

Note: The finding of “not in substantial compliance” and disallowances have been revised since the release of the 2010 Final Report. Please see the file entitled [Michigan 2010 Revised Findings and Disallowance Letter](#) for more information.

Michigan Department of Human Services (DHS)
Primary Review
Title IV-E Foster Care Eligibility
Report of Findings for
April 1, 2009 – September 30, 2009

Introduction

During the week of June 14, 2010, 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 State of Michigan Department of Human Services (DHS) and was completed by a review team comprised of representatives from DHS, State court improvement project, CB Central and Regional Offices, and ACF Regional Grants Management.

The purposes of the title IV-E foster care eligibility review were (1) to determine whether the DHS 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) 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 70 cases from the original sample plus 10 oversample cases. Five (5) cases were excluded from the original sample and two (2) from the oversample because no title IV-E foster care maintenance payments were made during the PUR. The State provided documentation to support excluding these cases from the review sample and replacing them with cases from the oversample. Additionally, the State identified five (5) cases in which title IV-E payments were claimed in error and subsequently rescinded the payments on April 26, 2010, which was prior to DHS receiving the sample on April 27, 2010. The State provided documentation to support excluding these cases from the review sample and replacing them with cases 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 childcare 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 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 during 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 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.

CB and the State agreed that the State would have two weeks following the onsite review to 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 the supplemental documentation received, the improper payment findings for sample cases 20, 29 and 36 were changed to non-error, no ineligible payments cases. Case 20 was a foster care-to-adoption case and DHS produced adoption payment records which showed that foster care payments ended and adoption payments began the following day. Case 29 was found to have a voucher payment that was made during the time the child was eligible. With case 36, DHS provided documentation which showed that the State determined the youth was not eligible for title IV-E funds on February 23, 2010 and subsequently rescinded the payments on April 26, 2010, which was prior to receiving the sample selection list.

Compliance Finding

The review team determined that 74 of the 80 cases met eligibility requirements (i.e., were deemed non-error cases) for the PUR. Six (6) cases were determined 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 and non-error cases with ineligible payments, are being disallowed. In addition, nine (9) non-error cases were identified to have periods of eligibility for which the State did not claim allowable title IV-E maintenance payments.

Because the number of cases in error is five (5) or more, DHS is found not to be in substantial compliance for the PUR and, pursuant to 45 CFR §1356.71(i), the State is required to develop a Program Improvement Plan (PIP) to correct those areas identified subsequently in this report.

Case Summary

The following charts record the error cases; non-error cases with ineligible payments; underpayments; reasons for the improper payments; improper payment amounts; 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)
13	Foster care maintenance payments continued after child returned home. [§472(a)(3), (b), and (c); 45 CFR §§1356.71(d)(1)(iv) and 1355.20] Ineligible: 07/31/09 – 08/02/09	\$119 Maint. \$1,180 Admin.
31	Foster care maintenance payment was claimed during the PUR for placement in an unlicensed home. [§§472(a)(3), (b), and (c); 45 CFR §§1356.71(d)(1)(iv) and 1355.20] Ineligible: 06/09/09 – 06/16/09	\$76 Maint. \$940 Admin.
41	Foster care maintenance payments continued after the child returned home. [§§472(a)(3), (b), and (c); 45 CFR §§1356.71(d)(1)(iv) and 1355.20] Ineligible: 08/05/09 – 08/16/09	\$185 Maint. \$1,880 Admin.
46	Removal from and living with requirements were not met by the same specified relative. [§§472(a)(1) & (2) of the Act; 45 CFR §§1356.21(k) & (l)] Ineligible: Entire Foster Care (FC) episode; Reported Disallowance Period: 04/09/07 – 03/26/10	\$16,598 Maint. \$25,797 Admin.
61	Deprivation requirement not met. [Former §406(a), Social Security Act, 45 CFR §233.90(c), 45 CFR §233.100] Ineligible: Entire FC episode; Reported Disallowance Period: 07/23/08 – 03/14/10	\$6,142 Maint. \$18,727 Admin.
73	Foster care maintenance payment was made for month prior to the judicial finding of “reasonable efforts to prevent removal,”	\$19 Maint. \$940 Admin.

	which was rendered in June 2009. [45 CFR §1356.21(b)] Ineligible: 05/30/09 – 05/31/09	
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\$23,139 Maint.
\$50,164 Admin.
Total: \$73,303

Non-error Case with Ineligible Payments

Sample Number	Improper Payment Reason & Ineligibility Period	Improper Payments (FFP)
11	Foster care maintenance payment was made for the month prior to the judicial finding of “reasonable efforts to prevent removal,” which was rendered in December 2002. [45 CFR §1356.21] Ineligible: 11/13/02 – 11/30/02	\$ 303 Maint. \$ 712 Admin.

Total: \$1,015

Underpayment Cases

<u>Sample Number</u>	<u>Underpayment Reason & Eligibility Period</u>	<u>Improper Payments (FFP)</u>
2	Placement ended 07/06/09, but the claim for title IV-E payment ended 1 day early on 07/05/09. Eligible: 07/06/09	\$22 Maint.
7	Child moved into a new foster home on 09/25/09 and the claim for title IV-E payments did not begin until 09/28/09. Eligible: 09/25/09 – 09/27/09	\$28 Maint
25	Child was placed in a foster home from 07/06/09 – 07/08/09 and no title IV-E claims were made for the period. Then the child was placed in a childcare institution from 7/16/09 – 12/16/09 and title IV-E claims ended on 12/06/09. Eligible: 07/06/09 – 07/08/09 and 12/07/09 – 12/16/09	\$1,255 Maint.
26	Child placed in foster home from 09/29/09 to 10/08/09, but no title IV-E payments were claimed for that period. Eligible: 09/29/09 – 10/08/09	\$146 Maint
33	Child living in a childcare institution from 01/29/09 - 9/01/09, however, title IV-E claims ended 07/21/09. Eligible: 07/22/2009 – 09/1/2009	\$6,568 Maint.
50	Child placed in foster home on 03/17/09, however, title IV-E claims did not begin until 04/02/09. Eligible: 03/17/2009 – 04/01/2009	\$151 Maint.
75	Child entered foster care on 05/05/09, however, title IV-E claiming did not begin until 05/25/09. Eligible: 05/05/2009 – 05/24/2009	\$189 Maint.

78	Child placed on 11/12/09, but there is no claim for that day. Eligible: 11/12/2009	\$17 Maint.
79	Judicial determination of “reasonable efforts to prevent removal” finding was made 01/07/09, so title IV-E claiming for the eligible child could have begun 01/01/09, but claiming did not begin until 01/14/09. [§472(a)(1)(B) of the Act; 45 CFR §1356.21; 45 CFR §1356.30] Eligible: 01/01/2009 – 01/13/2009	\$123 Maint.

Total: \$8,499

Areas in Need of Improvement

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

Issue #1: Correct coding of AFCARS data element 59. Ten (10) cases were excluded from the original sample and two (2) cases from the oversample and replaced with cases from the oversample. Documentation provided by DHS confirmed that the case replacements were necessary because for seven (7) of the cases a title IV-E maintenance payment was not made during the PUR (6, 12, 17, 40, 49, OS01 and OS10). Additionally, the State identified five (5) cases (14, 38, 67, 77 and 19) in which title IV-E claims were made in error and the payments were rescinded by the State prior to receiving the case sample list. State agency officials indicated that these costs were inadvertently coded for title IV-E maintenance instead of the correct funding source.

Title IV-E Requirement: The case sample and oversample drawn for review consist of cases of individual children with a “1” coded in AFCARS data element 59, “Sources of Federal Financial Support/Assistance for Child,” for the six-month reporting period of the PUR. As provided for in Appendix A of 45 CFR §1355.40, the AFCARS data element 59 inquires whether title IV-E foster care maintenance payments are paid on behalf of a child in foster care. If title IV-E foster care maintenance payments are paid on behalf of the child, the data element should be coded “1.” If title IV-E foster care maintenance payments are not being paid on behalf of the child, the data element should be coded “0.”

Recommended Corrective Action: The validity of the sample and oversample depends on the accuracy with which the State agency completes the AFCARS data element 59. It is critical, therefore, that State agencies report data element 59 accurately. CB recommends that DHS assure a common understanding among staff to only indicate whether a child received a title IV-E foster care maintenance payment during the reporting period in answering foster care element 59. Staff training and data system monitoring should be conducted to ensure coding accurately reflects the funding source. For example, AFCARS data element 62 is used to report child support, data element 63 for Supplemental Security Income, and data element 65 for other Federal or non-Federal funding sources. Data entry and processing systems should be evaluated to determine internal accuracy and consistency of the data.

Issue #2: AFDC Eligibility Determinations

- a) Living With/Removal From Specified Relative: During the onsite review, case 39 was found to be in error because the child was not living with and removed from the same specified relative. In this case the AFDC determination was incorrectly based on the home of the specified relative where the child lived during the removal month even though that was not the home from which the child was judicially removed. The child had not lived with the specified relative at some point during the six months prior to the court-ordered removal from that specified relative.

Title IV-E Requirement: Consistent with §472(a)(2)(A) of the Act, the child must have been physically or constructively removed from the home of a specified relative according to a court order or voluntary placement agreement and must have lived with that same specified relative within six months of removal according to a voluntary placement agreement or a judicial finding of contrary to the welfare.

Recommended Corrective Action: More training is recommended to ensure that staff understand the “living with and removal from” requirements and their linkage to determining the AFDC removal home for title IV-E eligibility.

- b) Deprivation: Case 53 was found to be in error because only the absent parent factor was identified in the case record and on the title IV-E eligibility worksheet as the reason for deprivation. Subsequent to the initial eligibility determination more information became available to the State about the father’s living arrangement and it was subsequently determined that he had been living in the home with the child and the child’s mother at the time of the child’s removal. Therefore, deprivation based on the absence of one of parents could not be established for the child. No other known deprivation factors were documented by DHS to have existed for the child at the time of removal.

Additionally, reviewers noted that DHS utilizes primarily one deprivation factor although there are four allowable circumstances in which deprivation can be met under Federal and State title IV-A mandates.

Title IV-E Requirement: Deprivation of parental support or care exists in the home in situations where there is death of a parent, continued absence from the home, or physical or mental incapacity of one of the child’s parents, or (if the State plan includes such cases) the unemployment of his or her parent who is the principal wage earner. Consistent with 45 CFR 233.90(c)(1)(i), the determination of deprivation is made only in relation to the child's natural or adoptive parent, or in relation to the child's stepparent who is married, under State law, to the child's natural or adoptive parent and is legally obligated to support the child under State law of general applicability which requires stepparents to support stepchildren to the same extent that natural or adoptive parents are required to support their children. This determination is irrespective of whether the child is legally removed from the home of a parent or another specified relative. The deprivation factors must be established based on the circumstances in the specified relative’s home that are the bases of the “contrary to the

welfare” determination or the specified relative that enters into a voluntary placement agreement with the title IV-E agency. If one of the deprivation factors is not met in the month of, but prior to, the child’s removal, by court order or voluntary placement agreement, from the home of that specified relative, the child is ineligible under title IV-E for the entire foster care episode. For additional information, see “Deprivation,” Chapter 4 of the March 2006 foster care eligibility review guide found at the following link: <http://cfr.vlex.com/vid/233-90-factors-specific-afdc-19933693#ixzz0tTWmTWYQ> and the State’s 1996 title IV-A plan.

Recommended Corrective Action: For title IV-E eligibility, the agency must document for the most recent foster care episode that, among other things, the child is deprived of parental support or care during the month of the child’s removal from the home by court order or voluntary placement agreement. The documentation should include enough information to assure that the appropriate process was followed in making the eligibility determination. There must be a specification of how the child was determined in need and deprived of parental support or care and the documentation should provide a clear, evidence-based path to the eligibility decision.

To help accomplish the above expectations, DHS should amend its current title IV-E initial eligibility worksheets to add all factors of deprivation as provided for in Federal regulations and the title IV-A State plan and require agency staff to fully explore and document the basis on which deprivation is established. The State also should develop and implement training to help staff understand the eligibility requirements and the changes to the worksheet.

Issue #3: Payments. Five (5) cases were identified to have claims for ineligible payments for reasons unrelated to the title IV-E eligibility requirements. Three cases (13, 31 and 41) were found to be in error because the title IV-E payments did not end for the period in the PUR when the child was no longer eligible. Sample case 73 was found to be in error because title IV-E maintenance payments were made for a period in the PUR prior to the child meeting all eligibility requirements. A non-error case (11) was found to have ineligible payments because payments were made for a period outside the PUR prior to the child meeting all eligibility requirements.

Finally, there were 9 cases within the two-year limitation that were identified as having underpayments. These cases were identified to include a child that was title IV-E eligible and living in a foster family home or childcare institution that met the licensure and safety requirements, but not all eligible title IV-E foster care maintenance payments were made. During discussions with the State there were no identified reasons for the underpayments.

Title IV-E Requirement: Federal regulations at 45 CFR §1356.60 provide that title IV-E foster care maintenance assistance payments may be claimed only for allowable costs of expenditures that are covered by the Federal definition of foster care maintenance found at §475(4) of the Act. Under §472 of the Act, title IV-E maintenance payments may be claimed from the first day of placement in the month in which all title IV-E eligibility criteria are met, but not before all eligibility criteria are met. To qualify for Federal Financial Participation (FFP), the State must document that foster care maintenance payments claimed for title IV-E reimbursement are for eligible children and expenditures that are in accordance with the Federal requirements.

Recommended Corrective Action: DHS should review its payment systems to identify and resolve the identified concerns. The State agency should then implement training to correct the items of concern. If the underpayments are caused due to coding issues, DHS should consider enhancing its automated system's capacity to permit retroactive claiming. Until the problems are rectified, the identified payment errors and underpayments will continue and could result in the loss of significant amounts of title IV-E dollars.

Strengths and Promising Practices

Several positive practices and processes of the title IV-E foster care eligibility program were observed during the review. The following approaches seem to have led to improved program performance and successful program operations.

Collaboration with the Judicial System: DHS has worked with the Court Improvement Project (CIP) as well as judges to refine court orders. CIP has developed model court orders to use for the various types of hearings. In addition, CIP staff have provided training to the judges and county attorneys. The DHS staff have also worked with judges throughout the State by reviewing orders submitted by the judges to determine if the orders contain explicit, child-specific determinations for "contrary to welfare" and "reasonable efforts." Through these efforts, the written orders issued by the court following a ruling have improved. There were no cases identified as not having the required judicial determinations and all determinations were timely.

Centralized Eligibility Unit: Over the past two years Michigan has added a Federal compliance unit, to include a title IV-E team. The title IV-E team was put in place to manage the eligibility determination process by overseeing the tracking and monitoring of title IV-E eligibility determination, documenting compliance, and conducting quality assurance activities. The addition of this unit allows for more accurate and consistent application of policy as well as timely issue and emerging trend identification and problem solving. CB also understands that title IV-E team staff work with field offices, courts, the State licensing agency, and State agency fiscal officials to ensure that required actions and supporting paperwork are completed timely. Moreover, they work to ensure that title IV-E claims are submitted only for those cases meeting all applicable requirements.

Background Checks: The state has implemented a process in which all approved foster parents are entered into the Bureau of Children and Adult Licensing (BCAL)'s Bureau Information Tracking System (BITS). Once a foster parent is entered into BITS, anytime a foster parent is fingerprinted by a police agency, the Michigan State Police notifies BCAL by e-mail the next morning following the fingerprinting. BCAL also gets a list every Monday of anyone associated with a license that has been put on Central Registry. Through these means, staff are alerted systematically and timely of any new safety concerns. Regarding childcare institutions, staff noted that required annual monitoring reviews were being completed and that safety considerations were addressed for child care staff. The monitoring reviews were reported to include a thorough check of the employment date of childcaring agency staff which was cross-referenced with the date of the completed criminal background and child abuse/neglect history checks. Current Michigan policy requires the completed criminal background and child

abuse/neglect history checks be completed before staff have direct contact with children in these institutions.

Disallowances

A disallowance in the amount of \$23,129 in foster care maintenance payments and \$50,164 in related administrative costs of FFP is assessed for title IV-E foster care payments claimed for the error cases. Additional amounts of \$303 in foster care maintenance payments and \$712 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 \$74,318 in FFP. DHS 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 and payment requirements are met.

Next Steps

The State agency must make the appropriate prospective claiming adjustments on behalf of the sample cases that were determined ineligible for FFP during the week of June 14, 2010. DHS must cease claiming title IV-E costs until these cases are determined to be eligible. DHS must also take appropriate claiming action to apply the findings contained in this report for any additional payments that are subsequently identified as title IV-E claimed or claimable for services rendered during the review period or for other periods during the same episode of foster care. To the extent that this effort results in the filing of prior period adjustments claims on Part 2 of form ACF-IV-E-1, the State should include in Column E (other comments) a reference to the "FFY 2010 Title IV-E Review."

Because DHS was found not to be in substantial compliance, pursuant to 45 CFR §1356.71(i), the agency is required to develop a Program Improvement Plan (PIP) designed to correct those areas needing corrective action as identified in the this report. The PIP is not to exceed one year. We will work with the State in identifying technical assistance needs and obtaining assistance through our funded Training and Technical Assistance Network to help the State develop and implement program improvement strategies.