

HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

CHAPTER 2

GENERAL PROVISIONS FOR ADMINISTRATIVE RELIEF

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Historical Note: Chapter 17-2 is partially based on Parts I and II of Rule 6, [Eff 3/26/64; R 6/4/84], and on Rule 7 [Eff 3/30/64; R 6/4/84], of the department of social services and housing.

§17-2-1 Statement of purpose. This chapter shall govern all proceedings brought before the department which are intended to obtain:

- (1) A declaration of the applicability of any rule or order of the department or of any statute the department is required to

- administer or enforce with respect to a factual situation;
- (2) The adoption, modification, or repeal of any department rule; and
 - (3) Relief in a contested case. [Eff 11/5/84; comp APR 13 1995] (Auth: HRS §§91-2, 346-14, 348-3) (Imp: HRS §§91-2, 346-14, 348-3)

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

"Hearing officer" means a person, not interested in the outcome of the matter, who has been authorized by the director to conduct hearings and render decisions on the director's behalf in any case or controversy within the department's jurisdiction.

"Party" means:

- (1) The department, if it participates in a proceeding;
- (2) Each person named in a proceeding; and
- (3) Any interested or aggrieved person permitted or entitled to participate in a proceeding before the department in a capacity other than as a witness.

"Person" means an individual, partnership, corporation, association, or organization of any character, except for the department.

"Relief" means one or more of the following:

- (1) The resolution of any contested matter within the department's jurisdiction in favor of a petitioning party;
- (2) The department's declaration as to whether a rule or order of the department or a statute which the department is required to administer or enforce, applies to a factual situation; or
- (3) The adoption, modification, or repeal of any rule by the department. [Eff 11/5/84; comp APR 13 1995] (Auth: HRS §§26-38, 346-14, 348-3) (Imp: HRS §§346-14, 348-3)

§17-2-3 Conflict with division rules. This chapter is general in nature and is superseded by the rules adopted by a division where applicable. [Eff 11/5/84; comp APR 13 1995] (Auth: HRS §§26-38, 346-14, 348-3) (Imp: HRS §§26-38, 346-14, 348-3)

§17-2-4 Commencement of proceedings in request for hearing. A proceeding shall commence by the filing of a request for hearing with the department either in person or by mail. The request shall be made in writing, dated and signed by the petitioner or an authorized representative, and shall contain a short and plain statement of the relief requested and the reasons therefore. When a request is filed, the department shall record its receipt and assign it a docket number. [Eff 11/5/84; comp APR 13 1995] (Auth: HRS §§91-2, 346-14, 348-3) (Imp: HRS §§91-2, 346-14, 348-3)

§17-2-5 Individual representing party. When a person appears in a proceeding or signs a document submitted to the department or hearing officer that indicates that the person is a party's representative, the representative may be required by the department or hearing officer to furnish proof of authority. [Eff 11/5/84; comp APR 13 1995] (Auth: HRS §§26-38, 346-14, 348-3) (Imp: HRS §§91-2, 346-14, 348-3)

§17-2-6 Substitution of parties, intervention, and consolidation. Where it will further justice and not prejudice any party, the hearing officer may:

- (1) Order substitution of parties, except where a party dies or becomes legally incapacitated;
- (2) Permit intervention of a party if the party has a substantial interest in the outcome of the proceeding which is not protected by the other parties' interests; and
- (3) Consolidate two or more proceedings which involve substantially the same issues, or arise out of the same general transaction.

[Eff 11/5/84; comp APR 13 1995] (Auth: HRS §§26-38, 346-14, 348-3) (Imp: HRS §§91-2, 346-14, 348-3)

§17-2-7 Format and certification of pleadings.
 (a) All documents submitted to the director or hearing officer shall be legibly written or typed.

(b) The first page of every pleading shall set forth the name, address, and phone number of the party, and the party's attorney, if any, the title of the particular pleading, and the docket number and name of the proceeding.

(c) All pleadings shall be signed in ink by the filing party or the party's authorized representative. This signature shall constitute certification that the person signing has read the pleading and that to the best of the person's knowledge, the pleading is true or has good grounds to support it and is not interposed for the purpose of harassment or delay.

(d) Unless otherwise provided, all documents shall be filed with the department, except that when a petition has been assigned to a hearing officer, all documents shall be filed with the hearing office. [Eff 11/5/84; comp APR 13 1995] (Auth: HRS §§26-38, 346-14, 348-3) (Imp: HRS §§91-2, 346-14, 348-3)

§17-2-8 Departmental action. (a) Upon the filing of the request, the department shall determine whether or not to proceed.

(b) If the department decides to proceed, it shall set the matter for further proceedings before a hearing officer, pursuant to the appropriate rules contained in this title, and issue the party a notice which shall include:

- (1) The date, time, place, and nature of hearing;
- (2) The legal authority under which the hearing is to be held;
- (3) The particular sections of the statutes and rules involved;
- (4) An explicit statement in plain language of the issues involved and the facts alleged by the department in support thereof; provided that if the department is unable to state such issues and facts in detail at the time the notice is served, the initial notice may be limited to a statement of the known issues and thereafter upon application a bill of particulars shall be furnished;
- (5) A statement that a party may retain counsel, or may appear on the individual's own behalf, or a member of a partnership may represent the partnership, or an officer or authorized

employee of a corporation, trust, or association may represent the corporation, trust, or association.

(c) If the department decides not to proceed, the party may request the department to reconsider the determination, or may pursue judicial remedies. [Eff 11/5/84; am and comp APR 13 1995] (Auth: HRS §§26-38, 346-14, 348-3) (Imp: HRS §§91-2, 91-9, 346-14, 348-3)

§17-2-9 Notice of department determination not to proceed. The department shall provide the party with a written notice of any determination not to proceed. This notice shall also tell the petitioner the reasons for the department's decision not to proceed. [Eff 11/5/84; comp APR 13 1995] (Auth: HRS §§26-38, 346-14, 348-3) (Imp: HRS §§91-2, 346-14, 348-3)

§17-2-10 Extensions of time. Where a party is required or permitted to act within a specified period the director or hearing officer may:

- (1) Approve a stipulation between parties extending the period;
- (2) Upon motion for good cause shown before expiration extend the period; or
- (3) Upon motion for good cause shown permit action after the expiration of the specified period. [Eff 11/5/84; comp APR 13 1995] (Auth: HRS §§26-38, 91-2, 346-14, 348-3) (Imp: HRS §§26-38, 91-2, 346-14, 348-3)

§17-2-11 Motions. (a) An application for an order shall be made by written motion, except during a hearing, and shall state the grounds for the application and the relief or order sought.

(b) Motions referring to facts not of record shall be supported by affidavits and if involving a question of law, by a memorandum in support.

(c) Except for a motion entitled to be heard ex parte, all motions shall be accompanied by a notice of hearing. Unless otherwise directed by the director or hearing officer, the motion and notice shall be served upon all parties not less than seventy-two hours before the hearing. The opposing parties shall serve any

counter-affidavits and memorandums in opposition not less than twenty-four hours before the hearing.

(d) Motions shall be filed with the department except that after a petition has been transferred to the hearing officer, all motions shall be filed with and decided by the hearing officer. [Eff 11/5/84; comp APR 13 1995] (Auth: HRS §§26-38, 91-2, 346-14, 348-3) (Imp: HRS §§91-2, 346-14, 348-3)

§17-2-12 Powers of the director or hearing officer in conducting hearings. The director or hearing officer in conducting a hearing may:

- (1) Issue notices and subpoenas;
- (2) Administer oaths and affirmations;
- (3) Examine witnesses;
- (4) Rule upon offers of proof, receive relevant evidence, and exclude irrelevant evidence or restrict questioning or testimony;
- (5) Regulate the manner of any examination to prevent harassment, intimidation, or unnecessary embarrassment of any witness or party;
- (6) Remove disruptive individuals;
- (7) Hold conferences;
- (8) Rule on motions and dispose of procedural requests on similar matters;
- (9) Certify a question to the department for the department's consideration;
- (10) Submit in writing a report or recommended decision together with the findings of facts and conclusions of law and a recommended order to the department for consideration;
- (11) Render a final decision when authorized by the director or by rule; and
- (12) Dispose of any matter that normally arises in the course of the proceedings and take any action authorized by this chapter, chapter 91, HRS, or any other related laws administered by the department. [Eff 11/5/84; am and comp APR 13 1995] (Auth: HRS §26-38) (Imp: HRS §26-38)

§17-2-13 Subpoenas. (a) Upon timely written request, the director or hearing officer may issue subpoenas requiring attendance of witnesses or production of documents at a hearing. The director or

hearing officer may require that a request to issue a subpoena specify the person to be subpoenaed or the documents desired. Witnesses summoned shall receive the same fees and mileage reimbursement as witnesses in state courts, to be paid by the department.

(b) Upon timely motion, the director or hearing officer may:

- (1) Quash or modify the subpoena if it is unreasonable and oppressive; or
- (2) Condition denial of the motion upon the requesting party's payment of the costs of producing the subpoenaed documents. [Eff 11/5/84; comp APR 13 1995] (Auth: HRS §26-38) (Imp: HRS §§26-38, 346-13)

§17-2-14 Disqualification of director or hearing officer. (a) No matter shall be heard by a director or hearing officer who:

- (1) Has any pecuniary interest in the matter;
- (2) Is related within the third degree by blood or marriage to any party;
- (3) Has participated in any pre-proceeding investigation of the matter;
- (4) Has participated in developing evidence to be introduced at the proceeding;
- (5) Has participated in making the decision; or
- (6) Has participated in taking the action challenged in the proceeding.

(b) Any director or hearing officer to whom subsection (a) applies shall be disqualified from hearing the matter, either on the director's or hearing officer's motion or the motion of any party. Any motion to disqualify a director or hearing officer shall be decided prior to the hearing. [Eff 11/5/84; comp APR 13 1995] (Auth: HRS §§26-38, 91-2) (Imp: HRS §§26-38, 91-13)

§17-2-15 Ex parte communications. (a) In any proceeding before the department, no party or representative shall communicate with the hearing officer concerning the merits of the case.

(b) It shall be improper for any person interested in a proceeding to seek to influence the judgment of any member of the department or hearing officer designated to hear and decide a matter.

(c) It shall be improper for a member of the department to:

- (1) Disclose or reveal to any other member of the department or hearing officer designated to hear and decide a matter, the contents of any investigatory report prepared by the department concerning the matter the department member or hearing officer is designated to hear and decide; or
- (2) Furnish the report or a copy thereof to any member of the department or hearing officer designated to hear and decide the matter, except where authorized by law. [Eff 11/5/84; comp APR 13 1995] (Auth: HRS §§26-38, 346-14, 348-3) (Imp: HRS §§26-38, 346-10, 346-14, 348-3)

§17-2-16 Rights of the parties. The parties or their 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 a party or witness is non-English speaking;
- (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 confront and cross examine any witness. [Eff 11/5/84; comp APR 13 1995] (Auth: HRS §§26-38, 346-14) (Imp: HRS §§26-38, 346-14)

§17-2-17 Decision. (a) All matters relating to the hearing shall be heard and disposed of within one hundred twenty calendar days from the date of request for a hearing, except when the hearing is continued or the record is held open. 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 party'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 party or the party's authorized representative. Unless authorized to render a final decision, the hearing officer shall prepare a proposed decision for the director. In those cases, no decision shall be final until signed by the director. [Eff 11/5/84; comp APR 13 1995] (Auth: HRS §§26-38, 346-14) (Imp: HRS §§26-38, 346-14)