

March 1, 1993

Mr. Kenneth Matsuura, Chairman
Employees' Retirement System
of the State of Hawaii
201 Merchant Street, Suite 1400
Honolulu, Hawaii 96813

Dear Mr. Matsuura:

Re: Entitlement of "Hanai" Children to Certain Benefits Available Under Chapter 88, Hawaii Revised Statutes

This letter responds to an oral inquiry from the Administrator of the Employees' Retirement System of the State of Hawaii (ERS), concerning whether certain statutory allowances, in particular, death benefits upon an employee's demise (assuming all other requirements for such benefits are met), accrue to hanai children.

The term "hanai" is generally used to refer to those children taken informally under custom and usage into another's home, but not formally adopted in accordance with Hawaii law. The Hawaii courts have long refused to recognize "adoptions" accomplished without compliance with statutory requirements. Those decisions have excluded children not formally adopted from inheriting as children of a decedent. ([top](#))

Since neither retirement law nor intestacy law specifically provides for hanai children, the public employee health program excludes hanai children, and the legislature recognized, absent explicit inclusion, that hanai children are not entitled to statutory benefits under the workers' compensation laws, we believe that hanai children are not included within the meaning of "child" or "children" as used in sections 88-85 and 88-286, Hawaii Revised Statutes.

DISCUSSION OF AUTHORITIES

I. Concept or Custom of Hanai

Initially, an understanding of the concept or custom of "hanai" is appropriate. The Hawaii Supreme Court defined ancient custom adoptions in *re Estate of Farrington*, 42 Haw. 640, 650 (1958), stating that the "two types of children taken by foster parents were the keiki hanai, who were not truly adopted but merely reared in the home, and the keiki hookama, the latter being regarded the same as actual children of the blood." ([top](#))

The Hawaiian concept of adoption was further described by the court in another case as follows:

The ancient Hawaiians cherished the principle of adoption, which took two forms: A child or adult one loves, but for whom one might not have exclusive care, might be adopted as a keiki ho'okama (child), or kaikua'ano ho'okama, kaikaina ho'okama, kaikuahine ho'okama, kaikunane ho'okama (adult). A child so adopted would be adopted as a child of the family, and entitled to inherit through his parents, while an adult would be adopted as a form of showing affection or respect. On the other hand, a keiki hanai is a child given to another to raise, as a foster child. *O'Brien v. Walker*, 35 Haw. 194, 128-30 (1939); *Andrews and Parker*, Hawaiian Dictionary 104, 158 (1922); *Pukui and Elbert*, Hawaiian Dictionary 52, 115 (1971). As adoption under statute replaced Hawaiian custom and usage, the term ho'okama has fallen into disuse and the term hanai has since been used to refer to all types of adoptions. Nevertheless the custom of giving children to grandparents, near relatives, and friends to raise whether legally or informally remains a strong one. ([top](#))

Leong v. Takasaki, 55 Haw. 398, 411, 520 P.2d 758, 766 (1974) (emphasis in original).

II. The Term "Child" as Used in Chapter 88, Hawaii Revised Statutes

Chapter 88, Hawaii Revised Statutes, established the Employees' Retirement System of the State of Hawaii. Section 88-85, Hawaii Revised Statutes, grants an accidental death benefit to "the deceased [contributory] member's child or children" under age eighteen in certain events. Section 88-286, Hawaii Revised Statutes, grants a death benefit to the "dependent child or children of a member at the time of the member's death" if the [non-contributory] "member suffers either an accidental death or an ordinary death while in service after accumulating ten years of credited service." Both ordinary and accidental death benefits terminate when a dependent child reaches eighteen years of age. ([top](#))

This death benefit is a form of statutory annuity which devolves to a deceased member's "child or children" or "dependent child or children." Entitlement to this statutory benefit, therefore, rests on a determination that the claimant is a "child" or "dependent child" for purposes of chapter 88. This department has previously commented on the meaning and application of the term "dependent" as used in section 88-286.¹

However, there is no definition of "child" or "children" within chapter 88, nor is any definition contained in the administrative rules of the ERS. Legislative history for sections 88-85 and 88-286 is also devoid of legislative expression or intention. The Joint Committee on Pensions of the Thirteenth Legislature of the Territory of Hawaii stated that "[a]lthough it is not necessary to include any death benefit in a retirement plan the committee desired to provide for the dependents or estate of employees dying before reaching retirement age because of the advantage to the employee in including such insurance." Report on the Bill to Establish a Retirement System for Territorial Employees of the Territory of Hawaii, at 30 (1925). ([top](#))

In view of this limited insight into the Legislature's intent, reliance on certain rules of statutory construction is appropriate. The plain meaning rule and the rule directing that the construction given when the same term is used in other statutes dealing with the same subject be adopted are applicable to this inquiry. ([top](#))

The plain meaning rule of statutory construction simply prescribes that the words of a statute be given their ordinary or customary meaning when it is not readily apparent that the Legislature intended otherwise. The words of a statute are usually read in their ordinary and popular sense. Haw. Rev. Stat. 1-14 (1985); *Hawaiian Beaches v. Kondo*, 52 Haw. 279, 474 P.2d 538 (1970).

"Child" is defined in Webster's Third New International Dictionary p. 388 (1981) as a son or daughter; a male or female descendant in the first degree; the immediate progeny of human parents; or an adopted child. The term "child" is also defined as progeny or offspring of parentage, and may include or apply to adopted, after-born, or illegitimate child, step-child, child by second or former marriage, or issue. See *Blacks' Law Dictionary* 239 (6th ed. 1990). ([top](#))

Other laws in which the word "child" is used may also aid in determining the meaning of that word as used in sections 88-85 and 88-286. What is clear in one statute may be considered in explaining what is doubtful in another statute on the same subject matter. Haw. Rev. Stat. 1-16 (1985); *State v. Taylor*, 49 Haw. 624, 636, 425 P.2d 1014, 1021 (1967). Further, one may refer to analogous statutes having similar language and dealing with similar subject matter to construe an ambiguous statute. *Lussier v. Mau-Van Development, Inc.*, 4 Haw. App. 421, 424, 667 P.2d 830, 832-33 (1983); *Educators Ventures, Inc. v. Bundy*, 3 Haw. App. 435, 441, 652 P.2d 637, 640 (1982). ([top](#))

Entitlement to benefits under either section 88-85 or section 88-286 requires interpretation of the word "child." Since those sections pertain to entitlement to a statutory benefit upon the demise of an individual, the meaning ascribed to that term in other statutes (e.g., the health fund, workers' compensation, or intestacy statutes) affording analogous benefits would be useful. ([top](#))

Our Uniform Probate Code, chapter 560, Hawaii Revised Statutes, states the general rule of descent of property on death without a will. Resort to its definition of the word "child," specifically to determine whether that word includes a hanai child, is enlightening. ([top](#))

Section 560:1-201(3) defines "child" to include "any individual entitled to take as a child under [the Uniform Probate Code] by intestate succession from the parent whose relationship is involved and excludes any person who is only a stepchild, a foster child, a grandchild or any more remote descendant" (emphasis added). Section 560:2-109 provides that in establishing the relationship of parent and child, "(1) [a]n adopted person is the child of an adopting parent" and "(2) [in other cases], a person is the child of those persons specified in section 584-1."²

These definitions require a biological or recognized legal relationship to exist if a person is to be a "child" who is entitled to take property upon another's demise by operation of law. Significantly, "a stepchild, a foster child, a grandchild or any more remote descendant" are explicitly excluded from the definition of a "child" in section 560:1-201(3). That exclusion would include a hanai child whose biological or legal relationship has not been established.

The term "hanai" is generally used to refer to children informally adopted under Hawaiian customs and usages, but not formally adopted under Hawaii law. Essentially, the claim of entitlement to a chapter 88 death benefit by "hanai" children would rest on the assertion that by Hawaiian custom they are adopted, and so a "child" and intended recipient of that statutory benefit. ([top](#))

The current laws providing for adoptions are contained in chapter 578, Hawaii Revised Statutes.³ A child adopted in accordance with chapter 578 is legally adopted and, pursuant to section 578-16(a), a legally adopted individual shall be considered to be the "natural child of the whole blood of the adopting parent." ([top](#))

An exhaustive review of the history of the law of adoption in Hawaii as set out in *O'Brien v. Walker*, 35 Haw. 104 (1939), discloses that, while adoption by custom was recognized in early times, beginning in 1841 and continuing until the present time, compliance with written statutory adoption procedures is required to constitute an adoptee the legal heir of the adopters. ([top](#))

As early as 1856, the court indicated that absent satisfactory evidence to show that a certain person had been adopted by the testator, and not merely a keiki hanai, he would not inherit. In *re Estate of Hakau*, 1 Haw. 471, 473 (1856). Within a short period, the courts consistently held that inheritance rights did not obtain to a keiki hanai absent compliance with statutory procedures for adoption.⁴

Even prior to the enactment of any statutes governing adoptions, the mere fact that one was a "keiki hanai" did not, by Hawaiian custom, carry with it a right of inheritance.⁵

Generally, Hawaiian courts have refused to recognize "adoptions" accomplished in a manner not in compliance with statutory requirements. While ancient unwritten law recognized adoptions as a general custom and usage, today rights attendant to the status of adoption require compliance with statutory procedures. Therefore, being a "hanai" child alone would not carry rights attendant to being a child, whether a natural or adopted child. ([top](#))

Chapters 87 and 386, Hawaii Revised Statutes, also specifically grant benefits to children on the death of an individual. Consideration of the meaning of the term "child" under the public employees' health fund program and workers' compensation program is, therefore, appropriate. ([top](#))

Under the Hawaii Public Employees Health Fund established by chapter 87, health insurance benefits are generally available to unmarried children under age nineteen of public employees and retirees as either a dependent-beneficiary or as an employee-beneficiary. See Haw. Rev. Stat. 87-1(4) and (6) (1985). Further, this statutory benefit is granted, pursuant to section 87-6(c), without cost to those beneficiaries of employees who are killed in the performance of duty or of

deceased retirees having ten years or more of service credit. ([top](#))

Again to determine entitlement to a statutory benefit, the meaning of the word "child" is significant. At the inception of the Hawaii Public Employees Health Fund, the term "dependent-beneficiary" was defined to mean "the spouse and legal children of an employee-beneficiary." Act 146, 1961 Haw. Sess. Laws 191, 191 (emphasis added). In 1974, the definition of "dependent-beneficiary" was modified to mean an "employee-beneficiary's spouse and any unmarried child, including adopted child, stepchild, foster child or recognized natural child who lives with the employee-beneficiary." See Act 136, 1974 Haw. Sess. Laws 241, 242. Additionally, a "family member" was defined as the "deceased retired member's or employee's spouse and unmarried child under the age of nineteen years (including a legally adopted child and a stepchild or recognized natural child who lives with the deceased retired member or employee in a regular parent-child relationship)." Id. at 243. ([top](#))

The rules of Hawaii Public Employees Health Fund further indicate that a "'beneficiary' means . . . any unmarried child under the age of nineteen, including an adopted child, stepchild, foster child, or recognized natural child of an employee who is killed in the performance of duty or of a deceased retired member of a state or county retirement system." Haw. Admin. R. 6-30-2 (1988); see also Haw. Admin. R. 6-32-1(a) and 6-32-2 (1982). In addition, a "'[f]oster child' means a child under the age of nineteen living with an employee-beneficiary in a regular parent-child relationship; the employee-beneficiary must have filed a petition with the family court to become the child's guardian or adoptive parent" (emphasis added). Haw. Admin. R. 6-30-2 (1988). ([top](#))

Therefore, to be eligible for benefits under chapter 87, a child must have a biological or legal relationship to the parent as well as reside with the parent. Absent the requisite relationship, a hanai child is not included within the definition of a child who is entitled to statutory health insurance benefits, whether the hanai parent is alive or deceased. ([top](#))

Another statutory benefit granted in the event of the death of an employee, whether public or private, exists under chapter 386, the Workers' Compensation Law. Dependent children may receive income or indemnity benefits under circumstances described in sections 386-34 and 386-41. Again, entitlement requires a determination of who is a child. ([top](#))

Section 386-2 defines "child" to include a posthumous child, adopted child, stepchild, illegitimate child, and hanai child acknowledged prior to the personal injury. This statutory benefit for acknowledged hanai children was first enacted in 1982. According to the Senate Committee on Human Resources, the purpose of the bill to enact that benefit was "to grant a hanai child or any other person toward whom the employee had assumed the duties and responsibilities of a parent, the same rights as other children as defined in [section 386-2]." S. Stand. Comm. Rep. No. 277-82, Haw. S.J. 1066 (1982). ([top](#))

However, the Legislature clearly understood that hanai children are not ordinarily included in the term "children."⁶ Prior to that amendment, benefits under the Workers' Compensation Law did not extend to hanai children. The amendment was required as the definition of "child" in its ordinary sense and as originally used in section 386-2 does not encompass the hanai custom. Absent such express inclusion in the statutory definition, a hanai child would not be entitled to a statutory benefit afforded to a "child or children." ([top](#))

CONCLUSION

A broad interpretation of the phrase "child or children" in sections 88-85 and 88-286 could include all children living with the deceased employee, no matter whether or how related. A narrow reading of the phrase would limit the definition to natural and adopted children. Since the phraseology of the statute defining these beneficiaries under chapter 88 does not explicitly state what relationship (other than dependency in section 88-286) the child must bear to the parties,

we conclude the the phrase "child or children" has not been given other than its ordinary meaning.

The word "child," in its usual contemplation, means not a mere biological fact, but a relationship sanctioned by law. The word "child" employed in a document expected to have legal significance, and especially in a statute, to designate a relationship would, without more, ordinarily refer to offspring or those to whom legal relationship and obligation exists. ([top](#))

Our conclusion is based on the Legislature's evident understanding that hanai children are not included in that phrase as disclosed by the legislative history of section 386-2. The term "hanai" generally refers to those children adopted informally under custom and usage, but not formally in accordance with Hawaii law. Long before the ERS or this benefit was granted, Hawaii courts had refused to recognize "adoptions" accomplished without compliance with statutory requirements, and denied hanai children the rights attendant to the status of a child. In view of Hawaii decisions excluding children not formally adopted from inheriting as children of a decedent, we consider the Legislature's failure to include hanai children as significant. ([top](#))

Since neither chapter 88 nor Hawaii law of descent and distribution specifically provides for hanai children, since chapter 87 excludes hanai children from its benefits, and since the Legislature recognized that hanai children were not entitled to a statutory benefit for children without express authorization in chapter 386, we believe that hanai children are not included in the meaning of children as used in sections 88-85 and 88-286, Hawaii Revised Statutes. ([top](#))

Very truly yours,

Celia L. Jacoby
Deputy Attorney General

APPROVED:

Robert A. Marks
Attorney General

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¹That written legal advice dated October 19, 1989, concluded that the phrase "dependent child or children" included children of a deceased member born out of a former marriage for whom the decedent had provided the financial support which furnished their living necessities prior to the member's death.

Therefore, if a child is under age 18 and, at the time of death, the deceased member had provided the child's living necessities, that child is a "dependent" entitled to death benefits. But since the section does not set out to what extent a child must be supported by a member to qualify as a "dependent" of a member, nor what is considered a necessary living expense, promulgation of rules to delineate dependency for receipt of benefits under section 88-286 may be appropriate. ([back to document](#)) ([top](#))

²Section 584-1, Hawaii Revised Statutes, defines the parent and child relationship to include "the legal relationship existing between a child and the child's natural mother, between a child and father whose relationship as parent and child is established under [the Uniform Parentage Act], or between a child and the child's adoptive parents, incident to which the law confers or imposes rights, privileges, duties, and obligations." ([back to document](#)) ([top](#))

³In the United States, adoption proceedings have been developed by statute. 2 C.J.S. Adoption of Persons 3 (1972); *In re Estate of Wilhelm*, 13 Haw. 206 (1900). In the early days of Hawaii children were adopted by agreements of adoption duly recorded in the Bureau of Conveyances or by decrees issued by circuit judges at chambers. In 1915 by statute, adoption by court decree became the exclusive method of accomplishing adoption. Act 47, 1915 Haw. Sess. Laws 49. Embodying subsequent amendments, the law of adoptions now appears under chapter 578, Hawaii Revised Statutes. The proceeding being wholly statutory, adoption may only be affected by compliance with the prescribed requirements of law. ([back to document](#)) ([top](#))

⁴For example, in *Abenela v. Kailikole*, 2 Haw. 660, 662 (1863), the court held:

The Legislature having made it necessary, and we think wisely so, that all agreements of adoption which are of great importance, as affecting rights in property, should be made in writing, and duly recorded; and as no compliance with this requirement has been shown [even though plaintiff "lived in the family of Hakau for a great length of time"], the plaintiff cannot prevail in this action, in the absence of the necessary legal evidence of his having been adopted ([back to document](#)) ([top](#))

⁵In *Mellish v. Bal*, 3 Haw. 123, 126-27 (1869), the court stated:

If the usages in regard to the force and meaning of adoption prior to 1841, had been uniform, so as to establish a custom having the force of law, in all cases of adoption, this case would present a different aspect; for proof of the unwritten law of the land is never required. But no one would claim that every relation of keiki hanai carried the inheritance. [Emphases in original.] ([back to document](#)) ([top](#))

⁶In floor debates, the potential for abuse posed by this hanai custom was discussed. According to Representative Whitney T. Anderson, "[n]owhere in this bill does it say what a hanai child is, . . . [n]owhere in the bill does it say exactly how long a hanai child lives with a person to be eligible for workmen's compensation. Nowhere in the bill does it say that if the child's parents -- real parents -- passes [sic] away and he or she is eligible for workmen's compensation, that there could possible [sic] be double payment. . . . But to put it in a workmen's compensation whereby you do not explain that if this child is only with the person for one week, that he or she may not be eligible if the parent is still alive and still has that child on their own benefit, he or she may not be eligible, I think is wrong." Haw. H.J. 475-76 (1982). ([back to document](#))

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