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HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 12 MED-QUEST DIVISION

CHAPTER 1703

ADMINISTRATIVE APPEALS

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Historical Note: This chapter is based substantially upon chapter 17-602 [Eff 7/19/82; am 6/6/83; am 7/18/83; am 9/29/86; R 3/19/93]

§17-1703-1 Purpose. The purpose of this chapter shall be 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

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dissatisfaction with any department action or inaction and the time a final hearing decision is implemented.
[Eff 08/01/94] (Auth: HRS §346-14) (Imp: HRS §§346-12, 346-14(9); 42 C.F.R §431.200)

§17-1703-2 Definitions. As used in this chapter:

"Adverse action" means denial of or failure to act with reasonable promptness on a claim for medical assistance, or the suspension, reduction, termination, or withholding of medical assistance, or an increase in spenddown or premium-share amounts.

"Aid paid pending a hearing decision" means the continuation or reinstatement of medical assistance 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 the department'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.

"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 hearing officer 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 med-QUEST eligibility office at the written or oral request of a dissatisfied individual. An informal review is not the same as the administrative hearing

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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 department 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 08/01/94; am 01/29/96] (Auth: HRS §346-14; 42 C.F.R. §431.200) (Imp: HRS §346-12, 42 C.F.R. §431.201)

§17-1703-3 Informal Review. (a) A dissatisfied individual may request an informal review from the med-QUEST eligibility 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 worker;
- (2) Section or eligibility office supervisor; or
- (3) Eligibility 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 08/01/94] (Auth: HRS §346-14(9); 42 C.F.R. §431.202) (Imp: HRS §346-12)

§17-1703-4 Right to a hearing. (a) Every applicant for or recipient of medical assistance shall be provided an opportunity for a hearing if dissatisfied with any department adverse action affecting the assistance claim.

(b) Every applicant or recipient filing for a

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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 medical assistance and at the time of department 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 08/01/94; am 01/29/96] (Auth: HRS §346-14(9); 42 C.F.R. §431.206) (Imp: HRS §346-12; 42 C.F.R. §431.206)

§17-1703-5 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 08/01/94] (Auth: HRS §346.14(9); 42 C.F.R. §431.242) (Imp: HRS §346-12; 42 C.F.R. §431.242)

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§17-1703-6 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 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 med-QUEST eligibility office and the med-QUEST eligibility office 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 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 department shall mail a notice of denial to the claimant.

(e) When the requirements specified in section 17-1703-10 are met, the department shall reinstate or continue assistance. [Eff 08/01/94] (Auth: HRS §346-14(9); 42 C.F.R. §431.230) (Imp: HRS §346-12; 42 C.F.R. §431.230)

§17-1703-7 Med-QUEST eligibility office responsibility. (a) When the med-QUEST eligibility office assists the applicant or recipient in filing for the hearing, the med-QUEST eligibility office 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 med-QUEST eligibility office shall review all request for hearing to assure that all facts are properly considered. If any basis for the grievance is found prior to the hearing, the med-QUEST eligibility

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office shall promptly take necessary corrective action.

(c) The med-QUEST eligibility office 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 08/01/94] (Auth: HRS §346-14(9); 42 C.F.R. §431.221) (Imp: HRS §346-12; 42 C.F.R. §431.221)

§17-1703-8 Responsibility of hearing office.

(a) The hearing office shall accept:

- (1) Any request directly at the hearing office; and
- (2) All requests cleared through med-QUEST eligibility offices.

(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 medical assistance or any medical 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 department 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 med-QUEST eligibility office;
- (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

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- the department 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 08/01/94; am 01/29/96] (Auth: HRS §346-14(9); 42 C.F.R. §431.221) (Imp: HRS §§91-9, 91-9.5, 346-12; 42 C.F.R. §431.221)

§17-1703-9 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 adjustment in the standard of assistance for classes of recipients unless the appeal is for an incorrect determination of eligibility.

(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 med-QUEST eligibility office shall determine whether the request for hearing is based on action taken by the department as a result of subsection (a). If subsection (a) applies, the med-QUEST eligibility office shall make a recommendation to

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the hearing officer that the request be denied.

(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 fall on a weekend or holiday, the tenth day shall then be the working day after the weekend or 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 08/01/94; am 09/14/98]
(Auth: HRS §346-14(9); 42 C.F.R. §431.220) (Imp: HRS §346-12; 42 C.F.R. §431.220)

§17-1703-10 Payment status of medical assistance recipients pending hearing. (a) No adverse action shall be taken until a hearing decision is rendered when a signed written request for a hearing is received on or before the last day of the month preceding the effective month from the federally funded medical assistance recipient. That recipient is entitled to timely notice. 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.

(1) When a signed written request for a hearing

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is received within the period specified in this subsection, no adverse action shall be taken until a hearing decision is rendered unless:

- (A) The claimant withdraws or abandons the request for hearing as specified in section 17-1703-9;
 - (B) 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 computation;
 - (C) Another change affecting the claimant's eligibility occurs during the hearing process and the claimant fails to request a hearing after notice of the change; or
 - (D) The recipient specifically requests not to receive continued assistance pending a hearing decision.
- (2) The department shall promptly notify the claimant in writing if assistance is to be reduced or discontinued pending the hearing decision for reasons other than withdrawal or abandonment of the request by the claimant.
- (b) 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 specifically requested that continued assistance not be paid pending the hearing decision; or
 - (3) The claimant withdraws or abandons the request for hearing as specified in section 17-1703-9.

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

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

- (1) Becomes eligible for a reduction of spenddown amount, or premium-share amount, the change shall be made; or

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- (2) Provides a written request for but is denied a medical service, 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 08/01/94; am 01/29/96; am 09/14/98] (Auth: HRS §346-14; 42 C.F.R. §431.230) (Imp: HRS §346-12; 42 C.F.R. §431.230)

§17-1703-11 The hearing. (a) The hearing shall include consideration of:

- (1) Any department adverse action on a claim for medical assistance which includes the department's:
- (A) Failure to determine eligibility within the specific time limits of the medical assistance programs;
 - (B) Refusal to consider a request for or failure to make a payment adjustment within time limits set by the medical assistance programs; or
 - (C) Discontinuance, termination, suspension, withholding, or reduction of the assistance; and
- (2) Any department decision regarding:
- (A) Eligibility for medical assistance in both initial and subsequent determinations;
 - (B) Amount of spenddown or change in spenddown;
 - (C) Amount of premium-share or change in premium-share; or
 - (D) The method of delivery of service, including restricted status.

(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:

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- (1) The claimant, the authorized representative, or both, interpreter, if any, legal counsel, and witnesses;
- (2) Representatives of the section or unit offices;
- (3) Representatives of the state med-QUEST division or benefit, employment, and support services division; and
- (4) Hearing officer and members of the 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 17-1703-5.

(e) The hearing shall be conducted at a reasonable time, date, and place and shall generally be held in the jurisdiction of the department 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 08/01/94; am 01/29/96; am 09/14/98] (Auth: HRS §346-14(9); 42 C.F.R. §431.244) (Imp: HRS §346-12; 42 C.F.R. §431.244)

§17-1703-12 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

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represented by an authorized representative.
[Eff 08/01/94] (Auth: HRS §346-14(9); 42 C.F.R.
§431.222) (Imp: HRS §346-12; 42 C.F.R. §431.222)

§17-1703-13 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 evaluation shall be conducted by someone other than the persons involved in making the original decision. The additional medical assessment shall be obtained at the med-QUEST division's expense and shall be made part of the record. [Eff 08/01/94] (Auth: HRS §34614(9); 42 C.F.R. §431.240) (Imp: HRS §346-12; 42 C.F.R. §431.240)

§17-1703-14 Hearing involving spousal support from institutionalized individuals.

(a) A fair hearing may be requested if either the institutionalized spouse or the community spouse is dissatisfied with the determination of the:

- (1) Community spouse monthly income allowance;
- (2) Computation of the spousal share of the resources; or
- (3) Community spouse resource allowance.

Any hearing request resulting from the determination of the community spouse resource allowance shall be held within thirty days of the request for hearing.

(b) A community spouse may be allowed to maintain income that exceeds the standardized community spouse monthly income allowance when a community spouse's income needs are determined to be greater than the maximum income allowance limit.

(c) A community spouse may be allowed to retain resources in excess of the standardized community resource allowance when income is generated by those resources and that income does not cause the community spouse's income to exceed the community spouse monthly income allowance. [Eff 08/01/94] (Auth: HRS §346-14; 42 C.F.R. §431.10) (Imp: HRS §346-29; 42 U.S.C. §1396 r-5)

§17-1703-15 Hearing decision.

(a) All matters relating to the hearing shall be heard and disposed of

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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 17-1703-11(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 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 made available to the claimant or the authorized representative during normal business hours through the hearing office.

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

- (1) When the hearing decision is favorable to the claimant, the department shall promptly make necessary corrections, 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 corrections are not made, the notice to the hearing officer shall include a statement of why the department could not immediately comply with the decision.
- (3) The hearing officer shall review the notice to assure that the department 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 17-1702. [Eff 08/01/94; am 01/29/96] (Auth: HRS §346-14(9); 42 C.F.R. §431.244) (Imp: HRS §346-12; 42 C.F.R. §431.244)

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§17-1703-16 Decisions pending over ninety days.

(a) When a final decision has not been made and implemented within ninety days of the request, the department shall reduce the premium-share amount or spenddown amount to what existed prior to the hearing request 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 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) When a final decision on a medical issue is not made and implemented within ninety days:

- (1) The specific medical care denied the recipient which is the issue on appeal shall be authorized from the ninety-first day. The hearing shall be decided in the recipient's favor; or
- (2) Applicants for medical assistance shall be made presumptively eligible to secure assistance from the ninety-first day until the hearing decision is made.

(e) The eligibility worker shall review current need and eligibility factors exclusive of the issue on appeal. If the claimant is found to be currently eligible, the department shall reduce the premium-share amount or spenddown amount to what existed prior to the hearing request effective the ninety-first day. The required action shall be taken within five working days after the oral notice is received from the hearing officer. The amount of premium-share or spenddown amount shall be restored to the previous level until a final decision is made, provided the claimant remains eligible and no other changes become necessary.

(f) If, for reasons exclusive of the issue pending hearing, the department determines that the claimant is ineligible to receive assistance, the department shall terminate or deny the assistance on or

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after the ninety-first day of the hearing request. The worker shall prepare and mail a notice indicating the reasons for not restoring assistance pending the final hearing decision. [Eff 08/01/94; am 01/29/96; am 09/14/98] (Auth: HRS §346-14(9); 42 C.F.R. §431.244) (Imp: HRS §346-12; 42 C.F.R. §431.244)

§17-1703-17 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.

(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 17-1703-9, the department shall recover the aid paid pending the hearing decision. [Eff 08/01/94] (Auth: HRS §346-14(9); 42 C.F.R. §431.230) (Imp: HRS §§346-12, 346-44; 42 C.F.R. §431.230)

