

State of Maine
Primary Review
Title IV-E Foster Care Eligibility
Report of Findings for
April 1, 2009 – September 30, 2009

Introduction

During the week of June 21, 2010, the Children’s Bureau (CB), within the Administration for Children and Families (ACF), conducted a primary eligibility review of the Maine title IV-E foster care program. The onsite review was conducted by a team comprised of staff from the CB Central and Regional offices, ACF Region I Office of Grants Management, and the Maine Office of Child and Family Services (OCFS). The review took place at the OCFS central office located in Augusta, Maine.

The purposes of the title IV-E foster care eligibility review were (1) to determine whether Maine was in compliance with the child 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 Maine’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) of April 1, 2009 through September 30, 2009. A computerized statistical sample of 100 cases (80 cases plus 20 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, which consisted of 79 cases from the original sample plus one (1) oversample case. The one (1) case excluded from the original sample had been closed by OCFS prior to the PUR. The State provided documentation to support excluding this 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 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 also was examined to ensure the foster family home or childcare 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 properly claimed under title IV-E. 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.

Compliance Finding

The review team determined that 77 of the 80 cases met eligibility requirements, (i.e., were deemed non-error cases) for the PUR. Three (3) cases were determined to be in error for either part or all of the PUR and one (1) non-error case was 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 the error cases and non-error case with ineligible payments are being disallowed.

Since the number of error cases in Maine was fewer than the threshold of four (4), CB has determined the State to be in substantial compliance with the title IV-E Federal foster care program eligibility requirements. Thus, the next primary review will not be conducted until Federal fiscal year 2013.

Case Summary

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

Error Cases

Sample Number	Improper Payment Reason & Ineligibility Period	Improper Payments (FFP)
70	Foster care provider not fully licensed. [§472(b) and (c) of the Act; 45 CFR§1355.20] Ineligible: 07/30/2009 – 09/30/2009	\$353 Maint. \$0 Admin.
33	Judicial determination of reasonable efforts to finalize permanency plan not timely. [§472(a)(2)(A)(ii) of the Act; 45 CFR§1356.21(b)(2)] Ineligible: 10/01/2006 – 06/30/2009	\$22,938 Maint. \$13,035 Admin.

39	Foster care provider not fully licensed. [§472(b) and (c) of the Act; 45 CFR§1355.20] Ineligible: 12/10/07 – 09/30/09	\$1,175 Maint. \$1,840 Admin.
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Maint. \$24, 466
Admin. \$14,875
Total: \$39,341

Non-error Case with Ineligible Payment

Sample Number	Improper Payment Reason & Ineligibility Period	Improper Payments (FFP)
12	Foster care provider not fully licensed. [§472(b) and (c) of the Act; 45 CFR§1355.20] Ineligible: 08/10/2006 – 01/26/2007	\$77 Maint. \$0 Admin.

Total: \$77

Strengths and Promising Practices

Title IV-E Application System. Each of the cases reviewed was found to have the required initial determinations for Aid to Families with Dependent Children (AFDC). The State has developed a reliable automated Title IV-E Application system for determining and documenting financial need and deprivation of parental support according to the State’s July 16, 1996 guidelines for AFDC, as required for title IV-E eligibility determinations of children removed from the home and placed into foster care. Since the previous title IV-E foster care review in June 2007, the State has made changes to the Maine Automated Child Welfare Information System (MACWIS) which now automatically ceases payments when a child no longer meets AFDC eligibility requirements related to age and school attendance. Where two (2) error cases had presented on this issue during the 2007 review, no errors related to AFDC eligibility were found during this 2010 review demonstrating the State’s efforts to continually improve its system and program operations.

Areas in Need of Improvement and Recommendations

Judicial Determinations

For a child removed on or after March 27, 2000, a judicial determination regarding reasonable efforts to finalize the permanency plan must be made within twelve months of the date on which the child is considered to have entered foster care and at least once every twelve months thereafter while the child is in placement. This finding represents the court’s judgment on whether the agency’s activities during the previous twelve months were meaningful in bringing about permanency for the child. For title IV-E eligibility, the judicial determination of reasonable efforts must be timely, explicitly documented, and must be made on a case-by-case basis and so stated in the court order, in accordance with 45 CFR 1356.21(b) and (d).

One (1) case, sample number 33, was found to be in error because court orders, for the periods in question, were missing judicial determinations of reasonable efforts to make and finalize a

permanency plan because the findings were not explicitly documented.¹ As confirmed by the Departmental Appeals Board (DAB) in Decision No. 1998, 45 CFR 1356.21(b) and (d) require an explicit reasonable efforts finding by the court. The court orders at issue in case #33 did contain descriptions of certain actions taken by the Agency, but did not explicitly state that these constituted reasonable efforts toward finalizing the permanency plan. DAB Decision No.1998, generally held that, “While no specific terminology is required, the use of the term ‘explicit’ in the regulation means that it is not sufficient if the order [or transcript] merely implies that reasonable efforts were made. Instead, there must be an express[ed] statement on the face of the court order which, in the context of the order as a whole, can reasonably be understood as a determination that the required type of reasonable efforts has been made or were not required.” The Board also ruled that a listing of the efforts and the court’s approval of the child’s permanency plan do not equate to a determination that the efforts made to accomplish the permanency plan are reasonable.

CB recommends that OCFS 1) work with the Court Improvement Program to be sure there is a clear understanding of the reasonable efforts requirement and the documentation needed for title IV-E eligibility; and 2) institute internal controls to ensure that title IV-E funds are not claimed when there is a delay or void in obtaining the required annual judicial determination of reasonable efforts to finalize the permanency plan.

Licensing

Title IV-E foster care maintenance payments may not be made on behalf of a child placed in a foster family home or childcare facility that is not fully licensed. Nor may title IV-E foster care maintenance payments be made on behalf of a child before the month the foster family home or childcare institution attained full licensure. When title IV-E foster care maintenance payments and administrative costs are claimed during the PUR in either situation, the case will be in error and the ineligible title IV-E foster care maintenance payments and administrative costs will be disallowed for the entire time the ineligible payments are claimed. The State should note that both of the error cases pertaining to licensing involved instances where the State (correctly) did not claim for foster care room and board charges when the child was in a home that was not fully licensed. However, in both instances claims were submitted for “incidental” costs - a one week summer camp program in one case, and childcare expenses in the other case. The one (1) non-error case involved a transportation claim. We suggest the State review its internal claim processes to better understand why these erroneous “incidental” claims are not being caught in the same way as the board costs when the home is not fully licensed.

Voluntary Placement Agreements and Responsibility for Placement and Care Vested with State Agency

While no improper payments related to Voluntary Placement Agreements (VPA) were found during this review, we strongly encourage the State to develop policy and strengthen practice in this area. Under section 472(f) of the Act, a voluntary placement is an out-of-home placement of a minor child by or with the participation of the State agency, after the child's parents or legal

¹ Court orders dated 7/13/2009 and 12/14/2009 satisfactorily met the Title IV-E requirements because they were child-specific, timely and had explicit documentation of the finding.

guardians request the assistance of the agency and sign a voluntary placement agreement. A representative of the State agency must also sign the voluntary placement agreement. The VPA must indicate that the responsibility for placement and care of the child is 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. If the child's placement through a VPA extends beyond 180 days, a judicial determination is needed which indicates that continued placement is in the best interest of the child.

When it is determined that a valid voluntary agreement does not exist between the child's parents or legal guardians and the State agency, the sample case will be cited as an error case. For purposes of the eligibility review, a VPA will be considered valid if it is signed by the parent or legal guardian and the State agency.

During the onsite review, CB learned that there is no current OCFS policy on VPAs. This has resulted in a lack of clarity by State staff on whether or not a supervisor's or manager's signature is required on the agreement form. OCFS staff reported that the VPAs sometimes contain only worker's signatures, while at other times, contain both worker's and supervisor's (or manager's) signatures. Another concern noted during the review involved a case where the VPA contained a termination date that appeared to render the agreement expired prior to any court order being obtained and while the child was still in foster care. To be clear, the necessary court order (best interest) was obtained within the required 180 day timeframe, but the VPA itself contained an expiration clause and date which was shorter than the 180-day time period. In response to CB's expressed concern over the State's continued placement and care responsibility in this circumstance, OCFS provided CB with case file notes indicating that a court hearing had been held in which all parties verbally agreed to "a stay in current status" thereby extending the VPA.

It is vitally important that the State makes certain to maintain placement and care responsibility for the entire period it claims title IV-E foster care maintenance payments for an otherwise eligible child placed in foster care through a voluntary placement agreement. CB recommends that when developing and implementing policy related to VPAs particular attention is paid to ensuring that a valid legal agreement is entered and that the agency explicitly documents its responsibility for the placement and care of the child for the entire period that title IV-E payments are being claimed. Among other things, the policy should specifically address (1) which Agency official may enter into and sign the VPA for it to be valid; (2) the duration of the VPA and the significance of an end date that is within 180 days of the child's placement; (3) what actions should be taken if the Agency determines the child should remain in placement beyond the period specified in the VPA; and (4) how decision-making and the Agency's continued authority for placement and care of the child are documented.

Additional Observations

Safety Measures for Foster Care Placements. Criminal records checks were completed on foster family homes, and all of the cases reviewed had fire inspections completed within the State's required timeframes. Reviewers commented positively on the thoroughness of the checks which included running multiple names and aliases of the prospective applicants as a regular part of licensing process. For childcare institutions, Federal regulations at 45 CFR §1356.30(f) require States to establish procedures that address safety considerations with respect to the staff of childcare institutions. For title IV-E eligibility purposes, the State must provide documentation

verifying that these safety considerations are satisfied for the duration of the child's placement during the PUR. Reviewers noted great improvement in this area since our last review in 2007 where we found a wide variation in how background checks were documented. This year, we found clear, detailed documentation in the case files which demonstrated State review of 20% of all residential personal staff records during licensing renewal timeframes, as is required by State policy. The information was consistently documented on the Division of Licensing and Regulatory Services Check Sheet, Review of Employee Records, and notes the name of the staff person, title of the staff person, date of hire, date of criminal check, and date of child abuse registry check, as well as the date the Check Sheet was completed. During the exit debriefing, State workers reported that when a new facility comes into operation, licensing workers complete a 100% review of staff background checks.

Disallowances

A disallowance in the amount of \$24,466 in maintenance payments and \$14,875 in related administrative costs of FFP is assessed for title IV-E foster care payments claimed for the error cases. Additional amounts of \$77 in maintenance payments (and \$ 0 in related administrative costs of FFP) 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 \$39,418 in FFP. The State also must 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.