MARYLAND
TITLE IV-E PRIMARY ELIGIBILITY REVIEW
APRIL 1, 2007 – SEPTEMBER 30, 2007 (REVIEW PERIOD)

INTRODUCTION

During the week of June 16, 2008, staff from the Children's Bureau (CB) Central and Regional Offices and Maryland Department of Human Resources (DHR) conducted a primary eligibility review of Maryland's title IV-E foster care program. The purpose of the title IV-E foster care eligibility review was to determine if Maryland was in compliance with the eligibility requirements as outlined in 45 CFR §1356.71 and Section 472 of the Social Security Act (the Act) and to validate the basis of Maryland's financial claims to ensure that appropriate payments were made on behalf of eligible children placed in licensed or approved homes and child-caring institutions that meet the safety requirements.

SCOPE OF THE REVIEW

Maryland's primary title IV-E foster care eligibility review encompassed a sample of all of the title IV-E foster care cases that received a foster care maintenance payment during the period of April 1, 2007 to September 30, 2007. A computerized statistical sample of 100 cases (80 cases plus 20 over-sample cases) was drawn from the Adoption and Foster Care Analysis and Reporting System (AFCARS) data submission transmitted by the State agency to the Administration for Children and Families (ACF) for the period under review. Two cases were selected from the over-sample to replace those cases that had not received a title IV-E maintenance payment during the period under review.

During the on-site review, each child's case file in the selected sample was reviewed to determine title IV-E eligibility. The associated provider's file was examined to ensure that the foster home or child care institution in which the child was placed during the period under review was licensed or approved and that safety considerations were appropriately addressed. Payments made on behalf of each child were reviewed to verify that the expenses were allowable under title IV-E. Efforts also were made to identify any underpayments that may have existed in the reviewed sample cases. In addition, the CB and Maryland DHR agreed that, subsequent to the on-site review, the State could submit additional child and provider documentation for any case that was found to be in error, in pending status, or to have an ineligible payment. As a result of the provision of additional documentation, a number of case and payment determinations were modified.

For a primary review, substantial compliance means that the case error rate does not exceed four. As a result of the primary title IV-E foster care eligibility review conducted in Maryland, twenty-one cases were found to be in error for either part or all of the period under review for reasons that are identified in the Case Record Summary section of this report. Since the number of error cases was more than four, Maryland is considered not to be in substantial compliance with title IV-E child eligibility requirements as outlined in 45 CFR §1356.71 and Section 472 of the Act.

Pursuant to 45 CFR §1356.71(i), Maryland is required to develop a Program Improvement Plan (PIP) designed to correct those areas determined not to be in substantial compliance. The PIP will be developed by the State, in consultation with CB's Regional Office staff, and must be submitted to CB's Regional Office within 90 days of the date of the correspondence transmitting this report.

In addition to the twenty-one cases with errors, nine eligible cases were identified as having ineligible payments. Although these cases are not considered error cases for determining substantial compliance, the ineligible maintenance payment and the associated administrative costs are subject to a disallowance. A disallowance in the amount of $602,883 Federal Financial Participation (FFP) for maintenance payments and $463,240 FFP for administrative costs are assessed for the error and non-error cases with ineligible payments. The total disallowance as a result of this review is $1,066,123 FFP. Please refer to the letter transmitted with this report and to the Disallowance section of this report for further information on the disallowance.

CASE RECORD SUMMARY

Error Cases

The following chart provides details for the twenty-one cases containing errors, the reasons for the ineligibility, the appropriate Federal statutory and regulatory (respectively) citations, the dates of ineligibility, and the total disallowance amount:

Case Number	Reason for Ineligibility (Ineligibility Period)	Federal Citation	Maintenance Payment FFP	Administrative Cost FFP
MD-03	Safety requirements for foster care provider (9/13/06 – 5/31/08)	471(a)(20); 475(1); 45 CFR 1356.30	$75,059	$22,676
MD-07	Safety requirements for foster care provider (5/1/07-5/16/07) Provider license (5/1/07 - 5/16/07)	471(a)(20); 475(1); 45 CFR 1356.30 472(a), (b) & (c); 471(a)(10); 45 CFR 1356.71(d)(1)(iv) & 1355.20(a)	$917	$1,065
MD-08	AFDC income eligibility not met Child over 18 years of age and not attending school (3/8/05 - 5/31/08)	472(a)(1); 419(2); 45 CFR 1356.71(d)(1)(v) 472(a)&(b); 419(2); 45 CFR 233.90	$102,243	$27,477

MD-11	Voluntary placement agreement in excess of 180 days without a judicial determination of best interest (8/1/05 - 5/31/08) AFDC eligibility – child not living with and removed from same specified relative (2/1/05 - 5/31/08) Safety requirements for foster care provider (4/6/05 - 11/30/07) Provider license (4/6/05 - 11/30/07)	472(a), (e) & (f); 45 CFR 1356.22 472(a)(1); 45 CFR 1356.71(d)(l)(v); 45 CFR 1356.21(k) & (l) 471(a)(20), 475(1); 45 CFR 1356.30 472(a), (b) & (c); 471(a)(10); 45 CFR 1356.71(d)(1)(iv) & 1355.20(a)	$70,693	$38,291
MD-18	Provider license (7/5/07 - 7/11/07)	472(a), (b) & (c), 471(a)(10); 45 CFR 1356.71(d)(1)(iv) & 1355.20(a)	$105	
MD-19	Safety requirements for foster care provider (4/6/07 - 4/11/07)	471(a)(20); 475(1) & 45 CFR 1356.30	$1,204	
MD-21	AFDC eligibility was not based on the relative with whom the child was living with and removed (5/21/05 - 10/5/07) Reasonable efforts to finalize the permanency plan (7/1/06 - 8/31/06)	472(a)(1); 45 CFR 1356.71(d)(l)(v); 45 CFR 1356.21(k) & (l) 45 CFR 1356.21(b)(2)	$12,254	$28,849
MD-38	AFDC eligibility – child not living with and removed from same specified relative (7/29/96 - 5/31/08)	472(a)(1); 45 CFR 1356.71(d)(l)(v); 45 CFR 1356.21(k) & (l)	$18,450	$56,701

MD-42	Child turned 19 (7/1/05 - 6/30/07)	472(a)(1); 45 CFR 1356.71(d)(l)(v); 45 CFR 233.90	$33,855	$24,690
MD-45	Reasonable efforts to finalize permanency plan (2/1/07 - 7/31/07) Safety requirements for foster care provider (3/1/05 - 9/30/06)	45 CFR 1356.21(b)(2) 471(a)(20); 475(1); 45 CFR 1356.30	$8,108	$25,346
MD-46	Not a valid removal- child remained in the home (6/1/07 - 4/30/08) AFDC eligibility – child not living with and removed from same specified relative (6/1/07 - 4/30/08)	472(a)(1); 45 CFR 1356.21(k)(2) 472(a)(1); 45 CFR 1356.21(k) & (l); 45 CFR 1356.71(d)(l)(v)	$12,289	$8,830
MD-54	Child turned 18 and was not attending school (5/1/07 - 6/30/08)	472(a) & (b); 419(2); 45 CFR 233.90	$5,150	$15,310
MD-57	AFDC eligibility was not based on the relative with whom the child was living with and removed. AFDC eligibility based on month after initiation of court action (6/1/05 - 2/28/08)	472(a)(1); 45 CFR 1356.71(d)(l)(v)	$62,613	$34,395
MD-58	Safety requirements for foster care provider (10/15/04 - 5/31/08)	471(a)(20); 475(1); 45 CFR 1356.30	$40,390	$45,427
MD-62	Safety requirements for foster care provider (3/14/06 - 4/30/07) Provider license (4/1/07 – 4/22/07)	471(a)(20); 475(1); 45 CFR 1356.30 472(a), (b) & (c); 471(a)(10); 45 CFR 1356.71(d)(1)(iv) & 1355.20(a)	$31,782	$9,493

MD-63	Child turned 19 (7/1/07 – 4/30/08)	472(a)&(b); 419(2); 45 CFR 233.90	$4,325	$10,961
MD-70	Payments claimed after adoption finalization (9/22/07 - 4/30/08) Payment for respite, unallowable title IV-E cost (9/06) Payment for tutoring, unallowable title IV-E cost (7/2/07 - 9/19/07)	45 CFR 1356.71(d)(1)(iii) 472, 474 & 475; 45 CFR 1356.60 45 CFR 1356.60	$3,405	$7,765
MD-71	AFDC eligibility – Child was determined to be ineligible and payments were adjusted to State funds after CB provided the sample to the State (7/19/07 - 10/18/07).	472(a)	$972	$3,240
MD-73	Title IV-E non-reimbursable facility – Independent Living Program (6/2/06 - 5/31/07)	472(b) & (c); 45 CFR 1356.71(d)(l)(iv) & 1355.20	$18,301	$12,594
MD-OS2	AFDC eligibility – AFDC eligibility based on month prior to initiation of court action (11/01/01 – 5/17/07) Child turned 18 and was not attending school (5/18/07 - 5/18/07) Title IV-E payments claimed prior to findings of Reasonable efforts to prevent removal (11/01/01 - 11/30/01)	472(a)(1); 419(2); 45 CFR 1356.71(d)(1)(v) 472(a)&(b); 419(2); 45 CFR 233.90 472(a)(1); 471(a)(15)(B)(i); 45 CFR 1356.21(b)	$57,884	$62,896
MD-76	Provider license (4/1/07 – 7/8/07)	472(a), (b) & (c); 471(a)(10); 45 CFR 1356.71(d)(1)(iv) & 1355.20(a)	$1,061	$3,196

	Total	$561,060	$439,202

Ineligible Payment Cases

The following chart provides details for the ten cases containing ineligible payments, the reasons for the ineligibility, the appropriate Federal statutory and regulator (respectively) citations, the dates of ineligibility, and the total disallowance amount:

Case Number	Reason for Ineligibility (Ineligibility Period)	Federal Citation	Maintenance Payment FFP	Administrative Cost FFP
MD-23	Title IV-E payment claimed prior to finding of reasonable efforts to prevent placement (1/1/96 - 1/31/96)	472(a)(1); 471(a)(15)(B)(i); 45 CFR 1356.21(b)	$407	$731
MD-25	Title IV-E payment claimed prior to finding of reasonable efforts to final permanency plan (4/1/01 - 6/30/05)	472(a)(1); 471(a)(15)(B)(i); 45 CFR 1356.21(b)	$27,365	$20,272
MD-29	Non-reimbursable title IV-E facility (7/10/07 - 3/31/08)	472(b) & (c); 45 CFR 1356.71(d)(l)(iv) & 1355.20	$248	
MD-39	Title IV-E payments claimed for daycare services prior to meeting eligibility requirements (5/3/01 - 4/30/06)	45 CFR 1356.60 (c)(3)	$6,806	
MD-49	Safety requirements for foster care provider (2/23/05 - 4/30/05)	471(a)(20); 475(1) and 45 CFR 1356.30	$3,918	$1,926
MD-56	Title IV-E payments claimed prior to findings of contrary to the welfare and reasonable efforts to prevent removal (1/31/05 - 1/31/05)	472(a)(1); 471(a)(15)(B)(i); 45 CFR 1356.21(b) & (c)	$13	

MD-74	Child turned 18 and was not attending school (3/1/08 - 6/30/08)	472(a)&(b); 419(2); 45 CFR 233.90	$2,953	$1,109
MD-77	Child was no longer with foster care provider (4/23/07 - 4/30/07)	472(a) & (b)	$87	
MD-80	Title IV-E payment made prior to AFDC eligibility month (5/30/03 - 5/31/03)	472(a)(1)	$26	
		Total	$41,823	$24,038

Underpayment Cases

The following chart provides details for the one case containing underpayments in which the child was title IV-E eligible, but title IV-E maintenance was not claimed by the State. Maryland may choose to file a claim for this case once it is verified that all eligibility criteria were met. Reimbursement for this case may be requested only for claims that are within the two-year time limitation as described in 45 CFR 95.7.

Case Number	Maintenance Payment FFP
MD-39	$1,830
Total	$1,830

STRENGTHS AND MODEL PRACTICES

There are several areas that were noted as strengths and/or exemplary practices over the course of the title IV-E review. These include the following examples of good practice:

- Re-determinations of Aid to Families with Dependent Children (AFDC) eligibility requirements were being conducted more frequently than annually; these were being done consistently and were well-documented.
- Court orders were found to be timely, child-specific, and clear; Voluntary Placement Agreement (VPA) orders were also very comprehensive and detailed. Court orders specifically identified the State's responsibility for placement and care of the child.
- Maryland has made improvements since the last title IV-E review in meeting the requirements for a judicial determination of contrary to welfare and reasonable efforts to prevent removal. With the exceptions of three cases, judicial determinations of reasonable efforts to prevent removal were made timely with corresponding orders to support the findings.
- Judicial determinations of reasonable efforts to finalize the child's permanency plan must be made annually to maintain title IV-E eligibility; these determinations occurred more

frequently than required under title IV-E regulations in all but two of the reviewed cases. It is noted that Maryland has made improvements in this area since the previous review and we commend the State on these improvements.

- Case records were well-organized and members of the DHR staff were knowledgeable about the title IV-E eligibility requirements.

AREAS OF CONCERN

The review identified areas of improvement as discussed during the exit conference:

- The State should note the distinction between six months and 180 days for the purpose of title IV-E eligibility related to voluntary placements. The State of Maryland DHR Voluntary Placement Agreement form (Rev. 11/90) indicates that the VPA should not exceed 120 days; the Code of Maryland Regulations (COMAR) indicates six months. A judicial determination that a continued voluntary placement agreement is in the best interest of the child must occur within 180 days of the child's placement in foster care. The 180-day count begins on the date that the voluntary placement agreement was signed by both the parent or legal guardian and the State agency. The State had one case where this resulted in an error and reviewers noted other cases where the judicial determination was not made until very near the 180th day.

- Court orders did not consistently identify with whom the child was living and from whom the child was being removed. When a child was constructively removed, court orders did not clearly define the relative from whom the child was being legally removed and when the child last resided with that person. Including this information in the text of the removal order would facilitate more accurate AFDC eligibility determinations.

- The case record review demonstrated a number of cases where the foster home or facility did not meet the safety requirements; seven cases resulted in errors and one eligible case resulted in ineligible payments outside the period under review. Child Protective Services clearances in these cases were absent or completed after the child was placed. The State agency is required by the Act and the COMAR to conduct criminal records checks on all prospective foster parents licensed on or after November 17, 1997, and employees of facilities licensed on or after March 27, 2000. Case review found licensing and placement practice is not consistent with this requirement.

- The State had differing administrative requirements for the homes licensed by DHR and those licensed and approved by contracted child placing agencies. It is recommended that the State be more consistent in licensing practices in areas such as approval and expiration dates, issuance of certificates/licenses/letters of approval, and reconsideration timelines and requirements.

- There were five cases from the sample where title IV-E payments were claimed prior to the providers being fully licensed. Title IV-E reimbursement may be claimed only for eligible children placed with a foster care provider that meets the standards for full

licensure or approval established by the State. These cases were ineligible for title IV-E reimbursement from the date of placement until the date of full licensure.

- In determining AFDC eligibility, a child must have been living with and removed from the same specified relative at the initiation of court proceedings; a child residing with an interim caretaker must have lived with the specified removal relative at some time during six months prior to the initiation of court proceedings. Although the State reconstructed AFDC for several cases, in four cases the child either had not lived with the specified relative within the six-month timeframe, or financial need was not established based upon the income of the specified relative.

- Reviewers found that Temporary Assistance for Needy Families (TANF) eligibility was being used to meet the AFDC financial eligibility requirement. AFDC eligibility had to be reconstructed in the identified cases.

- Maryland's title IV-E eligibility worksheets and policy have not been updated since 1992. It is strongly recommended that DHR update its forms and policy so that they are consistent with current title IV-E law, regulations and policy.

- Title IV-E maintenance payments were made on behalf of youth over the age of 18 either not attending school or expected to graduate, resulting in five error cases. Title IV-E claims continued after these cases were accurately determined to be no longer eligible. This is a continuing concern noted during the last review. Better communication is needed between DHR departments responsible for determining eligibility and submitting title IV-E claims.

- Payments were found to have been made on behalf of title IV-E eligible children for services (respite and tutoring) and placements (independent living programs) whose costs are not allowable under title IV-E.

DISALLOWANCES

The review included a sample of 80 cases. 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, 2007 to September 30, 2007. Based upon the results of the review, the State of Maryland has been determined to be not in substantial compliance.

Twenty-one cases were determined to be in error and nine additional cases were identified as having ineligible payments. A disallowance in the amount of $1,000,262 in Federal Financial Participation (FFP) for title IV-E foster care maintenance payments and related administrative costs for the cases determined to be in error is being assessed for the entire period of time that these cases were determined to be in error. An additional disallowance of $65,861 in FFP is being assessed for the title IV-E foster care payments claimed improperly for the cases determined to be non-error cases. No future claims should be submitted on these error cases until it has been determined that all eligibility requirements are met. The total disallowance as a result of this review is $1,066,123 in FFP for title IV-E foster care maintenance payments and related administrative costs.

The payment histories for error case numbers 42, 71, OS-2, and 76 included adjustments in title IV-E payments for ineligible periods subsequent to selection of the sample by CB and receipt by DHR. These adjustments to payments for children included in the sample cannot be included in the calculation of the disallowance because the post hoc revisions would result in an inaccurate representation of the payment error rate for the period under review. DHR must reverse the adjustments for these recipients that were included on the Title IV-E Financial Report (Form IV-E-1) for the quarter ended June 30, 2008, to assure that DHR is not subjected to duplicate recovery of unallowable costs. The reversal of the adjustments should be submitted on the Form IV-E-1 for the quarter ending September 30, 2008.

UNDERPAYMENTS

Only one case (MD-39) was identified as having an underpayment in which the child was title IV-E eligible, but title IV-E maintenance was not claimed by the State. It should be noted that this case was also found to have ineligible payments from May 3, 2001 until April 30, 2006 while the child was placed with a title IV-E non-reimbursable foster care provider. Maryland may choose to file a claim for this case once they verify that all eligibility criteria were met.

Reimbursement for this case may be requested only for claims that are within the two-year time limitation as described in 45 CFR 95.7. These claims have been determined to be in the amount of $1,830 FFP.

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