed thirty days and the time for action on the decision shall be extended for as many days as the hearing is postponed. [Eff 3/19/93; comp 9/18/06] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.15(c))

§17-602.1-28 Prehearing conference. (a) The household shall be informed of its right to a prehearing conference with branch staff and of its right to a hearing if the household disagrees with the branch's plan to reduce, terminate, or deny benefits.

(b) The household or its authorized representative shall be notified of the time and place of the conference.

(c) During the conference, the household or its authorized representative shall have the opportunity to discuss the situation, receive additional explanation of the reasons for the proposed action, and present any information the household feels would support its position that the action should not be taken.

(d) The branch may be represented by the eligibility worker responsible for the branch's action, and a supervisor or the branch administrator shall attend the conference.

(e) If the branch determines the proposed action was in error, appropriate steps shall be taken to continue assistance in the correct amount or to establish eligibility.

(f) A household that requests a conference shall be advised that the conference is optional and that the conference does not in any way delay or replace the hearing process.

(g) Although a prehearing conference may lead to an informal resolution of the dispute, a hearing shall still be held unless the household makes a written withdrawal of its request for a hearing. [Eff 3/19/93;

am and comp 9/18/06] (Auth: HRS §346-14) (Imp: 7
C.F.R. §273.15(d))

§17-602.1-29 Expedited hearing and conference.

(a) The department shall expedite hearing requests from a household, where a decision must be reached before it normally would be. Hearing requests from the household shall be processed faster than others if necessary.

(b) A prehearing conference for a household contesting a denial of expedited service under chapter 17-647 shall be scheduled within two working days, unless the household requests that the conference be scheduled later or states that the household does not wish to have a prehearing conference. [Eff 3/19/93; comp 9/18/06] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.15(d))

§17-602.1-30 Assistance with hearing processing.

(a) When the household requests material to determine whether a hearing should be requested, the household's request may be in writing or may be oral.

(b) Upon oral or written request for a hearing, the branch shall make available without charge, the specific materials necessary for a household or its representative to prepare for a hearing.

(1) When a nonhousehold member who is not the household's legal or authorized representative requests relevant material on behalf of the household to assist the household in preparing for a hearing, the branch shall contact the household to verify whether the household has asked the person to make this request if there is no signed consent by the household.

(2) The branch or any other designated department representative shall determine which contents of the case file materials are relevant to the hearing and the relevant materials shall be copied and supplied to the household or its representative.

- (3) Relevant case file materials include the application form and documents of verification used by the branch in determining eligibility.
- (4) Confidential information which is protected from release shall not be copied or supplied to the household or its representative. Confidential information includes, but is not limited to:
 - (A) The names of individuals who have disclosed information about the household without its knowledge; and
 - (B) The nature or status of pending criminal prosecutions.

(c) If the individual requesting a hearing speaks a language other than English and the branch is required to provide bilingual staff or interpreters, the branch shall ensure that the hearing procedures are verbally explained in the language of the individual making the request. Upon request, the branch shall assist the household in preparing its case. The household may ask questions and may seek help from branch staff or the hearing officer at any time during the hearing. The branch shall also advise households of any free legal services available that may provide representation at the hearing.

(d) The department shall make the hearing rules available to any interested party. [Eff 3/19/93; am and comp 9/18/06] (Auth: HRS §346-14) (Imp: 7 C.F.R. §§273.15(i), 273.15(p))

§17-602.1-31 The hearing request. (a) When the household directs its request for a hearing to the branch, the request shall be forwarded immediately to the hearing office. The information forwarded shall include:

- (1) Name and address of the household;
- (2) Name and address of legal counsel or other representative;
- (3) Date of request;
- (4) Category and case number; and
- (5) A brief statement outlining the reasons for the request.

(b) The hearing request in no way alters the branch's obligation to continue the necessary contacts with the household which shall assure delivery of the food stamp benefits for which the household is eligible. When requested, a branch shall assist the household in preparing its case prior to a prehearing conference or a hearing. [Eff 3/19/93; comp 9/18/06] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.15(h))

§17-602.1-32 Branch prehearing preparation. (a) The branch shall submit to the hearing office a completed branch report which summarizes prehearing information within two weeks after receiving a hearing request.

(b) The branch may arrange an interview with the household as soon as possible after the hearing request is received if the protest being made is not clear. However, the branch shall not require the household to have the interview.

(c) The report shall be completed from the case file information and information supplied at the initial hearing request.

(d) When a household is in the process of transferring from one branch to another, the branch serving the area in which the household is residing shall prepare the report and shall represent the transferring branch in the hearing.

(e) The report shall state the branch's position in the action being protested. The report shall be completed in all areas relating to the issue in controversy. A copy of the report shall be sent to the household.

- (1) Any information made available to the hearing officer either from the case file or from other sources shall also be made available to the household.
- (2) The report shall not contain speculative or subjective statements and shall be prepared in a manner that will be useful to the household in preparing for the hearing.

(f) The hearing officer shall not consider issues raised during the hearing without the household's prior knowledge.

(g) If the branch intends to introduce documentary evidence, copies of the documents shall be attached to the report. Names and addresses of witnesses the branch intends to call at the hearing shall be included in the report. The branch shall notify the hearing officer of any witnesses it wishes to subpoena at least two weeks prior to the hearing. [Eff 3/19/93; comp 9/18/06] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.15(h))

§17-602.1-33 Denial or dismissal of hearing requests. The branch shall not deny or dismiss a request for a hearing unless:

- (1) The request is not received in the time period specified in section 17-602.1-26;
- (2) The request is withdrawn in writing by the household or its representative. When the household or its representative has withdrawn the hearing request, the branch shall forward the request to the hearing officer immediately. A copy of the withdrawal request shall be put in the case record. If the household directs the withdrawal to the department, the hearing officer shall notify the branch immediately;
- (3) The household or its representative fails, without good cause, to appear at the scheduled hearing; or
- (4) The household or its representative orally withdraws the request. The branch may discuss this option with the household when it appears that the branch and household have resolved issues related to the hearing. The branch is prohibited from coercion or actions which would influence the household or its representative to withdraw the household's hearing request. The branch shall provide a written notice to the household within ten days of the household's request confirming the withdrawal request and providing the

household with an opportunity to request a hearing. The written notice shall advise the household it has ten days from the date it receives the notice to advise the branch of its desire to request, or reinstate, the hearing. If the household timely advises the branch that it wishes to reinstate the hearing, the department must provide the household with a hearing, within the time frames specified in section 17-602.1-27 and beginning the date the household advises the branch that it wishes to reinstate its request. The branch must reinstate a hearing as requested from a household at least once. The branch must not deny a household's request for a hearing if the household is aggrieved by a branch action that differs from the reinstated action. [Eff 3/19/93, am and comp 9/18/06] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.15(j))

§17-602.1-34 Participation during the appeal.

(a) If a household requests a hearing and a continuation of benefits within the period provided by the notice of adverse action as specified in subsection (b), and the household's certification period has not expired, the household's participation in the program shall be continued on the basis authorized immediately prior to the sending of the notice of adverse action unless the household specifically waives continuation of benefits or the basis of the branch's action was that:

- (1) The household failed to file a completed report described in chapter 17-650 and the household admits it did not submit a completed report described in chapter 17-650; or
- (2) The hearing is with regard to termination for nonreceipt of the report described in chapter 17-650 by the branch which the household claims to have submitted and the household does not file a new complete report as

described in 17-650 for the time period in question.

(b) In order to receive continued benefits in the amount prior to the anticipated reduction or termination of benefits, the household must request the hearing and a continuation of its benefits by the end of the month in which the notice of adverse action is mailed, or within ten days of the date the adequate notice is mailed.

(c) The form for requesting a hearing shall contain space for the household to indicate whether continued benefits are requested. If the form does not clearly indicate that the household has waived continuation of benefits, the branch shall assume that continuation of benefits is desired and the benefits, if any, shall be issued, if eligible for continued benefits.

(d) If the branch action is upheld by the hearing decision, a claim by the department against the household shall be established for all overissuances. If a hearing request is not made within the period provided by the notice of adverse action or adequate notice, the benefits shall be reduced or terminated as provided in the notice.

(e) If the household establishes that its failure to make the request for a hearing within the period provided by the adverse action notice or adequate notice was for good cause, the branch shall reinstate the benefits to the prior basis, if eligible for continued benefits.

(f) When benefits are reduced or terminated due to a mass change, participation on the prior basis shall be reinstated only if the issue being contested is that food stamp eligibility or benefits were improperly computed or that federal law or policy is being misapplied or misinterpreted by the branch. [Eff 3/19/93; am 8/19/96; am and comp 9/18/06] (Auth: HRS §346-14) (Imp: 7 C.F.R. §§273.15(k), 273.21)

§17-602.1-35 Reduction or termination prior to hearing decision. (a) Once continued, benefits shall not be reduced or terminated prior to a hearing decision except where:

- (1) The certification period expires and the household then may reapply and may be determined eligible for a new certification period with a benefit amount determined by the branch;
- (2) The hearing officer makes a preliminary determination that the sole issue is one of federal law, rule, or policy, and that the household's claim that the branch improperly computed the benefits or misinterpreted or misapplied the law, rule, or policy is not valid;
- (3) There is a subsequent change in circumstances affecting the household's eligibility or basis of issuance while the hearing decision is pending, and the household fails to request a hearing and continuation of benefits when the adverse action notice is received;
- (4) A mass change occurs affecting the household's eligibility or basis of issuance while the hearing decision is pending; or
- (5) A household required to report as described in chapter 17-650 fails to file a completed report by the branch's deadline.

(b) The branch shall promptly inform the household in writing if benefits are reduced or terminated pending a hearing decision. [Eff 3/19/93; am and comp 9/18/06] (Auth: HRS §346-14) (Imp: 7 C.F.R. §§273.15(k)(2), 273.21)

§17-602.1-36 The hearing. (a) The hearing officer shall have the sole authority to conduct the hearing, and shall do so according to department rules.

(b) The hearing shall provide the household adequate opportunity to:

- (1) Call witnesses;
- (2) Present all evidence to establish all pertinent facts and circumstances in the case without interference;
- (3) Confront and cross examine witnesses at the hearing;
- (4) Question or refute any testimony or evidence;

- (5) Present evidence in rebuttal; and
- (6) Advance arguments without interference.

The person representing the branch has the same rights afforded the household.

(c) The household shall be allowed to present its case in the way it desires or shall be allowed to have a relative, friend, or legal counsel present the case.

(d) The time, date, and place of the hearing shall be arranged so that the hearing is accessible to the household. At least ten days prior to the hearing, advance written notice shall be provided to all parties involved to permit adequate preparation of the case. The household may request less time for advance notice to expedite the scheduling of the hearing. The notice shall contain:

- (1) The name, address, and telephone number of the hearing officer;
- (2) The information that the hearing will be dismissed if the household or its representative fails to appear for the hearing without good cause;
- (3) The department's hearing procedures; and
- (4) The right of the household or its representative to examine the case file prior to the hearing. [Eff 3/19/93; comp 9/18/06] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.14(1) and (p); §273.15(m)(2))

§17-602.1-37 The hearing officer. (a) Hearings shall be conducted by an impartial officer who:

- (1) Does not have any personal stake or involvement in the case;
- (2) Was not directly involved in the initial determination of the action which is being contested; and
- (3) Was not the immediate supervisor of the eligibility worker who took the action.

(b) The hearing officer shall perform the following duties:

- (1) Administer oaths or affirmations;
- (2) Ensure that all relevant issues are considered;

- (3) Request, receive, and make part of the record all evidence determined necessary to decide the issue being raised;
- (4) Regulate the conduct and course of the hearing consistent with the right of due process of law to ensure an orderly hearing;
- (5) Order, where relevant and useful, an independent medical assessment or professional evaluation from a source mutually satisfactory to the household and the department; and
- (6) Render the final administrative decision in a hearing. [Eff 3/19/93; am and comp 9/18/06] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.15(n))

§17-602.1-38 Persons who may attend the hearing.

- (a) The following persons shall attend the hearing:
 - (1) The hearing officer;
 - (2) The household and its representatives;
 - (3) A person charged with recording the proceedings;
 - (4) The branch representative; and
 - (5) Attorneys assigned to the department.
- (b) Persons whose presence have been requested, or to whom consent has been given by the household, may also attend the hearing.
- (c) The hearing officer shall have the authority to limit the number of persons in attendance at the hearing if limitations on space exist. [Eff 3/19/93; comp 9/18/06] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.15(o))

§17-602.1-39 The branch representative. (a) The branch administrators shall attend the hearing or shall appoint another staff member to represent the branch.

(b) The branch representative shall be familiar with the facts and issues of the case which form the basis for the household's protest. The branch representative shall bring other branch staff and witnesses who have direct knowledge of the case and shall bring documents which support the branch action.

(c) The branch representative shall have authority to act for the branch in making decisions during the hearing which may have an effect upon the hearing final order. [Eff 3/19/93; comp 9/18/06] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.15(o))

§17-602.1-40 Conduct of the hearing and the household's rights. (a) The household or its representative shall be given adequate opportunity to examine 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.

(b) The contents of the case file, including the application form and documents of verification used by the branch to establish the household's ineligibility or eligibility and allotment, shall be made available, provided that confidential information is not disclosed.

(c) If requested by the household or its representative, the branch shall provide free copies of the relevant portions of the case file. Confidential information and other documents or records which the household shall not have an opportunity to contest or challenge shall not be presented at the hearing and shall not affect the hearing officer's decision. [Eff 3/19/93; comp 9/18/06] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.15(p))

§17-602.1-41 The hearing decision. (a) Decisions of the hearing officer shall comply with federal laws, rules, or policy and shall be based upon the hearing record. The verbatim transcript or recording of testimony and exhibits, or an official reporting containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, shall be retained for three years from the month of origin and shall constitute the exclusive record for the rendering of a final hearing decision. The record shall also be available, for copying and inspection, to the household or its representative at any reasonable time.

(b) A decision by the hearing authority shall be binding upon the branch and shall summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and the pertinent FNS rules or policy. The decision shall become a part of the record.

(c) The household and the branch shall each be notified in writing of:

- (1) The decision;
- (2) The reasons for the decision;
- (3) The available appeal rights;
- (4) That the household's benefits shall be issued or terminated as decided by the hearing authority; and
- (5) That an appeal request may result in a reversal of the decision.

(d) All department hearing records and decisions shall be available for public inspection and copying, subject to the disclosure safeguards provided in chapter 17-601, and provided identifying names and addresses of household members and other members are kept confidential. [Eff 3/19/93; comp 9/18/06] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.15(g))

§17-602.1-42 Appeal rights of the household. The household has the right to appeal an adverse hearing decision to a court. After a hearing decision which upholds the branch action, the household shall be notified of the right to pursue judicial review with the circuit court. [Eff 3/19/93; comp 9/18/06] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.15(g)(3); HRS §91-14)

§17-602.1-43 Branch action on the hearing decision. The branch shall be responsible for ensuring that all final hearing decisions are reflected in a household's allotment within the time limits specified in section 17-602.1-27.

- (1) When the hearing officer determines that a household has been improperly denied program benefits or has been issued less allotment than was due, lost benefits shall be provided

to the household as specified in chapter 17-683.

- (2) The branch shall restore benefits to a household which is leaving the project area before departure, whenever possible. If benefits are not restored prior to the household's departure, the branch shall give the household a form with the amount of entitlement to deliver to the new project area or forward the form to the new project area, if the new project area is known.
- (3) When the hearing officer upholds the branch's action, a claim against the household for any overpayment shall be prepared. [Eff 3/19/93; am and comp 9/18/06] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.15(g)(3))

§17-602.1-44 Review of hearing final decisions.

The department shall periodically monitor samples of decisions to assure that the recommendations and proposed decisions are in accordance with federal law, rules, or policy. If the department finds that a recommendation or proposed decision runs counter to federal law, rules, or policy, the department's objections and recommendations shall be filed in a report to the hearing officer and a copy of the report shall be forwarded to FNS. [Eff 3/19/93; comp 9/18/06] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.15(t))

§17-602.1-45 Consolidated hearings.

(a) The hearing officer may respond to a series of individual requests for hearings by conducting a single group hearing. The hearing officer may consolidate cases where individual issues of fact are not disputed and where related issues of state law, federal law, or both, are the sole issues being raised. In all group hearings, the rules governing individual hearings shall be followed. Each individual household shall be permitted to present its own case or shall have the case presented by a representative.

(b) A hearing and an administrative disqualification hearing may be combined into a single hearing if the factual issues arise out of the same, or related circumstances and the household receives prior notice that the hearings will be combined. If the hearing and administrative disqualification hearing are combined, the timeliness standards for conducting administrative disqualification hearings shall be followed.

- (1) If the hearings are combined for the purpose of settling the amount of the claim at the same time as determining whether or not intentional program violation has occurred, the household shall lose its right to a subsequent hearing on the amount of the claim.
- (2) The department, upon request of the household, shall allow the household to waive the thirty day advance notice period required for disqualification hearings when the disqualification hearing and hearing are combined.

(c) If a hearing is requested by a household because of a reduction or termination of both financial assistance payment and food stamp benefit, the hearing shall be conducted according to the financial assistance procedures and timeliness standards. [Eff 3/19/93; comp 9/18/06] (Auth: HRS §346-14) (Imp: 7 C.F.R. §§273.12(f)(4), 273.15(e), 273.16(e)(1))