

**WEST VIRGINIA  
TITLE IV-E PRIMARY ELIGIBILITY REVIEW  
APRIL 1, 2007 – SEPTEMBER 30, 2007**

**INTRODUCTION**

During the week of April 7, 2008 through April 11, 2008, staff from the Children's Bureau's (CB) Central and Regional Offices, cross-State peer reviewers and representatives of West Virginia's Department of Health and Human Resources (DHHR) conducted a primary eligibility review of West Virginia's title IV-E foster care program in Charleston, West Virginia. The purpose of the title IV-E foster care eligibility review was to determine if West Virginia was in compliance with the eligibility requirements as outlined in CFR 1356.71 and Section 472 of the Social Security Act (the Act) and to validate the basis of West Virginia's financial claims to ensure that appropriate payments were made on behalf of eligible children placed in licensed or approved foster family homes and child-caring institutions.

**SCOPE OF THE REVIEW**

The West Virginia title IV-E foster care review encompassed a sample of all the title IV-E foster care cases that received a foster care maintenance payment during April 1, 2007 to September 30, 2007, the period under review. A computerized statistical sample of 148 cases (80 cases plus 68 over-sample cases) was drawn from the Adoption and Foster Care Analysis and Reporting System (AFCARS) data which was transmitted by the State agency to the Administration for Children and Families (ACF) for the period under review. Nineteen cases were selected from the over-sample for the review to replace those cases in which it was found that West Virginia had not made a title IV-E maintenance payment during the period under review.

During the on-site review each child's case file in the selected sample was reviewed to determine title IV-E eligibility. The provider's file was examined to ensure that the foster home or child care institution in which the child was placed during the period under review was licensed or approved and that safety considerations were appropriately addressed. Payments made on behalf of each child were also reviewed to verify that the expenses were allowable under title IV-E. Efforts were made to identify any underpayments that may have existed in the reviewed sample cases. In addition, CB and West Virginia's DHHR agreed that, subsequent to the on-site review, West Virginia may submit additional child and provider documentation for any case that was found to be in error, in pending status, or to have an ineligible payment. As a result of the provision of additional documentation, a number of case and payment determinations were modified.

For a primary review, substantial compliance means that the case error rate does not exceed four. As a result of the primary title IV-E foster care eligibility review conducted in West Virginia, five cases were found to be in error for either part or all of the period under review for reasons that are identified in the Case Record Summary section of this report. Therefore, since the

number of error cases was more than four, West Virginia is considered not to be in substantial compliance with title IV-E child eligibility requirements as outlined in 45 CFR 1356.71 and Section 472 of the Act.

Pursuant to 45 CFR § 1356.71(i), West Virginia is required to develop a Program Improvement Plan (PIP) designed to correct those areas determined not to be in substantial compliance. The PIP will be developed by the State, in consultation with CB’s Regional Office staff, and must be submitted to CB’s Regional Office within 90 days of the date of the correspondence transmitting this report.

In addition to the five cases with errors, one case was identified that contained an ineligible payment. Although this case is not considered an error case for determining substantial compliance, the ineligible maintenance payment and associated administrative costs are subject to disallowance. A disallowance in the amount of \$93,100 Federal Financial Participation (FFP) for maintenance payments and \$12,044 for administrative costs are assessed for the error and non-error cases with ineligible payments. The total disallowance as a result of this review is \$105,144 FFP. Please refer to the letter transmitted with this report for further information on the disallowance and to the Disallowance section of this report.

## CASE RECORD SUMMARY

### Error Cases

The following chart provides details for the five cases containing errors, the reasons for the ineligibility, the appropriate Federal citations, the dates of ineligibility and the total disallowance amount.

Case Number	Reason Case Was Not Eligible	Federal Citation	Maintenance Payment FFP	Administrative Cost FFP
OS-5	Provider Not Licensed (9/1/07 - 10/31/07)	45 CFR 1356.71	1,218.85	452
WV-23	Invalid Removal (4/1/07 - 10/19/07)	Section 475 (5) (F), 45 CFR 1356.21	19,848.56	2,388
WV-63	Financial Need Not Established (9/18/06 - 9/30/06) and (1/22/07 - 2/05/07) and (8/01/07 - 8/20/07)	Section 472 (a)(1), 45 CFR 1356.71(d)(1)(v)	2,985.49	222

WV-72	Invalid Removal (7/27/06 - 7/2/07)	Section 475 (5) (F); 45 CFR 1356.21	3,220.26	2,418
WV-74	Safety Requirements not met for Foster Care Providers (2/2/07 - 9/30/07)	Section 472 (b) & (c); 45 CFR1356.71 (d)(1)(iv) & 1355.20	7,809.93	1,773
Total			35,083	7,253

### Ineligible Payment Cases

The following chart provides details for the case containing ineligible payments, the reasons for ineligibility, the appropriate Federal citations, the dates of ineligibility and the total disallowance amount.

Case Number	Reason Case Was Not Eligible	Federal Citation	Maintenance Payment FFP	Administrative Cost FFP
WV-09	No judicial determination of reasonable efforts to finalize permanency plan (7/1/01 - 11/30/03)	Section 472(a)(1); 471(a)(15)(B)(ii); 45 CFR1356.21(b)(2)	58,017.36	4,791
Total			58,017	4,791

### Underpayment Cases

The following chart provides details for the five cases containing underpayments in which the child was title IV-E eligible, but title IV-E maintenance was not claimed by the State. West Virginia may file a claim for these cases once they verify that all eligibility criteria were met. Reimbursement for these cases may be requested only for claims that are within the two-year time limitation as described in 45 CFR 95.7.

Case Number	Maintenance Payment FFP
OS-4	3,931
OS-9	1,335
WV-42	1,945
WV-59	1,110
OS-23	539
Total	8,860

## **STRENGTHS AND MODEL PRACTICES**

Several strengths were identified over the course of the title IV-E review. These include the following examples of good practice:

- Petitions contained much information regarding the family and their circumstances. Court orders were found to be timely in all but one case reviewed. Contrary to the welfare language was found in all but one of the removal court orders reviewed.
- The initial eligibility determinations were completed in a timely manner in all cases except one. Re-determinations were also done timely and were completed more frequently than annually.
- The review found that there is a strong effort by DHHR staff to move children timely through the foster care system to termination of parental rights and adoption in West Virginia.
- Reviewers saw many children achieve permanency on a timely basis due to frequent court hearings in which the case was thoroughly reviewed.
- The licensing requirements were met in all but one case reviewed. The majority of providers met licensing requirements.
- The review identified prudent fiscal oversight. Title IV-E payments were backed out of the system when the agency worker discovered the child was not title IV-E eligible.

## **AREAS OF CONCERN**

The review identified areas for improvement as discussed during the exit conference:

- The sample of cases that were reviewed was drawn from AFCARS data that is transmitted by the State agency to ACF. The validity of this sample depended on the accuracy with which West Virginia completed AFCARS data element #59, Title IV-E Foster Care. If title IV-E foster care maintenance payments were paid on behalf of the child, the data element should have been coded as “1” while if title IV-E foster care maintenance payments were not paid on behalf of the child, the data element should have been coded as a “0”. There were approximately 68 cases included in the sample that were coded in data element #59 as “1” although no IV-E foster care maintenance payment was made during the review period. These cases were, therefore, removed from the sample and additional cases were substituted. West Virginia will have to make adjustments in the data sent to AFCARS to ensure that this type of discrepancy does not occur in future AFCARS reports.
- Reviewers found that some DHHR workers determining eligibility believed Temporary Assistance to Needy Families (TANF) eligibility satisfies the Aid to Families with Dependent Children (AFDC) eligibility requirement. For those cases, AFDC eligibility was reconstructed using the correct eligibility criteria.
- West Virginia is determining AFDC eligibility based on the month of the court order removing the child and not on the month the petition was filed. In those cases when this was not the same month, AFDC eligibility had to be reconstructed using the correct eligibility criteria.

- 45 CFR 1356.21 (k)(2) states that the physical removal of a child must coincide with the judicial ruling or voluntary placement agreement that authorizes the child's removal from the home and placement in foster care. In two cases, which were determined to be errors, the child was left in the home despite a judicial ruling granting DHHR legal custody and a finding that it was contrary to the child's welfare to remain in the home. The removal court order did not sanction an alternative timeframe for the child's physical removal from the home. In addition, there was no clear plan in these cases to remove the child pending a placement in foster care.
- It appears that some judges continue to struggle with language in court orders in determining contrary to the welfare and reasonable efforts findings in juvenile justice cases and permanency goals. The court order language did not consistently match the contrary to the welfare circumstances of the case. We suggest that through collaboration with the courts, Court Improvement Program (CIP) staff stress the need for training. Technical assistance from the National Child Welfare Resource Center for Legal and Judicial Issues (NCWRCLJI) is available and recommended.
- Judicial determinations of reasonable efforts to finalize the permanency plans varied among counties. Reviewers noted this in cases prior to the period under review, from 2002 to 2004.
- Child Placing Agencies are not always issuing a certificate of licensure with a clear beginning and expiration date. In one error case, a license expired and a new license was not issued until two months later resulting in an error case. The Child Placing Agency claimed to provide an extension for that home despite the fact that this practice is not consistent with West Virginia DHHR policy.
- Reviewers found unearned income is being excluded in the AFDC determination process. Veterans and Social Security Survivors benefits should not be excluded when considering income. One error case resulted during this review due to veteran's benefits not being included as a source of income. In addition, a recipient of Supplemental Security Income (SSI), whose income is excluded, should not be included in the family unit total for AFDC calculation.
- In one case, WV-80, DHHR made a determination to waive its policy and approve a foster parent without ensuring that the prospective foster parent had not been convicted within the last five years of a felony involving physical assault, battery, or a drug-related offense, as required by Federal regulations under 1356.30. DHHR subsequently provided the required documentation, which allowed the case to be counted as a non-error. It is recommended, however, that the State review its waiver policy.
- DHHR policy allows provider staff to begin employment prior to receipt of the results of safety check clearances. We recommend this policy be examined to assure the safety of children in foster care placements. During the debriefing conference West Virginia's DHHR reported that delays in obtaining criminal history background checks occur due to systemic issues with the State Police and that the State Police requested no further criminal history background checks requests be submitted. The State Police are in the process of developing a database that should address this issue.

## **DISALLOWANCES**

The review included a sample of 80 cases. The sample was drawn from a universe of cases that received at least one title IV-E foster care maintenance payment during the six-month AFCARS period of April 1, 2007 to September 30, 2007. Based upon the results of the review, the State of West Virginia has been determined not to be in substantial compliance. Five cases were not eligible for funding under title IV-E foster care and one additional case was identified as having ineligible payments. Therefore, there is a disallowance of \$105,144 FFP for title IV-E foster care maintenance payments and related administrative costs for the entire period of time that these cases were determined to be in error and improperly paid. The total disallowance as a result of this review is \$105,144 FFP for title IV-E foster care maintenance payments and related administrative costs.

## **VII. UNDERPAYMENTS**

Reviewers identified five cases with possible underpayments. Underpayments were identified in cases where reasonable efforts were obtained but a retroactive claim was not made, and where claiming ended when parental rights were terminated but eligibility continued. In some cases State funds were used to pay for IV-E eligible services. The total amount of potential underpayment claims is \$8,860.

## **REVIEW TEAM MEMBERS**

### **Federal Review Team**

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Jason Mastrangelo – Organization and Facilitation  
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Ann Hudson Wills – Resource Policy, Practice and FACTS issues  
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