

Final Report
New York State Title IV-E Foster Care
Eligibility Review
April 1, 2002 - September 30, 2002

Introduction

During the week of April 28, 2003, Administration for Children and Families' (ACF) staff from the Central and Regional Offices and State of New York staff conducted a primary eligibility review of New York's title IV-E foster care program in Rensselaer, New York.

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

Scope of the Review

The New York State title IV-E foster care review encompassed a sample of all of the title IV-E foster care cases that received a foster care maintenance payment during the period of April 1, 2002 to September 30, 2002. A computerized statistical sample of 100 cases (80 cases plus 20 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 ACF for the period under review. 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 licensed or approved for the period of the review.

The State provided payment and claiming information for all of the reviewed cases. This information required extensive analysis and compilation for use in identifying payment amounts associated with the review findings. Gaps in the payment or the claiming of payments were identified covering periods during which children remained in care for some of the reviewed cases. The State did not provide information that would permit an analysis of whether the payment amounts are in accordance with the applicable rates for the type(s) of service.

During this initial primary review, 80 cases were reviewed. Thirty-one cases were determined to be in error for either part or all of the review period for reasons that are identified in the Case Record Summary section of this report. Since the number of error cases exceeded eight, the ACF has determined New York State not to be in substantial compliance. Therefore, pursuant to 45 CFR §1356.71(i), you are required to develop a Program Improvement Plan (PIP). Once the State has satisfactorily completed the PIP, a secondary review of a sample of 150 foster cases will be conducted.

Case Record Summary

The following chart details the error cases, reasons for the error, and appropriate citations:

Sample No.	Title IV-E Eligibility Criterion	Statutory Citation
4	Reasonable Efforts to Prevent Removals Reasonable Efforts to Make and Finalize a Permanency Plan	472(a)(1), 471(a)(15)(B)(i) 472(a)(1), 471(a)(15)(B)(ii) and (C)
7	Contrary to the Welfare Reasonable Efforts to Prevent Removals Reasonable Efforts to Make and Finalize a Permanency Plan Placement and Care Responsibility Vested with the State Agency	472(a)(1) 472(a)(1), 471(a)(15)(B)(i) 472(a)(1), 471(a)(15)(B)(ii) and (C) 472(a)(2)
9	Aid to Families with Dependent Children (AFDC) Eligibility	472(a)(1) and (4)
12	Reasonable Efforts to Prevent Removals	472(a)(1), 471(a)(15)(B)(i)
16	Contrary to the Welfare Reasonable Efforts to Make and Finalize a Permanency Plan Aid to Families with Dependent Children (AFDC) Eligibility	472(a)(1) 472(a)(1), 471(a)(15)(B)(ii) and (C) 472(a)(1) and (4)
22	Reasonable Efforts to Make and Finalize a Permanency Plan	472(a)(1), 471(a)(15)(B)(ii) and (C)
27	Reasonable Efforts to Make and Finalize a Permanency Plan	472(a)(1), 471(a)(15)(B)(ii) and (C)
29	Reasonable Efforts to Make and Finalize a Permanency Plan	472(a)(1), 471(a)(15)(B)(ii) and (C)
31	Reasonable Efforts to Prevent Removals	472(a)(1), 471(a)(15)(B)(i)
36	Voluntary Placement Agreements and Best Interests Determinations	472(d), (e), and (f)
37	Contrary to the Welfare Reasonable Efforts to Make and Finalize a Permanency Plan Payment not consisting of items or services allowable as foster care maintenance assistance	472(a)(1) 472(a)(1), 471(a)(15)(B)(ii) and (C) 475(4)
38	Reasonable Efforts to Make and Finalize a Permanency Plan	472(a)(1), 471(a)(15)(B)(ii) and (C)
39	Reasonable Efforts to Make and Finalize a Permanency Plan	472(a)(1), 471(a)(15)(B)(ii) and (C)
42	Reasonable Efforts to Make and Finalize a Permanency Plan Aid to Families with Dependent Children (AFDC)	472(a)(1), 471(a)(15)(B)(ii) and (C) 472(a)(1) and (4)
45	Reasonable Efforts to Make and Finalize a Permanency Plan	472(a)(1), 471(a)(15)(B)(ii) and (C)

50	Reasonable Efforts to Make and Finalize a Permanency Plan	472(a)(1), 471(a)(15)(B)(ii) and (C)
54	Reasonable Efforts to Prevent Removals	472(a)(1), 471(a)(15)(B)(i)
56	Reasonable Efforts to Make and Finalize a Permanency Plan Placement and Care Responsibility Vested with the State Agency	472(a)(1), 471(a)(15)(B)(ii) and (C) 472(a)(2)
59	Contrary to the Welfare Reasonable Efforts to Make and Finalize a Permanency Plan	472(a)(1) 472(a)(1), 471(a)(15)(B)(ii) and (C)
60	Reasonable Efforts to Prevent Removals Reasonable Efforts to Make and Finalize a Permanency Plan Placement and Care Responsibility Vested with the State Agency	472(a)(1), 471(a)(15)(B)(i) 472(a)(1), 471(a)(15)(B)(ii) and (C) 472(a)(2)
61	Reasonable Efforts to Make and Finalize a Permanency Plan Placement and Care Responsibility Vested with the State Agency	472(a)(1), 471(a)(15)(B)(ii) and (C) 472(a)(2)
62	Reasonable Efforts to Make and Finalize a Permanency Plan	472(a)(1), 471(a)(15)(B)(ii) and (C)
68	Aid to Families with Dependent Children (AFDC) Eligibility - Age 18 not expected to graduate by age 19	472(a)(1) and (4)
72	Reasonable Efforts to Make and Finalize a Permanency Plan	472(a)(1), 471(a)(15)(B)(ii) and (C)
78	Contrary to the Welfare Reasonable Efforts to Prevent Removals	472(a)(1) 472(a)(1), 471(a)(15)(B)(i)
79	Voluntary Placement Agreements and Best Interests Determinations	472(d), (e), and (f)
80	Reasonable Efforts to Make and Finalize a Permanency Plan Aid to Families with Dependent Children (AFDC) Eligibility	472(a)(1), 471(a)(15)(B)(ii) and (C) 472(a)(1) and (4)
OS3	Contrary to the Welfare	472(a)(1)
OS4	Reasonable Efforts to Make and Finalize a Permanency Plan	472(a)(1), 471(a)(15)(B)(ii) and (C)
OS11	Contrary to the Welfare Reasonable Efforts to Prevent Removals	472(a)(1) 472(a)(1), 471(a)(15)(B)(i)
OS12	Reasonable Efforts to Prevent Removals	472(a)(1), 471(a)(15)(B)(i)

Areas in Need of Improvement

In the following sections we have identified the areas of weakness that must be addressed in the PIP. Under each heading we provide the statutory and regulatory basis, and the specific results from our review.

I. Removal Pursuant to a Court Order - Removal of the child from the home must be pursuant to a judicial determination or a voluntary placement agreement. The contrary to the welfare determination must be made in the first court ruling that sanctions (even temporarily) the removal of a child from home. The judicial determination that reasonable efforts to prevent removal were made (or were not required) must be made no later than 60 days from the date of the child's removal from home. Judicial determinations must be made in a timely manner in a valid court order. [Statutory Citation: 472(a)(1), 471(a)(15)(B)(I); Reg Citation: §1356.21]

For a child who enters care prior to March 27, 2000: If the removal order does not contain the judicial determination regarding “contrary to the welfare”, the requisite finding may result from court proceedings (the petition filed) that are initiated no later than 6 months from the date the child is removed from home, consistent with Departmental Appeals Board Decision Number 1508 (DAB 1508). The Departmental Appeals Board, through DAB 1508, ruled that a petition to the court stating the reason for the State agency’s request for the child’s removal from home, followed by a court order granting custody to the State agency, is sufficient to meet the contrary to the welfare requirement. The judicial determination that reasonable efforts were made to prevent removal or that reasonable efforts were made to reunify the child and family satisfies the reasonable efforts requirement.

Contrary to Welfare/Best Interests of the Child

Seven (7) cases were found ineligible for Federal Financial Participation (FFP) because either: 1) the case record did not contain the removal petition or court order and a determination could not be made regarding contrary to welfare; 2) the judicial determination was not made in a timely manner; or 3) the court order did not contain a contrary welfare or best interest finding.

Reasonable Efforts to Prevent Removal/Reasonable Efforts to Reunify Child and Family

Nine (9) cases were determined ineligible for FFP because either: 1) the case record did not contain the court order and a determination could not be made regarding reasonable efforts to prevent removal or reunify child and family; 2) the judicial determination was not made in a timely manner; or 3) the court order did not contain a reasonable efforts determination.

II. Voluntary Placements - Title IV-E payments may be made on behalf of a child who is in foster care pursuant to a voluntary placement agreement only for the first 180 days of the foster care placement, unless there is a judicial determination that continued voluntary placement is in the child’s best interests. A valid voluntary placement agreement must be signed by the parent

or legal guardian and the title IV-B/IV-E agency representative(s). [Statutory Citation: 472(d)(e) and (f); Regulatory Citation: §1356.22]

Two (2) cases were found ineligible because: 1) the court order was not obtained within 180 days of placement, and 2) an invalid voluntary placement agreement.

III. Ongoing Judicial Activity - In order for a child to be eligible for title IV-E payments, there must be a judicial determination that reasonable efforts were made to finalize the child's permanency plan that is in effect. The permanency plan goal may be: reunification, adoption, legal guardianship, placement with a fit and willing relative, or another planned permanent living arrangement. The judicial determination of reasonable efforts to finalize the permanency plan 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 is in foster care.

If a judicial determination regarding reasonable efforts to finalize a permanency plan is not made within this timeframe, the child is ineligible at the end of the 12th month from the date the child was considered to have entered foster care or at the end of the month in which the subsequent judicial determination of reasonable efforts was due. The child remains ineligible until such a judicial determination is made. This requirement may also be satisfied by a judicial determination that reasonable efforts were made to reunify child and family. [Statutory Citation: 472(a)(1), 471(a)(15)(B)(ii) and (C); Regulatory Citation: 1356.21(b)(2)]

Reasonable Efforts to Finalize the Permanency Plan

Twenty (20) cases were determined ineligible for FFP because either: 1) the case record did not contain the court order and a determination could not be made regarding reasonable efforts to finalize the permanency plan; or 2) the judicial determination was not made in a timely manner; or 3) the court order did not contain a reasonable efforts determination.

In sixteen (16) cases, the case record did not indicate that the requisite judicial determination regarding reasonable efforts to finalize the permanency plan was made prior to March 27, 2001. For a child who enters foster care prior to March 27, 2000, a judicial determination that reasonable efforts were made to finalize the child's permanency plan must have occurred by March 27, 2001. If not made by March 27, 2001, the child becomes ineligible for title IV-E foster care payments from April 1, 2001 until the judicial determination requirement is met. However, because we were specifically looking for the court orders made during the period under review, this area of ineligibility is being reported as a management finding and will not be counted as an disallowance against the State.

It is ACF's understanding that State staff have been working with the local social services districts to correct and improve the issues regarding judicial determinations. The State must continue to emphasize to the districts, family court judges, and staff of the Family Court system the importance of the Federal requirements regarding judicial determinations. There must be a clear understanding that court orders must contain the necessary judicial findings regarding contrary to welfare, reasonable efforts to prevent removal or reasonable efforts to reunify, and

reasonable efforts to finalize the child's permanency plan. These findings must be rendered in a timely manner, explicitly documented and maintained in the case record.

IV. State Agency Responsibility for Placement and Care - Title IV-E payments can only be made for a child's placement and care that is under the responsibility of the State agency administering the title IV-E State Plan (or another public agency, including an Indian tribe, with which the title IV-E agency has a written agreement that is in effect). The court order or voluntary placement agreement must indicate that the agency has this responsibility. [Statutory Citation: 472(a)(2); Regulatory Citation: 1356.71(d)(1)(iii)]

Four (4) cases were determined ineligible for FFP because the review results indicated that either the court order that extended the child's placement in foster care was not renewed in a timely manner, or the placement and/or extension order could not be located for review. Thus it could not be determined if the child was under the responsibility of the State agency or if the State maintained responsibility for placement and care of the child during the review period.

V. AFDC Eligibility - Using its criteria in effect in its July 16, 1996 title IV-A State plan (or, if removal was prior to the effective date of The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [PRWORA] the title IV-A State Plan in effect at the time), the State must document that the child was removed from a specified relative, and that the child was financially needy and deprived of parental support in the month the voluntary placement agreement was signed or the month in which the petition that resulted in a court-ordered removal was signed. Deprivation must be by reason of death, absence, physical or mental incapacity of one parent, or the unemployment of the principal wage earner. [Statutory Citation: 472(a)(1) and (4); Regulatory Citation: 1356.71(d)(1)(v)]

Eligibility for AFDC at removal

Four (4) cases were determined ineligible for FFP because the case record did not contain the necessary documentation to determine whether the child received AFDC at the time of placement, or would have received AFDC within 6 months of placement based on financial need and deprivation of parental support.

School Attendance for students who are Age 18

When a child reaches his or her 18th birthday, eligibility for AFDC ceases unless, at State option, the child is a full-time student in a secondary school or its equivalent and is expected to complete the program before age 19. If the State does exercise this option, eligibility for title IV-E foster care ceases at the end of the month in which the child leaves school or when the child turns 19, whichever occurs earlier.

One (1) case was determined ineligible for FFP because the child was age 18 and not expected to graduate prior to age 19.

VI. Ineligible Payment – Title IV-E foster care maintenance assistance payments may only cover the costs of providing certain items encompassed within the definition of this term. [Statutory Citation: 475(4); Regulatory Citation: 1356.60(c)]

One (1) case was ineligible for FFP based upon documentation establishing that the service provided was therapeutic counseling. This item of cost constitutes the provision of social services and is not allowable as a title IV-E claim. The payment was classified in the State’s automated system as “Type 63 – Additional Per Diem”.

Areas of Strengths

In this section we have identified the areas of strength. Under each heading we provide the statutory and regulatory basis, and the specific results from our review.

Safety Requirements of Provider - In all cases where the State opts out of the criminal records check requirement, the licensing file for that foster or adoptive family must contain documentation that verifies that safety considerations with respect to the caretaker(s) have been addressed. In addition, in order for a child care institution to be eligible for title IV-E funding, the licensing file for the institution must contain documentation which verifies that safety considerations with respect to the staff of the institution have been addressed. [Statutory Citation: 471(a)(20), 475(1); Regulatory Citation: 1356.30]

Safety requirements for foster/adoptive family homes when state has opted out of criminal records check

The review indicated that in all foster family home cases reviewed the file contained the required documentation verifying that the safety consideration had been addressed for foster care providers. Specifically, it was determined that the State-required criminal records check had been conducted for all foster home cases reviewed and any concerns reviewed.

Safety requirements for staff/caretakers in child care institutions

Concurrently, the review also indicated that in all institutional cases reviewed the file contained the required documentation verifying that the safety consideration had been addressed for staff/caretakers in child care institutions.

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 6-month AFCARS period of April 1, 2002 to September 30, 2002. Based upon the results of the review, the State of New York has been determined not to be in substantial compliance. Thirty-one cases were determined not to be eligible for funding under title IV-E foster care. Therefore, a disallowance in the amount of \$806,811 in Federal Financial Participation is assessed for the period of time that these cases were determined to be in error through the end of the period under review for foster care maintenance payments and administrative costs.

The erroneous maintenance payments and administrative costs associated with the 31 error cases were calculated as shown in Attachment A. Administrative costs were identified based upon actual average monthly per child title IV-E claimed costs for applicable periods as shown in Attachment B. These calculations include the amounts claimed on behalf of the child for the period of the error through the end of the review period (September 30, 2002.) New York State will be required to make downward adjustments to title IV-E claims for any case or placement that has continued to be ineligible for title IV-E funding beyond the end of the period under review. The State is also required to appropriately apply the findings contained in this report if additional payments are subsequently identified as title IV-E claimed or claimable for services rendered during the review period or for earlier periods during the same episode of foster care.

Required Action

1. The State must make the appropriate prospective claiming adjustments from October 1, 2002 for the 31 cases that were determined ineligible for title IV-E. The State must also take appropriate claiming action to apply the findings contained in this report if additional payments are subsequently identified as title IV-E claimed or claimable for services rendered during the review period or for earlier periods during the same episode of foster care. To the extent that this effort results in the filing of prior period adjustments claims on Part 2 of Form IV-E-1, the State should include in column e (Other Comments) a reference to the "FY 2002 Title IV-E Review."
2. A Program Improvement Plan (PIP) must be developed with ACF, and submitted to this office for approval by September 1, 2003. The PIP should address the corrective actions needed to bring the State into substantial compliance with title IV-E requirements (i.e. change in policy, procedure, or practice.) The PIP should include active participation of both local departments of social services and OCFS staff. OCFS should work closely with ACF staff in developing appropriate outcome measures and timeframes for implementation. The PIP may not extend beyond one year unless State legislative action is required to implement needed corrective action.

According to regulations at 45 CFR §1356.71(i), the PIP must include the following components:

- Specific goals
- Action steps required to correct each identified weakness or deficiency;
- A date by which each of the action steps is to be completed.

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