

 <p>HAWAII HEALTH SYSTEMS C O R P O R A T I O N <i>"Touching Lives Everyday"</i></p> <p>Policies and Procedures</p>	Department: Finance	Policy No.: FIN 0009
	Issued by: Kelley Roberson COO/CEO	Revision No.: N/A
Subject: DEBTOR TAX REFUND SETOFF	Approved by: Thomas M. Driskill, Jr. President & CEO	Effective Date: October 22, 2004
		Supersedes Policy: N/A
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I. PURPOSE:

The purpose of this policy is to establish the provisions by which the state income tax refunds of those persons who owe a debt to HHSC shall be setoff to recover the debt, and to establish the provisions of the administrative hearing process to contest the tax setoff. This policy does not afford the debtor the opportunity to a hearing on any issue which has been previously litigated or for which an opportunity for a hearing has been previously provided.

II. DEFINITIONS:

As used in this policy:

- "Administrative hearing" means an administrative proceeding affords an aggrieved person the opportunity to present an appeal before an impartial HHSC representative for a formal decision.
- "Authorized representative" means an individual who has been authorized in writing by the claimant to act for and represent the claimant in any and all aspects of the administrative hearing.
- "Claimant" means any debtor who has requested an administrative appeal in writing to contest HHSC's intention to setoff the individual's income tax return to recover a debt.
- "Date of hearing request" means the date HHSC receives a signed written request for an administrative hearing by the claimant or authorized representative of the claimant that meets all of the criteria of a request for an administrative 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.
- "Debt" means any sum exceeding \$25 which is due and owing to HHSC, regardless of whether there is an outstanding judgment for that sum and whether

the sum has accrued through overpayment, employment, contract, subrogation, tort, operation of law, or judicial or administrative judgment or order.

- "Debtor" means any person, other than a current employee, who owes a debt to HHSC.
- "Hearing officer" means an impartial person assigned by HHSC's President/CEO to conduct an administrative hearing and to render a final decision. The hearing officer shall not have been directly involved in the initial determination of the action in question.
- "Pretax setoff notice" means the initial setoff notice that is sent by the Comptroller of the Department of Accounting and General Services ("DAGS") to inform the debtor of HHSC's intention to setoff the debtor's state income tax refund.
- "Request for an administrative hearing" means a clear written expression to HHSC's President/CEO by the claimant or an authorized representative that the claimant is contesting HHSC's intent to setoff the claimant's income tax refund to recover a debt to HHSC and that the claimant wants an administrative hearing.
- "Tax setoff" means the interception and retention of a state income tax refund to recover a delinquent debt.
- "Tax setoff notice" means the notice that is sent at the time the debt is set off against the debtor's state income tax refund.

III. TAX OFFSET PROCESS:

- A. HHSC or its representative may request that DAGS setoff any valid debt due and owing HHSC by the debtor against any debtor's income tax refund. Any amount of the refund in excess of the amount retained to satisfy the debt shall be refunded to the debtor.
- B. DAGS shall mail to the debtor a pretax setoff notice.
- C. A debtor receiving a pretax setoff notice shall have thirty days of the date of the notice to request in writing an administrative hearing.
- D. The setoff against the debtor's state income tax refund shall become final if an administrative hearing is not requested or upon a determination after administrative review.
- E. In the case of a setoff against a joint income tax, DAGS may make separate refunds apportioned in accordance with HRS §231-57.

IV. RIGHTS OF THE CLAIMANT:

Upon a request for administrative hearing directed to the President/CEO of HHSC or his representative, the claimant or an authorized representative shall have an opportunity to:

- A. 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;
- B. Present the case independently or with the aid of others including legal counsel;
- C. Bring witnesses, including an interpreter if the claimant is non-English speaking. If the claimant does not have an interpreter and HHSC believes an interpreter is necessary, an interpreter shall be provided by HHSC;
- D. Establish all pertinent facts and circumstances;
- E. Advance any arguments appropriate to the issue being heard without undue interference; and
- F. Question or refute any testimony or evidence, and to confront and cross examine any witness.

V. DENIAL OF REQUEST FOR ADMINISTRATIVE HEARING:

- A. An administrative hearing shall not be granted by HHSC when the claimant has withdrawn the request in writing. Where the claimant verbally reports a desire to withdraw the administrative hearing request, the claimant shall be advised that the withdrawal shall be submitted in writing. If the claimant prefers, HHSC shall confirm the claimant's request to withdraw in writing to the claimant.
- B. An administrative hearing shall not be granted by HHSC when HHSC decides not to complete a tax setoff or refunds the tax setoff before a hearing is scheduled.
- C. An administrative hearing shall not be granted if the administrative hearing request is not received within thirty days of the date on the notice of pretax setoff notice.
- D. An administrative 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 administrative 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 administrative 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 administrative hearing; or

(c) Sudden and unexpected emergencies.

E. When a request for an administrative hearing is denied or dismissed, HHSC shall inform the claimant in writing, stating the reasons for the denial or dismissal. Written notice shall be provided to the claimant within forty calendar days of the date of administrative hearing request.

VI. THE ADMINISTRATIVE HEARING:

A. The administrative hearing shall include consideration of:

(1) Evidence received, including oral testimony and exhibits; and

(2) Proposed findings and exceptions.

B. The claimant shall be required to appear in person at the administrative hearing unless authorization for a representative was received by HHSC. Unless both HHSC and the claimant agree to the presence of other individuals, the hearing officer or other person conducting the administrative 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) Hearing officer and members of the administrative appeals office staff.

C. The administrative hearing shall be conducted at a reasonable time, date, and place and shall generally be held in the region in which the claimant is living at the time of the administrative hearing. However, with the concurrence of the claimant the hearing may be conducted by video-tele conference.

D. The decision of the hearing officer shall be based exclusively on evidence and other material introduced at the administrative hearing. If, after an administrative

hearing has begun, additional evidence is necessary for the proper determination of the case, the hearing officer may:

- (1) Continue the administrative 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 administrative hearing and hold the record open for a period not to exceed thirty days to permit the receipt of additional documentary evidence.

VII. DECISION:

- A. All matters relating to the administrative hearing shall be heard and disposed of within sixty calendar days from the date of request for an administrative hearing except when the hearing is continued or the record is held open as specified above. 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 administrative hearing, the hearing officer shall prepare the decision in writing. The decision shall contain a statement of the reasons for the decision, the evidence, and the rules supporting the decision, and the claimant's right to judicial review. A copy of the written decision shall be provided to the claimant or the authorized representative and HHSC.
- C. The transcript, recording, or an official record containing the substance of the administrative hearing proceedings, together with all papers filed in the proceeding and the hearing officer's decision, shall constitute the exclusive record and shall be maintained by the hearing officer. The record shall be made available to the claimant or the authorized representative upon request during normal business hours.
- D. HHSC shall comply with the administrative hearing decision immediately upon receipt of the decision.

VIII. APPEAL RIGHTS OF THE CLAIMANT:

The claimant may appeal an adverse administrative hearing decision to the state circuit court in accordance with HRS chapter 91.