

**MICHIGAN TITLE IV-E
FOSTER CARE ELIGIBILITY REVIEW
AFCARS REVIEW PERIOD APRIL 1 – SEPTEMBER 30, 2003**

I. INTRODUCTION

During March 22 – 26, 2004 staff from Region V and the Children's Bureau of the Administration for Children and Families (ACF) in collaboration with staff from the State of Michigan conducted an eligibility review of Michigan's title IV-E foster care program in Lansing.

The purposes of the title IV-E foster care eligibility review were to (1) determine if Michigan was in compliance with the child and provider eligibility requirements as outlined in 45 CFR 1356.71 of the Code of Federal Regulations and Section 472 of the Social Security Act; and (2) validate the basis of Michigan's financial claims to assure that appropriate payments were made on behalf of eligible children and to eligible foster care providers.

II. SCOPE OF THE REVIEW

The Michigan title IV-E foster care review encompassed a sample of title IV-E foster care cases that received a foster care maintenance payment during the period of April 1, 2003 through September 30, 2003. A computerized statistical sample of 100 cases (80 cases plus an oversample of 20) was drawn from the Adoption and Foster Care Analysis and Reporting System (AFCARS) data and transmitted by the Michigan Family Independence Agency (FIA) to ACF. Child case files were reviewed to determine both the child's initial and ongoing title IV-E eligibility including the need for judicial determinations on reasonable efforts to finalize permanency plans. Files were reviewed to ensure that foster care placement Providers were licensed for the period under review. As of March 27, 2001 judicial determinations regarding reasonable efforts to finalize permanency plans are required for all children on a yearly basis. Consequently, cases failing to meet this requirement after March 27, 2001 will have disallowances assessed for the period of ineligibility.

During the initial primary review, 80 cases were reviewed; 76 from the original sample and four from the oversample. Michigan submitted additional information to be considered on cases that were deemed error cases or had missing information at the conclusion of the on-site. Based upon the results of the onsite and a review of additional information for those cases cited in Michigan's April 5th submission, 12 cases were determined to be in error for either part or all of the review period. In some instances, a case was determined to contain more than one error but was counted only once when determining the number of error cases. On April 21st, additional material was received and will be reviewed for further consideration regarding error determinations.

The Case Error Summary (contact the State for additional information) and Section IV provides specific information on the types of errors identified during the review.

Since the number of cases in error exceeded eight, Michigan is not in substantial compliance. Pursuant to 45 CFR 1356.71(i), Michigan is required to develop a Program Improvement Plan (PIP) designed to correct those areas determined not to be in substantial compliance. The PIP should be developed by the Michigan FIA in consultation with ACF Regional staff, and must be submitted to the ACF Regional Office within 90 days from the receipt of this report. Michigan will have a maximum of one year to implement and complete the PIP unless State legislative action is required to implement needed corrective action. (See 45 CFR 1356.71(i)(1)(iii).) Once Michigan has satisfactorily completed its PIP, a secondary review of a sample of 150 title IV-E foster care cases will be conducted. No more than 15 cases in the secondary review may be in error and the dollar error rate may not exceed 10 percent.

III. CASE RECORD SUMMARY

Enclosure B identifies the reasons for the errors. Enclosure C designates the dollar amount associated with the errors. The following section discusses the broad-based categories of errors that will need to be addressed in Michigan's PIP.

IV. AREAS NOT IN SUBSTANTIAL COMPLIANCE

Licensing

Regulations at 45 CFR 1355.20, 1356.21(m)(2) and 1356.71(d)(1)(iv) require that the placement of a child in foster care be in a licensed or approved facility. Three cases were found to be ineligible for FFP due to licensing errors during the period under review. In all three instances where licensing errors were cited, payments were made during the period that the license had expired. Licensing issues accounted for the sole error noted in these cases.

Contrary to the Welfare Finding

Children entering foster care on or after March 27, 2000 must have a judicial determination regarding "contrary to the welfare" in the first court order sanctioning the child's removal from the home as required by 45 CFR 1356.21 (c). "Contrary to the welfare" means that remaining in the home would be contrary to the child's welfare, safety or best interests. Acceptable documentation is a court order containing a judicial determination regarding contrary to the welfare. A transcript of the court proceeding is the only acceptable alternative to a court order to substantiate that the judicial determination requirement was met satisfactorily.

Three cases were found to be ineligible for FFP as the contrary to welfare requirement was not addressed in the first court order removing the child from the home. All three of these children for whom this finding was applicable entered foster care between 7/00 and 12/00. We believe that recent recommendation for changes to initial court orders proposed by the State Court Administrator's Office (SCAO) will facilitate documentation of the judicial finding in the court order.

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

For a child who enters care on or after March 27, 2000 the judicial determination that reasonable efforts to prevent removal were made, or were not required to be made, must occur no later than 60 days from the date of the child's removal from home as required by 45 CFR 1356.21(b). The judicial determination must be child-specific and may not merely reference State statutes pertaining to removals. Three cases were determined ineligible for FFP because either: 1) the judicial determination was not made in a timely manner; or 2) the court order did not contain a reasonable efforts determination regarding the State's efforts to maintain the family unit and prevent the unnecessary removal of the child from the home. In all three instances the children entered foster care after March 27, 2000.

Judicial Determinations on Reasonable Efforts to Finalize Permanency Plans

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 as required by 45 CFR 1356.21(b). 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.

The review found two cases to be ineligible for FFP because either: 1) the judicial determination was not made in a timely manner; or 2) the court order did not contain a reasonable efforts determination regarding the State's efforts to finalize the child's permanency plan.

AFDC Eligibility Requirements

In accordance with 45 CFR 1356.71(d)(1)(v), 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 in which the petition that resulted in a court-ordered removal was signed. This is to be accomplished by using the State's 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, the title IV-A State Plan in effect at the time). Deprivation must be by reason of death, absence, physical or mental incapacity of one parent, or the unemployment of the principal wage earner.

Two cases were found to be in error because the child had not lived with the specified relative from whom legally removed within six months of the removal petition.

Placement and Care Responsibility

One case was ineligible for FFP because the State Agency did not have placement and care of the child for the period the child was in foster care as defined by 45 CFR 1355.20 and 45 CFR 1355.38. In particular, the court order and transcript identified that the child was placed with "FC/suitable relative" without specifically identifying the State agency.

V. Future Concerns

Although the following areas are not required to be addressed in the PIP, it is strongly recommended that Michigan begin to take action now in order to prepare for future reviews.

AFCARS Mapping

Problems occurred in initially identifying all title IV-E eligible cases which received a payment for anytime within the period under review. Sample selection depends on the accuracy of AFCARS data element #59, *Title IV-E Foster Care*. Data element #59 inquires whether or not title IV-E foster care maintenance payments are being paid on behalf of the child. If title IV-E foster care maintenance payments are being paid on behalf of the child at any time during the six-month AFCARS period, the element should be coded "1". It is recommended that FIA review its AFCARS mapping to assure that all title IV-E eligible cases are being coded properly.

Payment History

In preparation for the review, difficulties occurred in obtaining complete payment histories with respect to the child's entire episode in foster care and were exclusive of administrative costs. For future title IV-E foster care reviews, we recommend that FIA be able to provide payment histories that include all of the required information delineated on page 4 of the Title IV-E Foster Care Eligibility Review Guide, ACYF-CB-IM-01-11, issued November 30, 2001. Particular consideration should be given to the following:

- (1) Complete payment histories that include the entire placement episode of each child, ending with the last day of the Period under Review;
- (2) Complete payment histories that are exclusive of all administrative costs, and;
- (3) Complete payment histories that include both the Gross and Federal financial participation amounts.

The Review Guide is accessible at the following weblink:

<http://www.acf.hhs.gov/programs/cb/laws/im/im0111a1.htm>.

AFDC Eligibility Requirements

During the review, instances were identified where either initial or subsequent AFDC eligibility determinations were either incomplete or absent from case records. FIA reconstructed these determinations subsequent to the review. It is recommended that FIA ensure that these are completed and documented in a timely manner.

Timely Judicial Determinations on Reasonable Efforts to Finalize Permanency Plans

While not considered error cases, there were instances in which judicial determinations to finalize permanency plans did not occur exactly 12 months from the date of the previous one. The judicial determination was due one month and made in the subsequent month. We recommend that FIA and the courts collaborate on ensuring that the timeframe for judicial determinations is not exceeded.

Documentation of Judicial Determinations

Reviewers identified the need for judges and referees to express Federal eligibility requirements more clearly in the written court order. Reviewers articulated that, when court orders included checkboxes, there were instances where contradictory boxes were checked or not all needed boxes to articulate

the judicial determination were checked. This led to confusion. In reference to the documentation of reasonable efforts to finalize permanency plans, reviewers cited that the court order frequently did not identify what the child's permanency plan was even though the court order contained a blank space for it. When a narrative followed the checkbox or all blank spaces were completed, reviewers found it easier to identify what the judicial determination was. In some instances, court transcripts were needed to determine whether the judicial determination was made. We recommend that FIA and the State Court Administrator's Office continue their collaboration to ensure that judicial determinations are complete and clearly documented. Relative to this, we acknowledge the work that has already been done by SCAO on strengthening the language in the Contrary to Welfare Orders.

FIA Manual Section CFF902-2

It became known during the on-site review that policy cited in the Childrens Foster Care Manual, Section CFF902-2 contains erroneous information regarding the requirements for judicial determinations on contrary to the welfare. We recommend that the FIA revise the Manual to be consistent with Federal regulations.

VI. STRENGTHS AND MODEL PRACTICES

During the review, the following strengths were identified.

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, including organizing the records for review and facilitating a "reviewer friendly" environment during the review week. Of note, was the willingness and untiring efforts made by various staff, including Bill Dodge, Leslie Adams, Janice Tribble, and Charles Foster in obtaining any additional information during the on-site review as well as consulting with other program staff, when necessary. Additionally, the assistance of Cathy Gosselin of the fiscal unit is recognized.

Michigan FIA 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. Knowledge of the State's systems often aided Federal reviewers in completing the assessment. Cross-fertilization of knowledge between Michigan staff and Federal staff was a positive byproduct of the review. They were also instrumental in verifying the accuracy of the ineligible cases and the periods of ineligibility.

Collaboration and Participation of the State Court Administrator's Office (SCAO)

Noteworthy is the collaboration between FIA and SCAO in working toward ensuring that judicial determinations meet title IV-E requirements. In particular, the involvement of Kathryn O'Grady from SCAO is noted, in both preparing for the review as well as participating in the entrance and exit conferences and debriefing around court related issues. As cited previously, SCAO has been instrumental in updating court forms, particularly the order that documents the judicial determination of contrary to the welfare. Subsequent to the on-site, SCAO has also been instrumental in obtaining court transcripts and necessary court information. This collaboration between FIA 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 both within the child welfare and legal communities.

AFDC Eligibility Determination Process

Noteworthy is Michigan's requirement for completing redeterminations of eligibility on a six-month basis, which exceeds Federal recommendations for yearly reassessments. Additionally, the IV-E eligibility determination process is automated throughout Michigan. Verifications including linkages to AFDC initial eligibility are accessible through Michigan's SACWIS system, which is known as SWSS (Services Worker Support System). The IV-E eligibility determination process uses flexible display features to guide users through the necessary steps to determine eligibility. In an effort to continually improve the automation of the process, Michigan has already identified edits to its system and the printout that it generates. These include delineating the period the redetermination covers, specifying the person to whom a source of income belongs, and entering "0" to signify that the user has considered all income questions.

Automated Payment System

SWSS supports payment processing. Of particular note is Michigan's practice of generating payments on a two-week basis. In this manner, foster parents are receiving payments more frequently which affords them the opportunity to better meet the financial needs of the children they are caring for. This timeframe also allows erroneous payments to be stopped on a timelier basis.

Licensing Safety Checks and Considerations

Particularly noteworthy is Michigan's practice of screening all licensed foster homes against its child abuse register on a weekly basis, notifying supervising agencies of any matches and then following up within 30 days to determine what actions are taken. 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.

VII. DISALLOWANCES

In accordance with 45 CFR 1356.71(j)(2), Michigan FIA is found not to be in substantial compliance with recipient and provider eligibility provisions of title IV-E. Enclosure C provides the error dollar amount for each of the 12 error cases as well as the two cases in which an overpayment was made but the case was not determined to be an error case. The total dollars in error are \$283,223.89 of which \$108,494.46 are Federal maintenance payments and \$174,729.43 are Federal administrative costs.

Moreover, it is noteworthy that the above-referenced disallowance only encompassed the period of ineligibility, ending with the last day of the period under review, September 30, 2003. It did not encompass any disallowances that may be associated with the error cases claimed against the title IV-E foster care program after September 30, 2003. Therefore, we request that Michigan review its records with respect to the 12 error cases 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, 2003.

To the extent that ineligible maintenance payments and administrative costs associated with the 12 error cases were claimed against the title IV-E program subsequent to September 30, 2003, we recommend that Michigan make the appropriate decreasing title IV-E foster care maintenance payment and administrative cost adjustments on its next regularly scheduled Quarterly IV-E-1 Report ending June 30, 2004. Michigan 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 Quarterly Report of Expenditures (ACF IV-E -1) Report.

VIII. NEXT STEPS

As referenced earlier in this report, Michigan's title IV-E foster care maintenance program has been found not to be in substantial compliance with Federal child and eligibility requirements. A PIP is due within 90 days of the receipt of this report. The PIP implementation period should be for one year. Once Michigan has satisfactorily completed its PIP, a secondary review of a sample of 150 title IV-E foster care cases will be conducted. Financial penalties based on ineligible payments are to be addressed as stipulated in the cover letter to this report.