

## **Minnesota Title IV-E Foster Care Eligibility Review Final Report Period Under Review: April 1, 2006 through September 30, 2006**

### **Introduction**

Staff from the Children's Bureau (CB), Administration for Children and Families (ACF), and the Minnesota Department of Human Services (DHS) conducted an eligibility review of Minnesota's title IV-E foster care program in St. Paul during the week of June 11 - 15, 2007. The purpose of the Title IV-E Foster Care Eligibility Review was to determine whether payments were made on behalf of eligible children placed in licensed or approved homes and institutions in accordance with title IV-E (Sections 471 and 472) of the Social Security Act (the Act) and title 45 of the Code of Federal Regulations (CFR), Section 1356.71.

### **Scope of the Review**

The Minnesota 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), which was April 1, 2006 to September 30, 2006. A computerized statistical sample of 100 cases (80 plus 20 oversample cases) was drawn from the Adoption and Foster Care Analysis and Reporting System (AFCARS) data, which was transmitted by the State Agency 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 child care institution in which the child was placed was fully licensed for the PUR.

This review was Minnesota's second primary review. Of the 80 cases reviewed, two cases were determined to be in error and one case was determined to be a non-error case that included ineligible payments made outside the PUR. CB has determined Minnesota to be in substantial compliance, as the number of error cases did not exceed four. States which are determined to be in substantial compliance are not required to submit a Program Improvement Plan or undergo a secondary review.

### **Case Record Summary**

This section summarizes both error cases and the non-error case with ineligible payments. A sample case is found to be in error when a review of the case record indicates that a title IV-E eligibility criterion is not met and a title IV-E maintenance payment is made during the PUR. A non-error case with ineligible payment(s) occurs whenever a title IV-E eligibility criterion is not met and title IV-E funds for foster care maintenance or administrative costs are paid outside of the PUR. All title IV-E funds associated with error cases, as well as any identified ineligible payments, will be disallowed in accordance with applicable Federal statutes and regulatory provisions. Of the 80 eligible cases, two were error cases and one was an ineligible payment case. The total amount of Federal dollars associated with the error and ineligibility cases is

\$60,186. Both error cases concerned valid removals. The non-error case with ineligible payments related to a late judicial finding of reasonable efforts to prevent removal.

### **Error Cases**

In sample case #22, a court order dated December 22, 2005, assumed temporary custody of the child and delegated it to Ramsey County with authority to proceed with a trial home visit with the child in the mother's care (specified relative from whom the child had been removed) until a health, safety and welfare assessment of the child could be made by a social worker. The County was authorized to discontinue the trial home visit and place the child in alternate care if the social worker determined that removal of the child from the home was necessary to protect his health, safety and welfare, or if the mother failed to cooperate with or make her and the child available to Ramsey County child protection staff. Following the mother's non-compliance with this court order's conditions, the child was then physically removed from the home on March 16, 2006. The physical removal did not coincide with the December 22, 2005 court order which, while containing both reasonable efforts and contrary to the welfare judicial determinations, is not a removal order, per se. The child was not removed pursuant to the contrary to the welfare determination. Therefore, the child is title IV-E ineligible for the life of the case due to lack of a valid removal. Federal regulations at 45 CFR 1356.21(k)(2) specifically address valid removal. The total disallowance assessed for this case is \$5,246, with \$2,956 attributed to maintenance costs, and \$2,290 attributed to administrative costs.

In sample case #44, a court order dated February 10, 1997 granted legal custody to Goodhue County DHS and granted authority to place the child in the removal home. On May 27, 1997, the court then amended paragraph two of this order to allow Goodhue County to place the child out of the home if deemed appropriate. The language of the May 27, 1997 order, by itself, does not sanction the child's removal, though the child was physically removed on that date. In addition, the physical removal date occurred more than three months following the initial order granting legal custody to the State. The physical removal does not coincide with the February 10, 1997 court order, which contained both reasonable efforts and contrary to the welfare judicial determinations. The sum of these circumstances renders this child title IV-E ineligible for the life of the case due to lack of a valid removal. Federal regulations at 45 CFR 1356.31(k)(2) specifically address valid removal. The total disallowance assessed for this case is \$8,196, with \$6,204 attributed to maintenance costs, and \$1,992 attributed to administrative costs.

### **Ineligible payments**

In oversample case #1, there was a delayed judicial determination regarding reasonable efforts to prevent removal or reunify the child and family. The child was removed from the home on May 11, 1995; however, the first court order with a reasonable efforts finding was dated December 16, 2002. For a child removed from the home prior to March 27, 2000, the judicial determination that reasonable efforts were made to prevent removal or to reunify the child and family may be made at any point in the foster care episode; however, title IV-E foster care maintenance payments may not begin until the first month all eligibility requirements pertaining to removal are met. Therefore, the child was ineligible for payments from May 11, 1995 through November 30, 2002. Federal regulations at 45 CFR 1356.21 specifically address reasonable

efforts. The total disallowance assessed for this case is \$46,744, with \$31,381 attributed to maintenance costs, and \$15,363 attributed to administrative costs.

## **Strengths and Model Practices**

*State Pre-Review and Review Activities:* The Minnesota staff, both at the State and County level, did an excellent job preparing for this review. The case records were well-organized and overall the reviewers had little difficulty locating the required information. The complete payment histories that State fiscal staff provided were very well done and often clearly and accurately demonstrated when each child moved in and out of facilities eligible for reimbursement under title IV-E. Prior to the onsite review, both State program and fiscal staff were very responsive to Federal requests and supplied needed information in a timely manner.

These noteworthy efforts continued during the onsite review, as all participating State and contracted staff worked diligently to ensure that the review flowed as smoothly as possible. State reviewers were especially helpful in locating required Aid to Families with Dependent Children (AFDC) eligibility information, particularly when the situation warranted an extended workday to locate information needed by the reviewers to complete their case reviews. All State reviewers contributed positively to the review process, and several State staff played key roles with quality assurance.

*Judicial Documentation in Court Orders:* Reviewers found the Minnesota court orders to be very well done, detailed, and improved since the State's Initial Primary Title IV-E Foster Care Eligibility Review in April 2004. The language included in the court orders illustrated how informed judges were about child welfare practice and the cases they were hearing. Examples included orders with indications that siblings were to be placed together as well as detailed lists of exactly what reasonable efforts were employed to prevent removal or reunify a family.

The improvements that were seen in the court orders overall between the 2004 and 2007 title IV-E reviews is clear evidence of the strong collaboration between the State agency and State court system and the hard work that has been done over the past few years to make these positive changes come to fruition.

*Reasonable Efforts to Finalize Permanency Plans:* A judicial determination that reasonable efforts were made to finalize a permanency plan (REPP) must be made no later than 12 months from the date on which the child is considered to have entered foster care and at least once every 12 months thereafter while the child remains in foster care in order for a child to remain title IV-E eligible. [45 CFR 1356.21(b)(2)]

This was a key area of strength for Minnesota. Reviewers noted clear documentation in the case files indicating that permanency plan review hearings were conducted every six months, a more frequent practice than mandated by Federal regulation, and the REPP findings were explicitly documented during these hearings. Moreover, it was observed that these hearings were occurring even more frequently for children seeking permanency whose parental rights had been terminated. There were no error cases or non-error cases with ineligible payments attributed to this criterion and the State demonstrated strong practice overall.

*Placement and Care:* In order for a child to be eligible for title IV-E reimbursement, the State title IV-E agency (or another public agency, including an Indian Tribe, with which the title IV-E agency has a written agreement that is in effect) must maintain responsibility for the child's placement and care for the entire time that he/she is in an out-of-home placement. [45 CFR 1356.71(d)(1)(iii)]

In all 80 cases reviewed, the Minnesota court orders explicitly vested placement and care responsibility with the appropriate Minnesota public agency. This is particularly noteworthy considering Minnesota is a State-supervised, county-administered State with 87 different counties. The clarity of placement and care responsibility despite the diversity in the court orders utilized by the 87 counties is another example of the strong collaboration between the court system and the State and County agencies.

*Licensing and Safety Checks:* In order for the State to receive Federal financial reimbursement for foster care payments made on behalf of a child in care, the child must be placed in a foster care facility that is licensed and meets all of the State (or Tribal) agency standards for full licensure. These facilities include foster family homes, group homes, private child care institutions or public child care institutions which accommodate 25 or fewer children. For each case in the sample, State agencies must provide a licensing file containing the licensing history, including a copy of the license or approval, or the letter of approval, for each of the child's foster care providers during the PUR. [45 CFR 1356.21(m)(2)]

The quality of the licensing and safety check information in the Minnesota case files was exceptional and no concerns emerged during the review process about these related components. All foster care providers were fully licensed during all periods for which the State claimed title IV-E funds on behalf of children placed with them and this information was clearly documented in the case files. Criminal background check information was readily available for all foster family homes and child care institutions in the sample. Several reviewers also noted while examining the licensing information that Minnesota has already been taking steps to comply with the Adam Walsh Child Protection and Safety Act of 2006, which is not presently under the purview of the eligibility review. Licensing and safety checks were clear strengths during this review.

## **Areas in Need of Improvement**

*Judicial Removals:* The two error cases associated with this review both relate to valid removal issues. A valid removal is considered not to have occurred in situations in which the child is judicially removed from the parent or another specified relative and the child is permitted to remain in that same relative's home under the supervision of the State agency. The physical removal from the home must coincide with the judicial ruling that authorizes the child's removal from the home and placement in foster care under the responsibility of the State agency, unless the court order specifies an alternative timeframe for removal, as allowed for in the Departmental Appeals Board decision # 2017 (effective as of March 6, 2006). If this does not occur, the child is not eligible for title IV-E funding for the duration of the foster care episode. [45 CFR 1356.21(k)(2)] In both of the error cases, several months transpired between the transfer of legal custody to the State and the child's physical removal from the home. It is imperative that all

counties in the State have a clear understanding of what constitutes a valid removal. It is our understanding that judicial training has been conducted in this area and that we should anticipate positive results in future reviews.

*AFDC Eligibility:* While ultimately there were no error cases and no ineligible payments related to AFDC eligibility determined during the on-site review, there were challenges encountered during the review week which warrant improvements in future State practice. The purpose of the title IV-E foster care program is to provide financial assistance to States for maintaining children who meet the eligibility requirements for the AFDC program and cannot remain safely in their homes of origin. Thus, a child's eligibility for title IV-E foster care maintenance, in part, is predicated on the child's eligibility for AFDC, based on the eligibility requirements that were in place in the State's title IV-A Plan on July 16, 1996. [45 CFR 1356.71(d)(1)(v)]

In order for a child to be title IV-E eligible, the State must prove that he/she meets the dependency requirements of financial need and deprivation based on the circumstances that existed in the home of the specified relative from which the child was removed during the month the court proceedings leading to the child's removal were initiated or the voluntary placement agreement was signed. It is often appropriate that States use the month the removal petition is filed, or the date of the removal court order can be used if a removal petition is not filed or is filed after the removal order. A new AFDC eligibility determination must be conducted for each episode if there are multiple foster care episodes associated with a particular child.

There was much confusion about this matter during the on-site review. It became clear that Minnesota was consistently using the month the original court petition was filed even if that petition did not initiate proceedings for foster care placement or did initiate removal proceedings for a different foster care episode when there was more than one foster care episode associated with the child in question. The State was then required to re-create AFDC initial eligibility for each of those cases. Fortunately, all children in question met the AFDC eligibility criteria and no periods of ineligibility were determined. However, we strongly recommend that the State examine its practice in this area and provide training to all counties to ensure that workers are determining AFDC eligibility based on the correct month so these complications are not faced in future reviews.

## **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, 2006 to September 30, 2006. Based upon the results of the review, Minnesota has been determined to be in substantial compliance. Three cases (two error cases and one non-error case with ineligible payments) were determined not to be eligible for funding under title IV-E foster care. Therefore, a disallowance in the amount of \$60,186 FFP is assessed for the entire period of time that these cases were determined to be ineligible. Of this total, \$40,541 pertains to ineligible title IV-E foster care maintenance payments (\$9,160 related to the error cases and \$31,381 related to the non-error case) and \$19,645 pertains to ineligible title IV-E foster care administrative costs (\$4,282 related to the error cases and \$15,363 related to the non-error case).

Moreover, it is noteworthy that the above-referenced disallowance only encompasses the period of ineligibility, ending with the last day of the PUR, September 30, 2006. It does not encompass any disallowances that may be associated with the error cases claimed against the title IV-E foster care program after September 30, 2006. Therefore, we request that Minnesota review its records with respect to the three cases referred to above and ascertain whether any additional ineligible maintenance payments and related administrative costs were claimed against the title IV-E foster care program after September 30, 2006. Any additional ineligible payments beyond the PUR must be added to the total disallowance.

Since the amount of disallowed funds was previously included in Federal payments made to the State, Minnesota 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). Minnesota should identify the adjustments by Federal fiscal year, by quarter, and by case number when making these adjustments on Part 2, Section B: Decreasing Adjustments of the Form ACF-IV-E-1, which must be submitted within 30 days of the date of the accompanying transmittal letter in order to avoid the assessment of interest. [45 CFR 30.12(a) and 30.13] DHS will be liable for interest on the amount of funds disallowed by CB in accordance with the provisions of 45 CFR 30.13(a) if the disallowance is not paid within 30 days from the date of that letter. Regulations at 45 CFR 30.14 provide guidance on paying the debt or accruing interest while pending a formal review of the debt. Minnesota may appeal this disallowance to the Departmental Appeals Board within 30 days from receipt of the accompanying letter. [45 CFR 16.7(a)] Please refer to these regulations for procedures for appealing this disallowance. This decision shall be the final decision of the Department unless within 30 days after receipt of this decision, you deliver or mail (using registered or certified mail to establish the date) a written notice of appeal to:

Department of Health and Human Services  
Departmental Appeals Board  
Room 635-D, HHH Building  
200 Independence Avenue SW  
Washington, DC 20201

Should the State choose to appeal, please attach to the notice a copy of this decision, a note of intention to appeal, the amount in dispute and a brief statement as to why DHS believes this decision is incorrect. A copy of the appeal should also be sent to CB's Regional Office. The Board will notify you of further procedures.

If DHS appeals, the agency may elect to repay the amount at issue pending a decision of the Departmental Appeals Board, or you may retain the funds pending that decision. An adjustment to return the disallowed funds for the purposes of avoiding interest assessment must be made through the use of a supplemental submission of the Form ACF-IV-E-1. Interest will be charged starting from the date of this letter on the funds the Board decides were properly disallowed if the State retains the funds and the Board sustains all or part of the disallowance. Regulations at 45 CFR Part 30 detail how interest will be computed.

In the event DHS chooses to take no action to return the funds, it will be assumed the State has elected to retain the funds either to appeal or to delay recoupment of the funds until the next

issued grant award. Interest will continue to accrue on the Federal funds retained by the State during this period.

## **Conclusion**

Overall, the results of Minnesota's primary review indicate strong practice in the area of title IV-E eligibility. Building upon the State's substantial compliance with Federal requirements in their Initial Primary Review in 2004, the results of this more recent review revealed that the State has continued to make improvements in title IV-E eligibility and case practice. Several model practices were distinguished throughout the course of the primary review, and the time and effort that DHS State and county personnel and the courts have invested in improving the State foster care system is notable.

As Minnesota is found to be in substantial compliance with Federal title IV-E requirements, the State can anticipate the next primary Title IV-E Foster Care Eligibility Review to take place in approximately three years.