

<h1>ACF</h1> <p>Administration for Children and Families</p>	U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES Administration on Children, Youth and Families	
	1. Log No: ACYF-CB-IM-04-03	2. Issuance Date: February 27, 2004
	3. Originating Office: Children's Bureau	
	4. Key Words: Title IV-E; Foster Care Maintenance Payments Program; Eligibility; Removal From the Home/Living With a Specified Relative; Rosales	

INFORMATION MEMORANDUM

TO: State and Territorial Agencies Administering or Supervising the Administration of Title IV-E of the Social Security Act and ACF Regional Administrators

SUBJECT: *Rosales v. Thompson*, 321 F.3d 835 (9th Cir. 2003).

LEGAL AND RELATED REFERENCES: Title IV-E (42 U.S.C. 670 et seq.) of the Social Security Act; Section 472 (a)(4) of the Social Security Act; Sections 406(a) and 407 of the Social Security Act (as they were in effect on July 16, 1996); 45 CFR 233.90(c)(1)(v)(B) and 45 CFR 1356.21(k) and (l)

PURPOSE: To provide information about the United States Court of Appeals for the Ninth Circuit's (hereafter, the "Ninth Circuit") March 3, 2003 decision in *Rosales v. Thompson* regarding title IV-E eligibility.

BACKGROUND: On March 3, 2003, the United States Court of Appeals for the Ninth Circuit ("Ninth Circuit") decided the case of *Rosales v. Thompson*. The case involved a child who was placed informally with his grandmother after being abused in his mother's home. The grandson would not have been eligible for AFDC (as it was in effect on July 16, 1996) (hereafter, "eligible for AFDC" or "AFDC eligibility") in his mother's home, but would have been eligible for AFDC had eligibility been based on him living in his grandmother's home. ACF's long-standing interpretation of

§472(a)(4) of the Social Security Act required the State to consider only the home from which he legally was removed when determining AFDC eligibility. Because he was not AFDC eligible in the removal home, the State could not find him AFDC (or therefore title IV-E) eligible. The Ninth Circuit, however, ruled that the child was eligible for title IV-E foster care based on his AFDC eligibility in the grandmother's home.

As a result of the decision, Ninth Circuit States must consider whether a child would have been eligible for AFDC, at the time the child legally was removed from the home, in either:

- the home from which the child legally was removed; or
- the home of any specified relative with whom the child lived in the 6 months prior to removal.

In short, for States within the Ninth Circuit, the child's "home of removal" need not be the home upon which the child's AFDC eligibility is based. The child's AFDC eligibility continues to be tied to the month of the child's removal, which is the month in which the removal petition is filed or the voluntary placement agreement is signed. (See Section 472 (a)(4)(A) and (B) of the Social Security Act).

The Ninth Circuit's decision has not altered any of the AFDC program requirements. Consequently, all States within and outside the Ninth Circuit must continue to apply all of the rules of the former AFDC program, including the regulations at 45 CFR 233.90 (c)(1)(v)(B). The State always must determine that the specified relative upon whom AFDC eligibility is based has had care and control of the child in accordance with 45 CFR 233.90 (c)(1)(v)(B) for the child to be eligible for title IV-E foster care.

The *Rosales* decision applies only to States within the Ninth Circuit. These States are: California (where the case originated); Alaska; Arizona; Hawaii; Idaho; Montana; Nevada; Oregon and Washington. The Ninth Circuit States are required to comply with the *Rosales* decision, and must amend their State plans so that they are consistent with *Rosales*. States that are outside of the Ninth Circuit must continue to apply ACF's existing policy when making title IV-E eligibility determinations. Specifically, in order to qualify for title IV-E foster care maintenance payments, among other things, a child must be eligible for AFDC in the home of the specified relative from whom the child legally is removed.

The decision is available on the Ninth Circuit Court of Appeals' website at the following address:

[http://www.ca9.uscourts.gov/ca9/newopinions.nsf/0E6F8EA651FAE45288256CDE005E51B6/\\$file/0017266.pdf?openelement](http://www.ca9.uscourts.gov/ca9/newopinions.nsf/0E6F8EA651FAE45288256CDE005E51B6/$file/0017266.pdf?openelement)

INQUIRIES TO: ACF Regional Offices

Joan E. Ohl
Commissioner
Administration for Children,
Youth and Families

cc: ACF Regional Offices