

Note: The finding of “not in substantial compliance” and disallowances have been revised since the release of the 2009 Final Report. Please see the file entitled [Indiana 2009 Revised Findings and Disallowance Letter](#) for more information.

INDIANA DEPARTMENT of CHILD SERVICES

PRIMARY REVIEW

TITLE IV-E FOSTER CARE ELIGIBILITY

Report of Findings for April 1, 2008 – September 30, 2008

Introduction

During the week of January 26 through 29, 2009, the Children's Bureau (CB) of the Administration for Children and Families (ACF) conducted a primary review of the State's title IV-E foster care program. The review was conducted in collaboration with the Indiana Department of Child Services (DCS) and was completed by a review team composed of representatives from DCS, CB Central and Regional Offices, the ACF Regional Grants Management Office and cross-State peer reviewers.

The purposes of the review were (1) to determine if Indiana'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 review encompassed a sample of the State's foster care cases that received a title IV-E maintenance payment during the six-month period under review (PUR), April 1, 2008 - September 30, 2008. A computerized statistical sample of 88 cases (80 cases plus 8 oversample cases) was drawn from State data submitted to the Adoption and Foster Care Analysis and Reporting System (AFCARS) for the above period. Eighty (80) cases were reviewed, 79 cases from the original sample plus one oversample case. One case was excluded from the original sample because no title IV-E foster care maintenance payment was made during the PUR. The State provided documentation to support excluding that case from the review sample and replacing it with a case from the oversample.

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 §1356.71(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 was examined to ensure that 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 that 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 service 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 two-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 the State agreed that, after the onsite review, the State could 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 on supplemental documentation, the finding for case # 55 was changed from an error to a non-error case.

Compliance Finding

The review team determined that 75 of the 80 cases met eligibility requirements, that is, were deemed non-error cases for the PUR. Five (5) cases were determined to be 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 title IV-E foster care maintenance payments, including related administrative costs, associated with error and non-error cases with ineligible payments are being disallowed.

For a State to be found in substantial compliance in a primary review there may be no more than four error cases. Five cases were found to be in error for part or all of the PUR for reasons identified in the Case Summary section of this report. Since the number of error cases was more than four, Indiana is not in substantial compliance with title IV-E child eligibility requirements as outlined in 45 CFR §1356 and §472 of the Act.

CASE SUMMARY

The following charts record the error cases and non-error cases with ineligible payments; reasons for the improper payments; Federal provisions for which the State did not meet the compliance mandates; and improper payment amounts.

Error Cases

Sample Number	Improper Payment Reason & Ineligibility Period	Improper Payments (FFP)
IN-19	The AFDC-related financial need requirement was not met. §472(a)(1) & (3) of the Act; 45 CFR §1356.71(d)(1)(v) Ineligible for the entire foster care episode: 07/03/2008-07/23/2008	\$1,587.82 Maintenance \$988.00 Administrative
IN-25	The child was not living with the specified relative within six months of removal. §472(a)(1) & (2) of the Act; 45 CFR §1356.21(k) Ineligible for the entire foster care episode: 06/15/2005-10/31/2008	\$18,852.97 Maintenance \$38,668.00 Administrative
IN-37	The AFDC-related Citizenship/Alien status requirement was not met. §472 of the Act; 45 CFR §1356.71(d)(1)(v) Ineligible for the entire foster care episode: 06/28/2008-06/29/2008	\$175.85 Maintenance \$0 Administrative
IN-53	A judicial finding of <i>Contrary to the Welfare</i> was not attained. §472 (a)(1) and 471(a)(15)(B)(i) of the Act; 45 CFR §1356.21(c) Ineligible for the entire foster care episode: 04/21/2008-04/22/2008	\$152.83 Maintenance \$0 Administrative
IN-58	A judicial finding of <i>Reasonable Efforts to Prevent Removal</i> was not attained. §472(a)(1)and 471(a)(15)(B)(i) of the Act; 45 CFR §1356.21(b)(1) Ineligible for the entire foster care episode: 12/05/2007-09/30/2008	\$41,305.25 Maintenance \$8892.00 Administrative
		\$62,074.72 Maintenance \$48,548.00 Administrative

TOTAL:

\$110,622.72

Non-error Cases with Ineligible Payments

In addition to the five error cases, five cases were identified that contained ineligible payments. Although these cases are not error cases for determining substantial compliance, the ineligible maintenance payments and associated administrative costs are subject to disallowance. Federal funds were claimed for activities or services not allowable under the title IV-E Foster Care program. The following chart lists those cases with ineligible payments. There were no administrative costs associated with the ineligible payment cases.

Sample #	Ineligible activity or service	Improper Maintenance Payment FFP
IN-09	Storage fees	\$234.64
IN-12	Homemaker services	\$1,037.46
IN-18	Transportation costs	\$37.61
IN-28	Tutoring fees	\$6,449.36
IN-47	Optometrist fees	\$9.39
Total		\$7,768.46

UNDERPAYMENTS

Reviewers identified, and State staff was informed of, seven cases with possible underpayments totaling **\$12,585.46 FFP**. The child was eligible in each case, but title IV-E maintenance was not claimed.

AREAS in NEED of IMPROVEMENT

The findings of the review indicate that 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 area needing improvement, the specific title IV-E requirement to which it relates and the corrective action the State should undertake.

Issue Number 1: Aid to Families with Dependent Children (AFDC) Eligibility

Three (3) cases were in error because they did not meet AFDC eligibility requirements. Case # 19 was an error case because the family income of the removal home was in excess of the AFDC standard. Social Security Retirement, Survivors, Disability Insurance (RSDI) income which is countable as income to a family was mistakenly considered to be a Supplemental Security Income (SSI) payment which is disregarded in the calculation of financial need. Case # 25 was an error case because the child had not lived with the specified relative from whom the child was legally removed within six months of the removal. Case # 37 was an error case because the child did not meet the requirement of citizenship or alien status.

Title IV-E Requirement: In accordance with 45 CFR §1356.71(d) (1) (v), the State must document that the child met initial eligibility requirements. These include that he or she was a citizen or a qualified alien (45 CFR §233.50) and had lived with and was removed from a specified relative, was financially needy [45 CFR §233.20 and 45 CFR §233.20(a) (3)] and was

deprived of parental support in the month the court proceeding leading to the requisite judicial determination is initiated or the voluntary placement agreement was signed. This is to be determined using criteria that were in effect in its title IV-A State Plan on July 16, 1996. Deprivation must be by reason of the continued absence, physical or mental incapacity, or death of a parent, or the unemployment of the parent who was the principal wage earner. The "living with" and "removal from" requirements must be satisfied by the same specified relative's home and AFDC eligibility must be based on that home. If the child was not living with that specified relative in the month of legal removal, the child: (1) must have been living with the specified relative from whom legally removed at some time within the previous six months of removal; and (2) must have been AFDC eligible in that specified relative's home in the month of legal removal as if the child still had been living with that relative in the month of the petition or voluntary placement agreement, [(§472(a) (1) and (2); 45 CFR §1356.21 (k)].

Recommended Corrective Action: DCS should provide refresher training on the AFDC program requirements to personnel who make determinations of initial eligibility.

Issue Number 2: Judicial Determinations Regarding “Reasonable Efforts” and “Contrary to the welfare”

Two (2) cases were in error because they did not meet the requirements related to “reasonable efforts” and “contrary to the welfare.” Case # 53 was an error case because, according to the transcript of the removal proceeding, the judge did not make a determination to the effect that it was contrary to the child’s welfare, safety, or best interests to remain in the home. Case # 58 was an error because, according to the transcript of the removal proceeding, the judge did not make a determination to the effect that the State had made efforts to maintain the family unit and prevent the removal of the child from the home.

Title IV-E Requirement: The precise language “contrary to the welfare” or “reasonable efforts” does not have to be included in the court ruling, but the order must include language to the effect that the required ruling is rendered. Regarding “Contrary to the Welfare,” a child's removal from the home must be the result of a judicial determination to the effect that continuation in the home would be contrary to the child's welfare, or that placement in foster care would be in the best interest of the child. For a child removed on or after March 27, 2000, the judicial determination regarding "contrary to the welfare" must be made in the first order that sanctions the State agency's action to remove the child from the home. This requirement is applicable even when the order is an emergency order or "pick-up" order. The child's physical removal from the home must coincide with the judicial ruling of "contrary to the welfare." A physical removal that does not coincide with the judicial determination requirement will not comply with 45 CFR §1356.21(c) and the child is not eligible for title IV-E funding for the duration of the foster care episode.

Regarding “reasonable efforts,” the State agency must obtain a judicial determination that it made reasonable efforts to maintain the family unit and prevent the unnecessary removal of a child from the home. For a child removed on or after March 27, 2000, the judicial determination that reasonable efforts were made, or were not required, to prevent removal must be made no later than 60 days from the date of the child's removal from the home [45 CFR §1356.21(b)(1)]. The State agency may obtain this judicial determination earlier than 60 days from the date of removal. If the eligibility criterion is not satisfied within the time frame prescribed in the

Federal regulations, the child is not eligible under title IV-E for the duration of the foster care episode.

Recommended Corrective Action: DCS and court personnel should collaborate on training to ensure that court orders meet the Federal requirements that are necessary for the State to claim title IV-E maintenance payments.

Issue Number 3: *Licensing and Safety Requirements for Child Care Institutions*

New employees (and volunteers and interns) of residential facilities for whom the State requires background checks are allowed to work in provisional status for a period of up to 90 days while the checks are being conducted and evaluated. There is no requirement for facilities to notify licensing staff that these checks have been completed. Quality assurance licensing staff verify adherence to requirements through a review of approximately 30% of relevant personnel files during onsite monitoring visits. It is possible, then, that files of some employees or volunteers will never be examined. Without documentation that the background checks were completed, the State cannot assure the safety of children in residential facilities.

Title IV-E Requirement: For childcare institutions, 45 CFR §1356.30(f) requires States to set procedures that address safety considerations with respect to the staff of the institution. The mechanism used to satisfy the safety requirement should be written into State policy, procedures or statutes, and incorporated into the licensing documentation. The safety requirement is applicable to all childcare institutions operating as foster care facilities licensed on or after March 27, 2000.

The State agency must provide documentation verifying that safety considerations with respect to the staff of the institution are satisfied for the duration of the child's placement for the PUR. The State agency documentation must demonstrate that the staff of the childcare institution meets the safety criteria that the State establishes, even when the child is placed in an out-of-State institution. The State agency will be expected to adhere to the safety standards the State established for childcare institutions and the State agency will be scrutinized, accordingly.

Recommended Corrective Action: The State should implement a monitoring system that will ensure full compliance with State licensing requirements. Childcare institutions should be required to inform licensing staff upon the receipt and evaluation of all background check information. Alternatively, DCS should establish a database and require facilities to enter this information at specific intervals so that licensing staff will have up-to-date information that documents that employees have met safety requirements.

STRENGTHS and PROMISING PRACTICES

The review team observed the following positive practices and processes during the review. These approaches seem to have led to improved program performance and successful program operations.

- If warranted by case circumstances, court hearings to finalize permanency plans were held more frequently than every 12 months.

- The certification information for family foster homes was well-documented in all relevant cases that were reviewed. If applicable, the names of both foster parents were listed on the license as well as the exact duration of the licensing period. Required criminal record checks were documented in all cases.
- The State's policy of requiring redeterminations of continuing AFDC-related eligibility every six months instead of every 12 months exceeds the Federal requirement for yearly reassessments.
- The title IV-E eligibility determination process is automated. Edits are in place to prevent payments for ineligible children and unallowable program costs.
- In the majority of cases reviewed, court orders were timely and the majority contained individualized case-specific judicial determinations.

DISALLOWANCE

A disallowance in the amount of \$62,074.72 in maintenance payments and \$48,548.00 in related administrative costs of Federal Financial Participation (FFP) is assessed for title IV-E foster care payments claimed for the error cases. An additional amount of \$7,768.46 in maintenance payments of FFP is 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 \$118,391.18 in FFP. The State must also identify and repay any ineligible payments that occurred for the error and non-error cases subsequent to the PUR. No future claims should be submitted on these cases until it is determined that all eligibility requirements are met.

NEXT STEPS

Pursuant to 45 CFR §1356.71(i), Indiana is required to develop a Program Improvement Plan (PIP) to correct those areas that are not in substantial compliance. The PIP is to be developed by the State, in consultation with the CB Regional Office, and is to be submitted to the Regional Office within 90 days from the date the State receives the letter transmitting this report. Once the State has 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 described in the cover letter to this report.