

Michigan Title IV-E Foster Care Secondary Eligibility Review April 1, 2006 through September 30, 2006

Introduction

During the week of March 26 through 29, 2007, staff from the Regional and Central Offices of the Children's Bureau (CB), Administration for Children and Families (ACF), in collaboration with staff from the Michigan Department of Human Services (DHS) conducted a secondary eligibility review of Michigan's title IV-E foster care program in Lansing, Michigan.

The purpose of the title IV-E foster care eligibility review was, (1) to determine if Michigan was in compliance with the eligibility requirements as outlined in 45 CFR §1356.71 and §472 of the Social Security Act (Act); and, (2) to validate the basis of Michigan's financial claims to ensure that appropriate payments were made on behalf of eligible children placed in family foster homes and child care institutions meeting licensure and safety requirements.

This secondary review was conducted as a result of the findings from Michigan's initial primary review, completed during the week of March 22, 2004, in which Michigan was determined not to be in substantial compliance with the title IV-E eligibility requirements. As required, Michigan developed and implemented a Program Improvement Plan (PIP) addressing actions to be taken to correct the areas found to be deficient during that review. Michigan's PIP was approved in November, 2004, and completed one year later. Key in the State's efforts was the ongoing dialogue and close collaboration between DHS and the Courts, including the attention of the current and former Chief Justices of the State Supreme Court, in developing and carrying out its PIP. The PIP goals and activities included, but were not limited to the following:

- Training, both within DHS and the State Court Administrative Office (SCAO), regarding title IV-E protections for children and documentation requirements for eligibility – the training included not only DHS staff, but also judicial staff and foster care review board staff;
- Introduction and passage of legislation, effective December 28, 2004, specifically including time frames established by title IV-E regulations, identifying when reasonable efforts to prevent removal are not required by defining aggravated circumstances and establishing procedures for conducting effective permanency planning hearings;
- Review and revisions to court orders reflecting child specific judicial determinations completed with input from many levels, including consultation from the National Child Welfare Resource Center on Legal and Judicial Issues;
- Case reviews conducted at the DHS central office and local levels to monitor compliance and documentation requirements. At the time of the PIP's closure in November, 2005, over 2,800 cases had been reviewed.
- Enhanced communication between the Office of Child and Adult Licensing and the

Foster Care Program Office to address payment provisions affected by the issuance of provisional license due to corrective actions; and,

- Collaboration between State fiscal and program staff to ensure payment records were reflective of both maintenance and administrative costs.

Scope of the Review

Michigan's secondary title IV-E foster care eligibility review encompassed a sample of all of the title IV-E foster care cases that received a foster care maintenance payment during the period under review (PUR) of April 1, 2006 through September 30, 2006. A computerized statistical sample of one hundred eighty (180) cases (150 cases plus 30 oversample cases) was drawn from the Adoption and Foster Care Analysis and Reporting System (AFCARS) data submission which was transmitted by the DHS to CB for the PUR. The child's case file was reviewed for the determination of title IV-E eligibility and the provider's file was reviewed to ensure that the foster home or childcare institution in which the child was placed was licensed or approved for the period of the review.

During the secondary review, 150 cases, comprised of 138 cases from the sample and 12 from the oversample, were reviewed. Subsequent to the sample pull, an examination of the payment histories revealed that while payments were made for 12 cases of the first 150 pulled, none of those payments were for the period under review; therefore, cases from the oversample were substituted to complete the 150 case sample.

Four cases were determined to be in error for either part or all of the PUR for reasons that are identified in the Case Record Summary section of this report. The case error rate is 2.7%. The gross dollar value of the maintenance payments in the 150 case sample was \$409,718 for the PUR, of which \$8,291 represents maintenance payments for the four error cases. The dollar error rate is 2.02%. These data indicate that Michigan's dollar error rate and the case error rate were both less than 10%. Therefore, Michigan is considered to be in substantial compliance with title IV-E child and provider eligibility requirements as outlined in 45 CFR §1356.71 and §472 of the Act. We are pleased to report this result and note that this represents a major improvement from the case findings from the initial primary review of Michigan's program in 2004.

In addition to the four error cases, four cases were identified that contained payments that were claimed improperly. Ineligible payments were identified because an eligibility factor was not met for a period other than the PUR. Although none of the improper payment cases are considered "error cases" for determining substantial compliance, the ineligible maintenance payments and the associated administrative costs in Federal financial participation (FFP) are subject to disallowance. A title IV-E foster care claims disallowance in the amount of \$5,157.43 FFP in maintenance payments and \$2,941.68 FFP in administrative costs, for a total of \$8,099.11 FFP is assessed for these ineligible payments.

In total, a title IV-E foster care claims disallowance in the amount of \$88,497.06 FFP, comprised of \$41,067.13 in maintenance payments and \$47,429.93 in administrative costs, is assessed.

Case Record Summary

The following charts provide details regarding reasons for and period of the ineligibility, appropriate Federal citations and disallowance amounts for the error cases and non-error cases with ineligible payments.

Error Cases						
Sample #	Error Reason	Ineligibility Period	Social Security Act & Code of Federal Regulations Citation	FFP Main.	FFP Admin.	Total Disallow.
13	AFDC income standards	3/21/06 – 5/14/06	§472(a); 45 CFR §233.20	\$ 547.48	\$ 567.20	\$ 1,114.68
14	Living with / removal from the same specified relative	5/4/2004 – 2/28/07	Former §406(a)(1); §472(a)(4)(B)(ii); §472(a)(4)(A) & (B) 45 CFR §233.90(c)(1)(v); 45 CFR §233.90(c)(1)(v)(B); 45 CFR §1356.21(l) ACYF-CB-IM-04-03	\$15,654.30	\$18,473.55	\$34,127.85
73	Living with / removal from the same specified relative	12/15/03 – 8/20/06	Former § 406(a)(1); §472(a)(4)(B)(ii); §472(a)(4)(A) & (B) 45 CFR §233.90(c)(1)(v); 45 CFR §233.90(c)(1)(v)(B); 45 CFR §1356.21(l) ACYF-CB-IM-04-03	\$14,427.51	\$17,954.10	\$32,381.61
89	Living with / removal from the same specified relative	2/23/06 – 3/4/07	Former §406(a)(1); §472(a)(4)(B)(ii); §472(a)(4)(A) & (B) 45 CFR §233.90(c)(1)(v); 45 CFR §233.90(c)(1)(v)(B); 45 CFR §1356.21(l) ACYF-CB-IM-04-03	\$ 5,280.41	\$ 7,493.40	\$12,773.81

Non- Error Cases with Improper Payments						
Sample #	Ineligibility Reason	Ineligibility Period	Social Security Act Citation	FFP Main.	FFP Admin.	Total Disallow.
71	Claiming prior to receipt of contrary to welfare & reasonable efforts determinations	6/17/99 – 11/30/99	§472 CB Child Welfare Policy Manual (CWPM) 8.3A.15	\$4,938.64	\$1,832.74	\$6,771.38
91	Claiming prior to child's removal from the home/entry into foster care	4/1/96 – 4/12/96	§472 CB CWPM 8.3A.15	\$ 81.75	\$ 0.0	\$ 81.75
137	Claiming prior to contrary to welfare and reasonable efforts determination	7/30/05 – 7/31/05	§472 CB CWPM 8.3A.15	\$ 16.16	\$ 541.74	\$ 557.90
07 OS	Claiming prior to reasonable efforts to prevent removal determination	10/17/05 – 10/31/05	§472 CB CWPM 8.3A.15	\$ 120.88	\$ 567.20	\$688.08

Areas in Need of Improvement

Automated Title IV-E Eligibility Determination Process

One of the title IV-E eligibility requirements under §472(a) of the Act is that a child must have been eligible for the former Aid to Families with Dependent Children (AFDC) program. As part of the pre-review materials, Michigan tendered screen prints from its automated eligibility process in its Statewide Automated Child Welfare Information System (SACWIS) known as the Services Worker Support System (SWSS). These screen prints addressed the factors for AFDC eligibility including removal home, court findings, need and deprivation, income and assets and period of eligibility.

Additionally, for initial eligibility determinations, the State must apply the former AFDC program's two-step income test, in place since 1981, to establish whether a child would have been considered a "needy child" under the State's title IV-A plan in effect on July 16, 1996. In addition to the income test, the State must apply a test of resources. Further information on the two-step income test can be found at 45 CFR §233.20(a)(3)(xiii); 45 CFR §233.20(a)(3)(ii)(F) and the 1994 Green Book, 14th Edition, July 15, 1994, Section 10, and the CB CWPM 8.4A #18.

Information gleaned during the review indicated that programming in SWSS was imported from an automated system used by the State's financial specialist staff in its former AFDC program. In preparation for and during the review we observed calculations for some of the SWSS eligibility screens. Though State staff within DHS and the Michigan Department of Information Technology has been working diligently to access pertinent information, how SWSS sustains the functional aspects of its eligibility determination process, including the two-step income test, has not yet been demonstrated.

Required Action:

Within 30 days of the date of the accompanying transmittal letter, Michigan must provide information to demonstrate that SWSS sustains the functional aspects of its eligibility determination process. A copy of the algorithm that shows how eligibility is determined will generally suffice to demonstrate the functional aspects of its eligibility determination process. The algorithm is the computer code that instructs the system on how to do the calculations. Code should include imbedded documentation that explains in an easy to read format what is going on at each point. If the code is not documented, then the State needs to provide that as separate documentation. If generating the algorithm from SWSS cannot be accomplished, the State may furnish a copy of the requirements documentation used for the design and development of the financial eligibility module. If this issue is not able to be resolved within the 30 day timeframe, CB will require Michigan to enter into a PIP, in accordance with regulations at 45 CFR §1355.32(d).

AFDC Eligibility Determinations

Living with / Removal from a Specified Relative Requirement

Three of the four cases determined to be in error did not contain evidence that the child was living with and removed from the same specified relative. For title IV-E eligibility, §472(a)(1) and (3) of the Act and Federal regulations at 45 CFR §1356.21, require a child to have been legally removed from the home of a specified relative and to have lived with that specified relative within six months prior to the removal. The child must have been AFDC-eligible in that specified relative's home for the month of legal removal, that is, the month the removal petition is filed. The "living with" and "removal from" requirements must be satisfied by the same specified relative's home. While the determination of deprivation is always made in relation to the child's parent, the State must look to the home of the specified relative from which the child is legally removed pursuant to a voluntary placement agreement or judicial finding of contrary to welfare and reasonable efforts to prevent removal to determine whether financial need exists.

In a situation where there is a legal removal of a child from a specified relative who is not the parent or sibling, the State may consider the child as an assistance unit of one when looking at financial need in the relative's home, unless there is a State policy which specifically prohibits it. A *legal removal* would require that the specified relative be named in the removal petition and court order as a subject of the contrary to the welfare findings. The circumstances of the removal

from the relative should be addressed within the court order or referenced in the court order through information provided to the court.

In case sample #14 the child had been living with a guardian and was legally removed from the mother, with whom they had not been living with for four years, when the guardian rescinded guardianship. The record did not indicate the child had been living with and removed from a specified relative within the six months preceding removal.

The child in case sample #73 had not lived with the parent since sometime in 2000 at which time an aunt assumed guardianship which lapsed, although it appears that the child continued to live with the aunt. Case notes indicate that the parent attempted to take custody of the child. The removal court order indicates that the child was removed from the parent. At the time of legal removal, the child had not lived with the parent during the preceding six months. The worker incorrectly based eligibility on the aunt's home.

Sample #89 involved a legal removal from an adoptive parent though the child had been living with a biological parent whose parental rights had previously been terminated. Upon the death of his spouse, the adoptive parent returned the child to the biological parent whose rights had been terminated. At the time of legal removal in 2006, the child had not been living with the adoptive parent for at least one year, possibly two. In this instance, the worker based eligibility upon a combination of information from both the adoptive parent (deprivation due to death of a spouse) and biological parent (living with and removal from a specified relative) in determining deprivation and need. Neither was correct, as the biological parent's rights had previously been terminated and the child had not been living with and removed from the same specified relative, the adoptive parent, within six months of removal.

The review identified additional cases in which the "living with/removed from criteria" was inappropriately applied. In those instances, the State was able to reconstruct the initial eligibility determination based upon the relative from whom the child had been legally removed and the child was deemed eligible.

Initial Financial Needs Determination

Sample case #13 was determined to be an error case as the family's income was in excess of the needs standard; therefore, financial need was not established and the child was ineligible for title IV-E foster care payments. The review revealed that the State subsequently determined the child to be ineligible but did not rescind payments that had already been claimed.

The review identified at least one additional case in which known income was not evaluated at the point of initial determination for AFDC eligibility. Upon reconstruction and consideration of that income, that child was deemed eligible for title IV-E maintenance payments.

Recommendation:

DHS should review and clarify State eligibility policy regarding the "living with/removal from" a specified relative requirements and income documentation. Reviewers noted that access to

electronic income verification information, currently available to staff in the Temporary Assistance for Needy Families (TANF) unit and very limited staff in child welfare, is no longer readily available. Restored access to this information would aid in verifying a family's income when determining title IV-E eligibility based upon Michigan's July 16, 1996 AFDC criteria. Edits to the SWSS title IV-E eligibility screen clarifying the "living with/removal from" requirement would aid in accurate eligibility determinations. Edits to the system which notify the fiscal unit on payments that need to be rescinded would help ensure that title IV-E claiming is accurate and reflective of revised eligibility determinations which affect prior claims. DHS also should provide training to all necessary staff to assure these requirements are being assessed and documented appropriately. Additionally, it would be beneficial and add clarity to include the names from whom the child is being removed in petitions and, particularly, court orders.

Additional Findings

Improper Payments

The review determined that four cases received ineligible payments. A case is determined to be a non-error case with ineligible payments when a review of the sample case indicates that a title IV-E payment for a maintenance or administrative cost is made solely outside the PUR on behalf of a child determined not to meet the criteria for title IV-E eligibility. In all four instances, claiming began prior to the initial eligibility requirement being met. States may claim FFP from the first day of placement in the month in which all title IV-E eligibility criteria are met. The following delineates the particular circumstances associated with each of the cases.

In case sample #71 the child was removed from the home on June 17, 1999. Judicial determinations regarding contrary to the welfare and reasonable efforts to prevent removal and reunify the family were obtained on December 7, 1999, within 6 months of the child's removal from the home. Claiming began on June 17, 1999, prior to these initial eligibility requirements being met.

In case sample #91, the child was not removed from the home until April 13, 1996. Claiming began on April 1, 1996, prior to the child's removal from the home.

In case sample #137, the child was physically removed from the home on July 30, 2005. The first court order sanctioning removal occurred on August 1, 2005, at which time the contrary to the welfare and reasonable efforts requirements were met. Claiming began on July 30, 2005, prior to these initial eligibility requirements being met.

In case sample #07 OS, the child was removed from the home on October 17, 2005, at which time the contrary to the welfare requirement was met. A judicial determination regarding reasonable efforts to prevent removal was not obtained until November 1, 2005. Claiming began on October 17, 2005, prior to this initial eligibility requirement being met.

Automation of the title IV-E Eligibility Process

In reviewing cases for initial and ongoing eligibility, it was difficult to identify financial need evaluation; period covered by the redetermination; and, in instances where an unscheduled redetermination occurred, the rationale for that redetermination. Though an edit to the SWSS system requires the worker to enter zero (0) to signify that the user has considered all income questions as evidenced in the more recent determinations, reviewers believed a narrative section within the eligibility form or a case note would allow for detailed backup to support and explain these determinations and situations.

Strengths and Model Practices

State Pre-Review and Review Activities

Michigan staff, both at the Central Office and county level, did an excellent job of preparing for the review. Records were extremely well organized with necessary documentation of eligibility requirement readily located. The State provided a “reviewer friendly” environment for the review to take place. Of note was the willingness and untiring efforts made by the Program Office in leading this effort. DHS licensing and field staff, in partnership with personnel from the SCAO and the Wayne County Department of Children and Family Services, were most efficient in obtaining additional information or acting as resources during the onsite review. Additionally, DHS’ fiscal unit is recognized for the thorough and updated payment histories.

Michigan staff actively and enthusiastically participated in reviewing the cases. The State review team was comprised of staff from both the Central Office and various counties in the Michigan child welfare system. State reviewers received prior instruction in the use of the title IV-E review checklist. State reviewers had a variety of program experiences that aided in the review of cases and participated fully in the debriefing process, identifying strategies the State may use in continuing to improve the quality of its program.

Collaboration and Participation of the State Court

Exemplary is the collaborative relationship between DHS and the State Court. This was evident not only in the presence of either the current or former Chief Justices of the Supreme Court at the entrance or exit conference, but also in the excellent quality of court orders observed during the review. In particular, the involvement of SCAO is noted for conveying title IV-E requirements to the court, instituting revisions to court orders and garnering greater consistency in the use of those revisions among the county courts. The ongoing collaboration between DHS and SCAO is a strong mechanism to foster an understanding of the need for and timely occurrence of appropriate and meaningful judicial determinations for children within both the child welfare and legal communities.

Documentation of Judicial Determinations

While documentation of judicial determinations served as the basis of the majority of errors cited during Michigan’s initial primary review, it is exemplary that, in this review of a substantially

larger sample, court orders were found to be child specific, clearly identified jurists' findings and is cited as a definitive strength of the review by the reviewers. Reviewers noted that the more recent court orders included more specificity regarding the exact circumstances of the child and family. In most instances, court orders went beyond the use of a check-box and incorporated the underlying reasons for the jurist's determination in the order. In those rare instances where a transcript was required to document a judicial determination, reviewers noted that it was present in the case record and addressed the finding.

Contrary to the welfare determinations were evident in all 150 reviewed cases. Reviewers noted that, even given the crisis nature of the hearing, when an emergency "Orders to Apprehend" were issued to sanction the removal of a child, it included a definitive and well documented contrary to the welfare finding.

The review revealed that the State obtained the requisite judicial determination, regarding reasonable efforts to prevent removal, for all cases in the timeframe allowed by Federal regulations. Often these findings were able to be made in the first court order sanctioning the child's removal from the home.

Federal regulations require that a judicial determination regarding reasonable efforts to finalize the child's permanency plan must be obtained within 12 months of a child's entry into foster care and at least once every 12 months thereafter. The review revealed that these determinations were obtained on a timely basis, and often were occurring earlier than when due.

Ongoing Title IV-E Eligibility Redeterminations

Though the review identified concerns with the State's eligibility process, we commend the State's practice in completing re-determinations on a six months basis, which exceeds Federal recommendations for yearly assessments. The State correctly applied eligibility criteria in the two cases in which the child was over 18 and in school.

Licensing

During the onsite review, reviewers determined that criminal background checks were in evidence for all foster home files that were examined. In instances where children were placed in child caring institutions, reviewers determined that law enforcement checks had been done on administrators. Particularly noteworthy is Michigan's practice of screening all licensed foster homes against its child abuse register on a weekly basis.

Payment Histories

Payment histories were complete, extremely thorough and addressed all required elements. The histories were expertly compiled onto a spreadsheet and included maintenance and administrative costs as well as the State's allocation of costs to its Social Services Block Grant. Updated payment histories were prepared and available for reviewers at the beginning of the review week.

Disallowances

The review included a sample of 150 cases with a total maintenance assistance dollar value of \$409,718 for the PUR. 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, 2006 through September 30, 2006.

As indicated earlier in this report, based on the results of the review, Michigan has been found to be in substantial compliance; however, four cases were determined to be in error and are not eligible for funding under title IV-E foster care. Therefore, a disallowance in the amount of \$35,909.70 FFP in maintenance assistance and \$44,488.25 FFP in associated administrative costs is assessed for the entire period of time that these cases were determined to be in error. Additionally, four cases contained improper payments for Federal funding for reasons identified in the report. A disallowance in the amount of \$5,157.43 FFP in maintenance assistance and \$2,941.68 FFP in associated administrative costs is assessed for the four ineligible payment cases for the total time they were ineligible for title IV-E.

The total title IV-E foster care claims disallowance for all categories and periods is \$88,497.06 FFP, comprised of \$41,067.13 in maintenance payments and \$47,429.93 in administrative costs.

Required Actions/Next Steps

Within 30 days of the date of the accompanying transmittal letter, Michigan must provide information to demonstrate that SWSS sustains the functional aspects of its eligibility determination process. A copy of the algorithm that shows how eligibility is determined will generally suffice to demonstrate the functional aspects of its eligibility determination process. The algorithm is the computer code that instructs the system on how to do the calculations. Code should include imbedded documentation that explains in an easy to read format what is going on at each point. If the code is not documented, then the State needs to provide that as separate documentation. If generating the algorithm from SWSS cannot be accomplished, the State may furnish a copy of the requirements documentation used for the design and development of the financial eligibility module. If this issue is not able to be resolved within the 30 day timeframe, CB will require Michigan to enter into a PIP, in accordance with regulations at 45 CFR §1355.32(d).

Since the amount of disallowed funds was previously included in Federal payments made to the State, Michigan must repay these funds by including a prior period decreasing adjustment on the Quarterly Report of Expenditures (Form ACF-IVE-1), Part 1, Line 1, Columns (c) and (d). The Form ACF-IVE-1 must be submitted within 30 days of the date of the accompanying transmittal letter report in order to avoid the assessment of interest.

CB will conduct a subsequent primary review in Michigan during Federal Fiscal Year 2010. At that time, the review team will examine 80 cases. To be found in substantial compliance as a result of a subsequent primary review, the State must not exceed the threshold of four error cases. DHS, and its partners in the Courts, are encouraged to continue the momentum they have achieved in implementing its title IV-E maintenance program.