

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

Introduction

During the week of March 15 – 19, 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 Minnesota and was completed by a review team comprised of representatives from the Minnesota Department of Human Services Child Safety and Permanency Division, CB Central Office, and ACF Region V Grants Management.

The purposes of the title IV-E foster care eligibility review were (1) to determine whether the Minnesota title IV-E foster care program was in compliance with the eligibility requirements as outlined in Section 472 of the Social Security Act (the Act) and 45 Code of Federal Regulations, Section 1356.71 (45 CFR §1356.71); 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 6-month period under review (PUR) of April 1, 2009 – 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 sixty-nine (69) cases from the original sample plus eleven (11) oversample cases. Eleven (11) cases were 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 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 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 paid 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 title IV-E maintenance payment was not claimed by the State for an eligible child during the 2-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, as well as further review of the case facts, the improper payment findings were reversed for sample cases 3, 4, and 84.

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 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 cases with ineligible payments, are being disallowed. In addition, four (4) 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 not greater than four (4), the State of Minnesota, Department of Human Services Child and Permanency Division, is in substantial compliance for the PUR.

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)
#33	Specified relative requirement not met in the removal home. The agency determined the title IV-E eligibility based on a non-relative caregiver. [§472(a)(1)& (2) of the Act; 45 CFR §1356.21(k)] Ineligible: Entire foster care episode Reported Disallowance Period: 12/01/2004-10/31/2009	\$31,945 Maint. \$22,911 Admin.
#38	Specified relative requirement not met in the removal home. The agency determined the title IV-E eligibility based on a non-relative caregiver. [§472(a)(1)& (2) of the Act; 45 CFR §1356.21(k)] Ineligible: Entire foster care episode Reported Disallowance Period: 09/01/2006-12/18/2009	\$23,908 Maint. \$16,236 Admin.
#44	Specified relative requirement not met in the removal home. The agency determined the title IV-E eligibility based on a non-relative caregiver. [§472(a)(1)& (2) of the Act; 45 CFR §1356.21(k)] Ineligible: Entire foster care episode Reported Disallowance Period: 08/01/2009-11/24/2009	\$5,478 Maint. \$1,814 Admin.

Total: \$102,292

Non-error Cases with Ineligible Payments

Sample Number	Improper Payment Reason & Ineligibility Period	Improper Payments (FFP)
#16	Judicial determination of reasonable efforts to prevent removal or finalize permanency plan not met during period of claiming. [§472(a)(2)(A)(ii) of the Act; 45 CFR §1356.21(b)(2)] Ineligible: 12/01/1996-06/30/1998 Evidence of a title IV-E agreement between Red Lake Nation and Beltrami County could not be produced by the State. [§472(a)(2) of the Act] Ineligible: 12/01/1996-12/31/1998 and 01/01/1999-12/31/2003	\$35,236 Maint. \$21,651 Admin.

Total: \$56,887

Underpayment Case

Sample Number	Improper Payment Reason & Ineligibility Period	Improper Payments (FFP)
#51	Title IV-E foster care maintenance payment not claimed due to data entry error resulting in an underpayment. Eligible: 01/01/2009-02/28/2009	\$1,756 Maint.
#64	Title IV-E foster care maintenance payment not claimed due to data entry error resulting in an underpayment. Eligible: 04/07/2009-05/18/2009	\$2,444 Maint.
#72	Title IV-E foster care maintenance payment not claimed due to data entry error resulting in an underpayment. Eligible: 04/11/2009-11/30/2009	\$1,982 Maint.
#73	Title IV-E foster care maintenance payment not claimed due to data entry error resulting in an underpayment. Eligible: 06/04/2009-07/23/2009	\$726 Maint.

Total: \$6,908

Areas in Need of Improvement

The findings of this review indicate that the State should further develop and implement procedures to improve program performance in the following areas:

Issue #1: In the three (3) error cases, the agency determined title IV-E eligibility based on the removal home of non-related caregivers from whom the child was judicially removed. In cases #33 and #38, the children were removed from family friends; and in case # 44 the child was removed from her legal guardians who were former foster parents but who had not adopted the child. None of these relationships met the requirements of specified relatives under title IV-E. No documentation was found in the case files or through further examination by the State that the relationship between the children and the caregivers from whom they were judicially removed was in the degree of kin specified in Federal title IV-E statute.

Title IV-E Requirement: Under §472(a)(1) of the Act, for title IV-E eligibility a child must have been removed from the home of a parent or other relative specified at 45 CFR §233.90(c)(1)(v) and to have been eligible for AFDC in the month the court proceeding leading to the removal is initiated or the voluntary placement agreement is signed. The regulations at 45 CFR §233.90(c)(1)(v) define a specified relative as a parent or any relation by blood, marriage, or adoption who is within the fifth degree of kinship to the child. The Federal statutes also require that the child had to have been living with the specified relative at the time, or within six months, of the voluntary placement agreement or initiation of court proceedings. The "living with" and

"removed from" requirements must be met by the same specified relative or the child is ineligible for the entire foster care episode.

Recommended Corrective Action: It is recommended that the State re-emphasize, through training and appropriate administrative guidance to all of its counties, the requirements for specified relatives under the title IV-E program. The training and guidance should specifically clarify the definition of family and the applicability of the definition in the various programs it administers, especially pointing out those instances when the State's broader definition of kin does not apply or is contrary to Federal law, policy, or practice. For title IV-E eligibility determinations, this guidance and training should also specify the verification requirements and sources that are appropriate to document compliance with each element of eligibility. The documentation is expected to clearly establish the facts of each eligibility criterion under title IV-E. All necessary staff should receive information to assure that title IV-E eligibility determinations, specifically around "living with" and "removal from" a specified relative requirements, are accurate and timely.

Issue #2: It was determined during the review process that there were four (4) cases that the State did not claim title IV-E maintenance payments for periods of time in which the State was entitled. These underpayments amount to a total of \$6,908 in allowable claims. In cases 51, 64, 72, and 73, these underpayments were due to incorrect coding during data entry into the State's automated title IV-E eligibility system (MAXIS).

Recommended Corrective Action: It is recommended that the State provide ongoing training to its counties on the use of the State's automated title IV-E eligibility system with a focus on proper data entry. In addition, it is recommended that the State continue its close administrative oversight of the counties' title IV-E eligibility claiming. The State must actively supervise the various activities subject to title IV-E that are performed by the counties, Tribes, and other agencies having title IV-E agreements with the State. This supervision includes making sure the counties adhere to the requirements of the Act, Federal rules, regulations, and policy interpretations in the operation of the State's foster care maintenance program. Consistent with §471(a)(2) and §472 (a)(2)(B) of the Act, the State ultimately is responsible for proper operation of the foster care program.

Issue #3: Fifteen (15) cases were excluded from the original sample and oversample because of incorrect coding of AFCARS data element 59. Eleven (11) of these cases were excluded from the original eighty (80) cases and four (4) from the oversample. Documentation provided by the State confirmed the case replacements were necessary because a title IV-E maintenance payment was not made during the PUR. State agency officials indicated that these cases were coded with a "1" in data element 59 since the State viewed the children as "eligible but not reimbursable." According to the State, the children in these cases met all of the eligibility requirements under title IV-E, but were placed in non-reimbursable placements.

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 the State, in answering foster care element 59, ensures a common understanding among staff to only indicate whether a title IV-E foster care maintenance payment was paid on behalf of the child during the reporting period. Staff training and data system monitoring should be conducted to ensure that coding is accurately reflected. Data entry and processing systems should be evaluated to determine internal accuracy and consistency of the data.

We further recommend that the State’s policy and training make it clear that title IV-E funds cannot be claimed on behalf of an otherwise eligible child until all title IV-E requirements are met, including those pertaining to the child’s foster care placement. Title IV-E eligibility is determined based on whether the child meets all eligibility criteria that are delineated in the Act at §472(a) and the implementing Federal regulations at 45 CFR §§1355 and 1356.

Strengths and Promising Practices

Minnesota’s commitment and willingness to improve its program and practice is evidenced by the following positive practices and processes of the title IV-E foster care eligibility program. These measures observed during the review seem to have led to improved program performance and successful operations.

- The State has a process in place for an internal review of its court practices and issuance of State policy through the use of bulletins, the training of judges, county attorneys, and the strong involvement of the Court Improvement Program to address identified concerns. This commitment and collaborative effort between the State agency and State court system contributed to timely review hearings and judicial findings occurring early in the cases. Court orders were generally clear, comprehensive, and child-specific. Most court orders documented specific reasons for removal. Findings of “contrary to the welfare” and “reasonable efforts to prevent removal” consistently appeared in court orders. Findings of “reasonable and active efforts to finalize the permanency plan” are made generally every three to four months, indicating significant judicial involvement in foster care cases as a measure to ensure there is timely achievement of permanency planning.
- The State recently implemented the use of an automated data system that conducts daily cross-references of child abuse complaints/reports on foster care providers, as well as individuals working in residential childcare institutions, with criminal background checks. This process is being used to make immediate safety determinations as well as providing a data bank of individuals that have been disqualified from working with children. The State Licensing Department has also added additional staff to assist with the conducting of timely, routine safety checks of childcare institutions.

- The State has also corrected its past policy and practice on determining AFDC eligibility for the removal month. During the 2007 eligibility review, it was determined that Minnesota consistently based AFDC eligibility on the month of the original court petition regardless of whether or not there was a direct link between the court petition and the most recent foster care episode. As discussed with the State then, the State must prove that the child is title IV-E eligible in the specified relative's home during the month the court proceedings leading to the child's removal were initiated or the voluntary placement agreement was signed in accordance with §472(a)(1)(B) of the Act. In all 80 cases reviewed this year, title IV-E eligibility was based on the correct month. However, as stated above, the agency should put in place measures to correct the State's practice of determining AFDC-related eligibility for title IV-E based on the home of non-related caregivers.

Disallowances

A disallowance in the amount of \$61,331 in maintenance payments and \$40,961 in related administrative costs of Federal Financial Participation (FFP) is assessed for title IV-E foster care payments claimed for the error cases. Additional amounts of \$35,236 in maintenance payments and \$21,651 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 \$159,179 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 have been satisfied.

Next Steps

As part of the State's ongoing efforts to improve its title IV-E foster care eligibility determination process, CB recommends that Minnesota examine identified program deficiencies and develop measurable, sustainable strategies that target the root cause of problems hindering the State from operating an accurate foster care eligibility program. Appropriate corrective action should be taken in instances of noncompliance with Federal laws and regulations. The CB Regional Office is available to assist the State in identifying and obtaining technical assistance available to facilitate the State's strategies for corrective action.