MARYLAND TITLE IV-E FOSTER CARE
SECONDARY ELIGIBILITY REVIEW
PERIOD UNDER REVIEW: APRIL 1 to SEPTEMBER 30, 2004

INTRODUCTION

From June 27 to July 1, 2005 Central and Regional Office staff of the Administration for Children and Families (ACF) collaborated with staff of the Maryland Department of Human Resources (MDHR) to conduct the secondary eligibility review of the State's title IV-E foster care maintenance program. The review was conducted at the offices of the MDHR, and, at the State's request, the Baltimore City Department of Social Services.

The purposes of the review were to determine if Maryland was in compliance with the child and provider eligibility requirements of Section 472 of the Social Security Act (the Act) and 45 CFR1356.71 and to validate the basis of the State's financial claims to determine whether appropriate payments were made on behalf of eligible children to eligible foster care providers.

Maryland was reviewed against the following requirements of title IV-E of the Act and the Federal regulations:

a) The eligibility of the children on whose behalf the foster care maintenance payments are made ((Section 472 (a)(1)-(4)) to include:

Judicial determinations regarding reasonable efforts and contrary to the welfare in accordance with 45 CFR 1356.21(b) and (c), respectively;

Voluntary placement agreements as set forth in 45 CFR 1356.22;

Responsibility for placement and care vested with the State agency as stipulated in 472(a)(2) and 45 CFR 1356.7(d)(1)(iii);

Placement in a licensed foster family home or child care institution as defined in Sections 472(a)(3)(b) and (c);

Safety requirements for children places in foster care as stipulated in 45 CFR 1356.30;

Eligibility for Aid to Families with Dependent Children (AFDC) under the State Plan as was in effect on July 16, 1996 as required by Section 472(a)(1) and (4) and 45 CFR 1356.7(d)(1)(v);

b) Allowable payments made to foster care providers who comport with Sections 471(a)(10), 471(a)(20), 472(b) and (c), and 45 CFR1356.30.

SCOPE OF THE REVIEW

The Maryland title IV-E review encompassed a sample of all the title IV-E foster care cases for which a foster care maintenance payment was made during the period April 1 to September 30, 2004. A computerized sample statistical sample of 180 cases was drawn from the Adoption and Foster Care Analysis and Reporting System (AFCARS) data which was transmitted by Maryland to the ACF for the period under review. Children's case files were perused for the determinations of title IV-E eligibility and the provider documentation was examined for licensure and safety requirements for the entire period under review (PUR).

RESULTS OF THE REVIEW

Pursuant to the promulgation of the final regulations which became effective March 27, 2000, this was the secondary review of the Maryland title IV-E foster care program Based on the results of the initial primary review of the foster care program in 2002, the State was determined not to be in substantial compliance, was required to develop and implement a Program Improvement Plan (PIP) and to undergo the subject secondary review. The State successfully completed its approved PIP.

With specific reference to the secondary review ***Maryland has been determined to be in substantial compliance.*** Of the 180 case records whose identifying numbers were drawn for sampling purposes, 150 were read during the review. The threshold for substantial compliance for secondary reviews is 15 or fewer error cases or 10% or less of the dollar error rate. The State has **12 error cases and a dollar error rate of 3.08%**. The next title IV-E foster care eligibility will be a primary review of 80 cases and will be scheduled to be conducted during Federal Fiscal Year 2008.

The successful results of the secondary review demonstrate a dramatic improvement over the initial primary review which yielded 37 error cases out of the sample size of 80 compared with only 12 error cases out of the sample size of 150 for the secondary review. It is apparent that the MDHR, the local departments of social services, the courts, the Court Improvement Program, and other MDHR partners labored successfully together to substantively address errors identified in the initial primary review.

CASE RECORD SUMMARY

Detailed below are two tables: the first one depicts the error cases and the second one identifies cases which, although not error cases, evidence ineligible payments. Note that the ineligibility dates provided are "bookends" for the entire period that the case was ineligible, and the disallowance includes only the Federal payments made during that timeframe.

ERROR CASES

SAMPLE	CITATIONS	ADMIN COSTS*	MAINTENANCE PAYMENTS*	TOTAL DOLLARS DISALLOWED*
14	45 CFR 1356(b)(1) &(c) Contrary to welfare and reasonable efforts to prevent removal Ineligible 5/5/97-7/1/05 45 CFR 1356.71(d)(1)(v) AFDC: living with specified relative, no removal Ineligible 5/5/97-7/1/05	$ 61,246	$ 86,792	$ 148, 038
19	45 CFR 1356.21(b)(1) Reasonable efforts to prevent removal Ineligible: 10/5/99-7/1/2005	$ 20,074	$ 7,000	$ 27,074
22	45 CFR 1356.21(b)(1) Reasonable efforts to prevent removal Ineligible 2/6/02-7/1/05 45 CFR 1356.21(b)(2)(i) Reasonable efforts to finalize permanency plan Ineligible 3/1/03-5/31/03	$ 34,099	$ 9,529	$ 43,628
36	45 CFR 1356.71(d)(1)(iii) Responsibility for placement and care Ineligible 4/1/04-9/30/04	$ 5,451	$ 1,950	$ 7,401
37	45 CFR 1356.71(d)(1)(iii) Responsibility for placement and care Ineligible 5/1/04-5/31/04	$ 908	$ 325	$ 1,233
61	45 CFR 1356.21(b)(2)(i) Late reasonable efforts to finalize permanency plan Ineligible 6/1/04-6/30/04	$ 908	$ 275	$ 1,183
74	45 CFR 1356.30 Safety requirements for foster homes: criminal records check yielded prohibitive results Ineligible 11/1/2000-7/1/2005	$ 35,109	$ 10,783	$ 45,892
80	45 CFR 1356.30 Safety requirements for foster homes: criminal records check yielded prohibitive results Ineligible 10/1/99-7/1/05	$ 27,924	$ 8,488	$ 36,412
96	45 CFR 1356.71(d)(1)(iii) Responsibility for placement and care Ineligible 7/1/04-7/1/05	$ 1,817	$ 650	$ 2.467

	The Act 472(a)(3)(b) and (c) Placement in licensed home Ineligible 8/1/04-7/1/05			
99	45 CFR 1356.21(b)(2)(i) Reasonable efforts to finalize permanency plan Ineligible 8/1/04-12/31/04	$ 4,589	$ 2,182	$ 6,771
138	45 CFR 1356.7(d)(1)(v) AFDC: living with specified relative, no removal Ineligible 11/27/95-7/1/05	$ 39,777	$ 12,135	$ 51,912
144	45 CFR 1356.71(d)(1)(iii) Responsibility for placement and care Ineligible 8/1/04-9/30/04	$ 1,817	$ 650	$ 2,467
	TOTAL	**$ 233,719**	$ **140,759**	**$ 374,478**

***=Federal Financial Participation**

TOTAL $374,478

INELIGIBLE PAYMENTS FOR NON-ERROR CASES

SAMPLE	CITATIONS/ISSUES	ADMIN COSTS*	MAINTENANCE PAYMENTS*	TOTAL DOLLARS DISALLOWED*
10	The Act, 472(a)(3)(b)(c) Overlap in provider payments Ineligible 11/1/03-11/30/03	0	$ 268	$ 268
17	The Act, 472(a)(3)(b)(c) Overlap in provider payments Ineligible 4/23/04-4/25/04	$ 0	$ 26	$ 26
34	45 CFR 1356.21(b)(2)(i) Late reasonable efforts finalize permanency plan outside PUR Ineligible 12/1/04-2/28/05	$ 2,773	$ 825	$ 3,598
46	45 CFR 1356.21(b)(2)(i) No reasonable efforts finalize permanency plan outside PUR Ineligible 4/1/01-3/30/03	$ 20,759	$ 6,508	$ 27,267
47	45 CFR 1356.21(b)(2)(i) Late reasonable efforts to finalize permanency plan Ineligible 2/1/02-3/31/02	$ 1,726	$ 650	$ 2.376
51	45 CFR 1356.71(d)(1)(iii) Responsible for placement and care Over 18, graduated 6/04 Ineligible 7/1/04-8/31/04	$ 1,817	$ 3,642	$ 5,459
60	45 CFR 1356.71(d)(1)(iii) Removed from home 5/22/00 Ineligible 5/19, 20, 21/00 45 CFR 1356.21(b)(2(i) Late reasonable efforts to finalize permanency plan outside PUR Ineligible 10/1/01-6/1/02	$ 4,315	$ 11,638	$ 15,953
76	45 CFR 1356.21(b)(2)(i) Late reasonable efforts to finalize permanency plan outside PUR Ineligible 4/1/02-10/31/02	$ 6,068	$ 16,949	$ 23,017
78	45 CFR 1356.21(b)(2)(i) Late reasonable efforts to finalize permanency plan outside PUR Ineligible 4/1/01-4/30/01	$ 843	$ 1,069	$ 1,912
95	45 CFR 1356.21(b)(2)(i) Late reasonable efforts permanency plan outside PUR Ineligible 5/1/03-10/31/03	$ 5,362	$ 1,605	$ 6,967

115	45 CFR 1356.21(b)(2)(i) Late reasonable efforts to finalize permanency plan outside PUR Ineligible 4/1/02-4/30/02	$ 863	$ 333	$ 1,196
116	45 CFR 1356.71(d)(1)(iv) Not licensed Ineligible 9/13/01-9/30/03	$ 0	$ 2,534	$ 2,534
129	The Act, 475(4)(A) Miscellaneous payments for counseling and Fox management which are not foster care maintenance payments.	$ 0	$ 613	$ 613
131	45 CFR 1356.21(b)(2)(i) Late reasonable efforts to finalize permanency plan outside PUR Ineligible 4/1/01-7/30/03	$ 21,649	$ 6,860	$ 28,509
132	45 CFR 1356.21(b)(2)(i) Late reasonable efforts to finalize permanency plan Ineligible 2/1/04-2/29/04	$ 908	$ 325	$ 1,233
135	The Act, 472(a)(3)(b)(c) Overlap in provider payments Ineligible 7/28/04-7/31/04	$ 0	$ 52	$ 52
141	The Act, 475(4)(A) Miscellaneous payment on 8/30/04 which is not foster care maintenance	$ 0	$ 3	$ 3
143	45 CFR 1356.21(b)(2)(i) Reasonable efforts to finalize permanency plan not done Ineligible 2/1/05-4/30/05	$ 2,773	$ 803	$ 3,576
	TOTAL	**$ 69,856**	**$ 54,703**	**$ 124,559**

***=Federal Financial Participation**

TOTAL ERROR CASES $374,478 FFP

TOTAL NON ERROR CASES $124,559 FFP

TOTAL DISALLOWED PAYMENTS $499,037 FFP

STRENGTHS and AREAS NEEDING IMPROVEMENT

Based on the review activities, commentary is provided on both strengths and areas needing improvement on the program requirements relating to judicial determinations, voluntary placement agreements, responsibility for placement and care, placement in licensed foster care facilities, safety requirements and fiscal items. For some areas both strengths and areas needing improvement or review apply. It is recommended that the State continue to give priority consideration to areas indicated as needing improvement or attention.

The following strengths were noted during the week's review:

- The MDHR staff who served in lead or coordinating roles during the review demonstrated laudable commitment, facilitation and problem-solving skills, as well as subject- matter expertise.

- On the whole and within the perimeters of Federal statutes, regulations and policy, the mandated functions and activities were occurring on a timely basis. They involve judicial determinations, voluntary placement stipulations, AFDC eligibility determinations, licensure of foster care providers and safety checks on providers. Case records were well organized and documentation was generally in chronological order. Additionally, the requisite fiscal information was readily available and generally indicated correct payments for eligible children to eligible providers for eligible periods.

- With regard to judicial determinations, some qualitative differences between newer and older cases were noted. Newer cases consistently had timely findings of reasonable efforts to prevent placement and were more likely to evidence the court's actual child specific findings as compared with some older cases which merely referenced the court's review and approval of the State agency's report and recommendations.

  Specifically as relates to judicial determinations regarding the State agency's reasonable efforts to finalize the permanency plan, many high quality orders were seen, particularly as relates to court orders for sample cases from Baltimore City. In this jurisdiction there were many instances in which the basis for the judicial determinations was abundantly documented directly by the court. Often the court's documentation included information on the services the agency provided or offered to the parents, and also on locating, interacting with and the suitability of, relatives. In most instances, the aforementioned reasonable efforts determinations were made at six-month intervals rather than annually, which is the requirement. Moreover, some very fine examples of court-approved permanency plans for older children were noted, particularly in the Baltimore City sample cases.

- Concerning voluntary placement agreements: In 3 of the 150 cases which were read, the child entered care through a voluntary placement agreement. Requirements on signing of the agreement and on judicial determination of best interests within 180 days of placement were met.

- Relative to AFDC: In general there was good documentation for both the initial determinations as well as for redeterminations. In instances where it was necessary to do a reconstruction, it was easily done. Under Federal provisions, redeterminations are required annually. In most cases there was evidence of redeterminations twice a year.

- As for evidence of the State agency having responsibility for placement and care of the child: Both court orders and voluntary placement agreements and, in the main, other case record documents bore evidence of, or supported the relevant requirements.

- Regarding provider licensure and safety checks: The files established that licensure and safety checks are, in the main, being done routinely. In instances in which the child was placed with more than one provider during the PUR, there was usually not a break in the continuity of licensure records, and, for the most part, safety checks were in order. There were instances noted of Baltimore City's having done comprehensive foster home/resource home studies.

These are the observations with respect to areas needing improvement or consideration:

- Continuing efforts need to be made to assure that court findings *throughout* the State meet requirements. Court orders that address reasonable effort to prevent removal for children who entered care on or after March 27, 2000 should not refer solely to 42 U.S.C. Section 672(A)(1) and 671 (A) (15), indicating that reasonable effort were not made because of the emergent nature of the situation. The language of court orders must be child-specific and should not merely reference State --or Federal-- statutes pertaining to removals. It was also noted that in most instances the child's family is well known to the agency so that the "emergent nature" (meaning unexpected) language may not really be applicable.

  Regarding ongoing judicial activity and more recent judicial determinations, there are four cases in which the reasonable efforts to finalize a permanency plan determination was not timely. Two of these cases required the requisite determinations during the PUR and are error cases. The remaining two cases needed the requisite determinations for periods subsequent to the PUR and are identified as cases having ineligible payments. Because the due date for the judicial determination was after the PUR and the 12-month period had not elapsed, they were determined not to be error cases. It is recommended that in all instances the court documents in the relevant order what the agency is doing to finalize the permanency plan and make a timely finding as to whether agency efforts were reasonable.

- Regarding the State agency's being responsible for the care and placement of the child: There were two cases in which the youth were18 but not yet 19, had graduated from school and foster care payments continued for a month or two after eligibility ceased.

- There are several areas needing improvement with respect to licensure and safety checks. With respect to licensing, the following was noted: Licensure was issued with an effective date that preceded the meeting of all criteria such as medical examinations or fire safety equipment. Also, licensure was continued even though criteria had not been met for two consecutive years such as the training criterion. Additionally, with regard to safety checks, there are two cases in which children were placed in relative homes when relatives have been convicted of felonies enumerated in 45 CFR 1356.30.

DISALLOWANCES

The review included a sample of 150 case records with a total dollar value of $842,675 FFP. The sample was drawn from a universe of cases that received at least one title IV-E foster care maintenance payment during the six-month AFCARS period of April 1, 2004 to September 30, 2004. Based on the results of the review, Maryland has been found to be in substantial compliance. However, 12 cases were determined to be in error and are not eligible for funding under title IV-E foster care. Moreover, an additional 18 cases, which are not error cases, were found to received some ineligible title IV-E payments. Therefore, a disallowance in the amount of $499,037 in Federal Financial Participation is assessed. (Refer to the Case Record Summary section of this report for the details).

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