

Delaware
Title IV-E Foster Care Eligibility
Primary Review
Report of Findings
October 1, 2011 – March 31, 2012

Introduction

During the week of July 16, 2012, the Children’s Bureau (CB) of the Administration for Children and Families (ACF) conducted a primary review of the Delaware title IV-E foster care program. The review was conducted in collaboration with the Department of Services for Children, Youth and Their Families (DSCYF) and was completed by a review team comprised of representatives from DSCYF, CB Central and Regional Office staff, ACF Regional Grants Management and a peer reviewer.

The purposes of the title IV-E foster care eligibility review were (1) to determine whether DSCYF’s title IV-E foster care program was in compliance with the eligibility requirements as outlined in 45 CFR §1356.71 and §472 of the Social Security Act (the 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.

Scope of the Review

The primary eligibility review encompassed a sample of the State’s foster care cases that received a title IV-E maintenance payment for an activity during the six month period under review (PUR) of October 1, 2011 - March 31, 2012. A computerized statistical sample of 100 (80 cases plus 20 oversample cases) was drawn from the State data submitted to the Adoption and Foster Care Analysis and Reporting System (AFCARS) for the above period. Eighty cases were reviewed which consisted of cases from the original sample. No oversample cases were reviewed. In accordance with Federal provisions at 45 CFR 1356.71, the State was reviewed against the requirements of title IV-E of the Act and Federal regulations regarding:

- Judicial determinations regarding reasonable efforts and contrary to the welfare as set forth in §472(a)(2)(A) of the Act and 45 CFR §§1356.21(b)(1) and (2), and (c), respectively;
- Voluntary placement agreements as set forth in §§472(a)(2)(A) and (d)-(g) of the Act and 45 CFR §1356.22;
- Responsibility for placement and care vested with the State agency as stipulated in §472(a)(2)(B) of the Act and 45 CFR §1556.71(d)(1)(iii);
- Eligibility for Aid to Families with Dependent Children (AFDC) under the State plan in effect July 16, 1996 as required by §472(a)(3) of the Act and 45 CFR §1356.71(d)(1)(v);
- Placement in a licensed foster family home or child care institution as defined in §§472 (b) and (c) of the Act and 45 CFR §1355.20(a); and
- Safety requirements for the child’s foster care placement as required at 45 CFR §1356.30.

The case file of each child in the selected sample was reviewed to verify title IV-E eligibility. The foster care provider’s file also was examined to ensure the foster family home or child care institution where the child was placed during the PUR was licensed or approved and that safety requirements were appropriately documented. Payments made on behalf of each child also were reviewed to verify the expenditures were allowable under title IV-E and to identify underpayments that were eligible for claiming. A sample case was assigned an error rating when the child was not eligible on the date of activity in the PUR for which title IV-E maintenance was paid. A sample case was cited as non-error with ineligible payment when the child was not eligible on the activity date outside the PUR or the child was eligible in the PUR on the date of an unallowable activity and title IV-E maintenance was paid for the unallowable activity. In addition, underpayments were identified for a sample case when an allowable title IV-E maintenance payment was not claimed by the State for an eligible child during the 2-year filing period specified in 45 CFR §95.7, unless the title IV-E agency elected not to claim the payment or the filing period had expired. The CB and State agreed that the State would have two weeks following the onsite review to submit additional documentation for a case that during the onsite review was identified as in error, in undetermined status, or not in error but with ineligible payments. Based upon additional documentation provided subsequent to the onsite review, the findings for sample cases 45, 64 and 59 were changed to non-error.

Compliance Finding

The review determined that seventy-six (76) of the eighty (80) cases met eligibility requirements (i.e., were deemed non-error cases) for the PUR. Four (4) cases were determined as in error for either part or all of the PUR and five (5) non-error cases were ineligible for Federal funding for a period of claiming. Accordingly, Federal funds claimed for the title IV-E foster care maintenance payments, including related administrative costs associated with error and non-error cases with ineligible payments, are being disallowed. Because the number of cases in error is fewer than five (5), Delaware is in substantial compliance for the PUR.

Case Record Summary

The following chart records the error cases; reasons for the improper payments; improper payment amounts; and the Federal provisions for which the State did not meet the compliance mandates.

Error Cases

Sample Number	Improper Payment Reason & Ineligibility Period	Improper Payments (FFP)
32	AFDC financial eligibility not met [§472(a)(3) of the Act; 45 CFR 1356.71(d)(1)(v)] Ineligible: 06/15/11-06/30/12	\$1,525 Maintenance \$8,260 Administrative
37	Child over 18 not expected to complete secondary school before 19 th birthday [§§406(a) and 472(a)(1) of the Act; 45 CFR 1356.71(d)(1)(v)] Ineligible: 01/01/12-01/03/12	\$34 Maintenance \$0 Administrative

49	AFDC financial eligibility not met [§472(a)(3) of the Act; 45 CFR 1356.71(d)(1)(v)] Ineligible: 06/15/11-06/30/12	\$1,751 Maintenance \$7,266 Administrative
67	Child did not live with specified relative from whom judicially removed within 6 months of removal [§472(a)(3) of the Act; 45 CFR 1356.71(d)(1)(v)] Ineligible: 12/17/11-06/30/12	\$9,172 Maintenance \$6,130 Administrative

TOTAL: \$34,138

Non Error Cases

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

Sample Number	Improper Payment Reason & Ineligibility Period	Improper Payments (FFP)
11	Foster care maintenance payment made for a period after responsibility for care and placement of the child was removed from the agency [§472(a)(2)(B) of the Act; 45 CFR §1356.71(d)(1)(iii)] Ineligible: 04/21/12-04/30/12	\$71 Maintenance \$0 Admin
26	Foster care maintenance payment made for a period after responsibility for care and placement of the child was removed from the agency [§472(a)(2)(B) of the Act; 45 CFR 1356.71(d)(1)(iii)] Ineligible: 04/21/12 -04/30/12	\$87 Maintenance \$0 Admin
43	Foster care maintenance payment made for a period after responsibility for care and placement of the child was removed from the agency [§472(a)(2)(B) of the Act; 45 CFR 1356.71(d)(1)(iii)] Ineligible: 04/21/12- 04/30/12	\$71 Maintenance \$0 Admin
57	Foster care maintenance payment made for a period after responsibility for care and placement of the child was removed from the agency[§472(a)(2)(B) of the Act; 45 CFR 1356.71(d)(1)(iii)] Ineligible: 04/21/12-04/30/12	\$71 Maintenance \$0 Admin
77	Title IV-E claimed for period prior to judicial finding of reasonable efforts to prevent removal [§472(a)(2)(A)(ii) and 471(a)(15) of the Act; 45 CFR1356.71(d)(1)(i)] Ineligible: 01/29/10-01/31/10	\$25 Maintenance \$0 Admin

TOTAL: \$325

Areas in Need of Improvement

The findings of the review indicate the State needs to further develop and implement procedures to improve program performance in the following areas. For each issue, there is a discussion of the nature of the area needing improvement, the specific title IV-E requirement to which it relates, and the corrective action the State should undertake.

Issue #1: AFDC Eligibility

During the onsite review, cases were evaluated to determine compliance with the requirements for the AFDC program as it was in effect on July 16, 1996. The review identified three cases that were found to be in error because they did not meet the requirements for AFDC. In two cases, the agency did not appropriately determine financial need for the child based on the specified relative's income. In one case, the child had not lived with the specified relative within six months of removal and financial need was not based on the specified relative's home.

Title IV-E Requirement: In order to meet AFDC requirements of §472(a)(3) of the Act and 45 CFR §1356.71(d)(1)(v), a child must be determined to be a dependent child which is defined in the requirements of the former AFDC program as a child who has been deprived of parental support or care, has been living with a parent or other specified relative in a place maintained as the home of the relative, and has not reached the maximum age designated for program eligibility. The State must establish that the child is financially needy and deprived of parental support based on the home from which the child is removed. Under title IV-E, the AFDC removal home is the home of the parent or other specified relative who is the subject of the judicial finding of "contrary to the welfare" or who enters into the voluntary placement agreement with the title IV-E agency. The family unit in which financial need is based must include the child, the natural or adoptive parents, and the blood-related or adoptive siblings who are otherwise eligible and who live in the same household as the child.

Recommended Corrective Action: While in most cases reviewed the court included contrary to welfare findings in the removal orders, the identity of the home from which the child was removed (that is the basis for the contrary to the welfare finding) was not clearly stated in the orders. It is recommended that the agency seek the assistance of the Delaware Court Improvement Project to clearly identify in the removal order the specified relative from whom a child is being judicially removed and that eligibility staff receive training to determine the correct household upon which the AFDC eligibility determination is based. Delaware also should provide training to eligibility staff to ensure that information from the State's AFDC State plan and policy manual is correctly applied to determine the family assistance unit and calculate financial need accurately.

Issue #2: Age and School Attendance

In one case, it was determined that a title IV-E maintenance payment was made on behalf of a youth over the age of 18 who was not expected to graduate from a secondary school before his 19th birthday.

Title IV-E Requirement: Sections 406 and 472 of the Act and 45 CFR 233.90 limit title IV-E eligibility to children under the age of 18, or over age 18 but under age 19 if a full-time student.

When a child reaches his or her 18th birthday, eligibility for AFDC ceases unless, as a title IV-E State Plan option, the youth is a full-time student in a secondary school or its equivalent and is expected to complete the program before age 19.

Recommended Corrective Action: Any change impacting the eligibility status of a child must be noted and necessary action taken in a timely manner. The State should work with the local offices and fiscal officers to institute adequate financial edits that will prevent payments for ineligible children. Additionally, it is important Delaware clearly define in policy what may be appropriately claimed for title IV-E reimbursement and provide training to agency workers on eligibility and payment requirements.

Issue #3: *Placement and Care Responsibility*

During the onsite review cases are examined to ensure that the title IV-E agency maintained responsibility for the placement and care of the child for the PUR. Placement and care responsibility may be granted in the removal court order or in a subsequent court ruling for a judicial removal. The review found four non-error cases where title IV-E funds were claimed for a period outside the PUR when the State no longer had responsibility for the placement and care of the child.

Title IV-E Requirement: Section 472(a)(2) of the Act requires that the responsibility for placement and care of a child be with the State agency administering the title IV-E plan approved under Section §471 of the Act, or any other public agency with whom the State agency has a written agreement in effect. The State agency must have responsibility for the placement and care of a child for which title IV-E foster care maintenance payments are claimed. The court order or voluntary placement agreement must indicate that the agency has this responsibility.

Recommended Corrective Action: Delaware must make certain that appropriate fiscal controls are in place to ensure that the State does not continue to claim title IV-E foster care maintenance payments after a child's placement goal has been met and the agency no longer has placement and care responsibility for the child. The State is also encouraged to conduct systematic monitoring of its programmatic and financial operations to confirm that required actions are completed timely and appropriately documented so title IV-E claims are submitted only for those cases meeting all applicable requirements.

Issue #4: *Judicial Determinations Regarding Reasonable Efforts to Prevent Removal*

In one non-error case it was found title IV-E funds were claimed before the month of the judicial finding that the agency made reasonable efforts to prevent placement, or such efforts were not necessary.

Title IV-E Requirement: Sections 472(a)(2)(A)(ii) and 471(a)(15) of the Act require that for a judicial removal, there must be a determination to the effect that the State agency made reasonable efforts to prevent removal of the child from the home or that reasonable efforts were not necessary. The judicial requirement must be met within 60 days of the removal. Federal financial participation, however, may not begin until the first day of placement in the month in which all initial eligibility requirements that must be met are satisfied.

Recommended Corrective Action: The State should continue to develop and implement procedures that ensure timely judicial determinations of reasonable efforts to prevent the removal

of a child from the home. Staff training will help to ensure workers make eligibility decisions based on the elements needed for compliance and to eliminate the authorization of payments prior to establishing compliance with the requirements. In addition, the establishment of a quality assurance system will allow the State to monitor the accuracy of eligibility determinations and claiming.

Additionally, while no court orders were reviewed during the onsite review that did not have a judicial finding of contrary to welfare clearly stated the agency reports that, in preparing for the review, court orders were found which referenced allegations rather than making the requisite affirmative finding. This resulted in otherwise eligible children being found ineligible by the agency for title IV-E foster care maintenance payments. It is recommended that the State agency work with the Court Improvement Program to ensure court orders include all necessary findings.

Additional Concern

Thirty-three (33) cases with potential underpayments were identified by reviewers. These incidences resulted from the State's practice to begin title IV-E claiming from the date the eligibility worker completed the determination instead of when the child becomes eligible. In accordance with §472 of the Act, title IV-E funds may be claimed from the first day of placement in the month in which all initial eligibility requirements are met. Cases were reviewed where no claims were made for the period between the month in which all eligibility requirements were satisfied and the date the determination of eligibility was made. The State is encouraged to examine its practice to ensure FFP is claimed for all periods of eligibility. In the 33 cases with potential underpayments, the State may file a claim for these cases once the State verifies 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 at 45 CFR 95.7.

Strengths and Promising Practices

The following positive practices and processes of the title IV-E foster care eligibility program were observed during the review. These approaches seem to have led to improved program performance and successful program operations.

Judicial Oversight

The review of cases found frequent judicial review of progress in achieving permanency plans of children in foster care. Court orders reviewed often detailed the expectations regarding the stability of placements and the placement of siblings together whenever possible. The Court encouraged the use of relatives whenever possible. Parental rights were terminated timely and children were often maintained in pre-adoptive homes. Increased collaboration among the agency, the Court Improvement Program and the Court led to these results.

Title IV-E Manuals and Instructions

The State has developed instructional material for eligibility staff which clearly describes processes and is essential to proper administration of the program. Manuals and instructions relating to the determination of eligibility for title IV-E foster care assistance are well written and maintained. These documents are used to train agency staff and as resources in making

eligibility decisions. The agency should continue to ensure staff are familiar with the documents and are able use them in their daily work.

Data Systems Interfaces

The system for determining eligibility for foster care assistance includes a significant number of automated interfaces which provide easily accessible information necessary for financial and deprivation decisions. Eligibility workers can access databases available to the State's Temporary Assistance for Needy Families (TANF) agency to confirm wages, benefits and resources.

Safety Checks Completion

The review of case records found that children were placed only with licensed or approved providers and that criminal record checks and other provisions assuring the safety of foster children had been completed. We particularly note the collaborative efforts between the State child welfare agency and the State licensing agency which resulted in timely and complete documentation of licensure for foster parents and childcare institutions. This was a concern identified in the previous review which was addressed through improved training and attention to obtaining and documenting efforts.

Disallowance

A disallowance in the amount of \$12,482 in maintenance payments and \$21,656 in related administrative costs of Federal Financial Participation (FFP) is assessed for title IV-E foster care payments claimed for the error cases. Additional amounts of \$325 in maintenance payments are disallowed for title IV-E foster care payments claimed improperly for the non-error cases. The total disallowance as a result of this review is \$34,463 in FFP. The State also must identify and repay any ineligible payments that occurred for the error and non-error cases subsequent to the payments provided in the payment histories for the review. No future claims should be submitted on these cases until it is determined that all eligibility requirements are met.

Next Steps

As part of the State's ongoing efforts to improve its title IV-E foster care eligibility determination process, the CB recommends Delaware examine identified program deficiencies and develop measurable, sustainable strategies that target the root cause of problems hindering the State from operating an accurate foster care eligibility program. Appropriate corrective action should be taken in instances of noncompliance with Federal laws and regulations.