

Minnesota Department of Health and Human Services
Primary Review
Title IV-E Foster Care Eligibility
Report of Findings for
April 1, 2012 – September 30, 2012

Introduction

During the week of March 4, 2013, 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 Minnesota Department of Human Services (DHS) and was completed by a review team comprised of representatives from Minnesota's Department of Human Services Child Safety and Permanency Division, Licensing Division and Fiscal Management Department, CB Central and Regional Offices, ACF Regional Grants Management and peer reviewers.

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 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 for which a title IV-E maintenance payment was claimed for an activity during the six-month period under review (PUR) of April 1, 2012 through September 30, 2012. 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 75 cases from the original sample plus 5 oversample cases. One (1) case was excluded from the original sample because no title IV-E foster care maintenance payment was made for a period during the PUR. Four (4) cases were excluded because the youths turned eighteen (18) years of age before or during the PUR and their coverage for eligibility is extended under the State's IV-E plan option for age requirements. 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), and (c), respectively;
- Voluntary placement agreements as set forth in §§472(a)(2)(A)(i) 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 1356.71(d)(1)(iv); and
- Safety requirements for the child’s foster care placement as required at §471(a)(20)(A) of the Act and 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 child care 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 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 in the PUR on the 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 an allowable 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. The 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.

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 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 Minnesota Department of Human Services 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) |
|---------------|--|--|
| #9 | <p>Safety requirements for foster care providers not met; §471(a) (20) of the Act; 45 CFR §1356.30.</p> <p>Foster care maintenance payments were made for the child’s two (2) separate placements during the PUR that were licensed on or after October 1, 2008 but did not have the required fingerprint-based National Crime Information Data Base checks completed.</p> <p>Reported Disallowance Periods: 05/30/2012-08/31/2012.</p> | <p>\$1,884.00 Maint. \$5,714.00 Admin.</p> |
| #50 | <p>AFDC eligibility requirement that the child lived with a specified relative within 6 months of the signing of the Voluntary Placement Agreement was not met; §472(a)(3)(A)(ii)(II) of the Act; 45 CFR §233.90(c)(1)(v); 45 CFR § 233.90 (c)(1)(v)(B).</p> <p>Child did not live with the specified relative (mother) within 6 months of the signing of the voluntary placement agreement.</p> <p>Child was ineligible for the entire foster care episode;</p> <p>Reported Disallowance Period: 03/10/2012- present.</p> | <p>\$4,265.00 Maint. \$6,477.00 Admin.</p> |
| #68 | <p>Safety requirements for foster care provider not met; §471(a)(20) of the Act; 45 CFR §1356.30.</p> <p>Foster care maintenance payments were made for the child’s placement during the PUR that was licensed on or after October 1, 2008 but did not have the required fingerprint based National Crime Information Data Base checks completed. Child was placed by Red Lake.</p> <p>Reported Disallowance Period: 10/01/2011-02/3/2012 and 04/26/2012-Present</p> | <p>\$2,911.00 Maint. \$6,454.00 Admin.</p> |

\$9,060.00 Maint.
 \$18,645.00 Admin.
Total: \$27,705.00

Non-error Case with Ineligible Payments

| Sample Number | Improper Payment Reason & Ineligibility Period | Improper Payments (FFP) |
|----------------------|--|------------------------------------|
| #11 | Prior to the PUR, child was placed in a unlicensed foster family home by Mille Lacs Band and foster care maintenance payments were made for the time the child was in the ineligible placement; §§472 (b) and (c) of the Act 45 CFR § 1356.71(d)(1)(iv); 45 CFR § 1355.20 Ineligible Payment Period: 05/11/2011-07/01/2011 | \$747.00 Maint. \$695.00 Admin. |

Total: \$1,442.00

Underpayment Cases

| Sample Number | Improper Payment Reason & Ineligibility Period | Improper Payments (FFP) |
|----------------------|---|--------------------------------|
| #4 | White Earth Tribe did not claim foster care maintenance payments even though the child was eligible and in a title IV-E allowable placement, resulting in an underpayment. Eligible: 10/01/2012-10/31/2012 | \$740.00 Maint. |
| #6 | Pope County did not claim foster care maintenance payments even though the child was eligible and in a title IV-E allowable placement, resulting in an underpayment. Eligible: 11/21/2011-11/30/2011 | \$451.00 Maint. |
| #13 | Hennepin County did not claim foster care maintenance payments even though the child was eligible and in a title IV-E allowable placement, resulting in an underpayment. Eligible: 06/07/2012-06/10/2012 | \$96.00 Maint. |
| #38 | Mower County did not claim foster care maintenance payments even though the child was eligible and in a title IV-E allowable placement, resulting in an underpayment. Eligible: 12/01/2011-12/04/2011 | \$41.00 Maint. |

Total: \$1,328.00

Strengths and Promising Practices

Minnesota's continued 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 approaches seem to have led to improved program performance and successful program operations.

Court Orders and Judicial Findings:

During the on-site review, it was noted that the strong involvement and commitment of the Court Improvement Program (The Minnesota Children's Justice Initiative) along with the collaborative training efforts between DHS, Tribal Courts, and County Courts contributed to strong and efficient judicial processes. In addition, promising practices such as the use of scheduling orders by the 10th District is an example of practice efforts that have contributed to positive outcomes. These efforts and collaboration seemed to have reduced the possibility of ineligible title IV-E foster care maintenance payments, as reflected in there being no findings of ineligible payments attributed to the judicial process. The following positive judicial practices were evidenced in the case records:

- In the majority of cases reviewed, court orders were clear, comprehensive and contained individualized and case specific judicial determinations;
- Timely judicial findings of Contrary to the Welfare and Reasonable Efforts to Prevent Removal were made and were well documented;
- Permanency plan hearings were being completed timely and in most cases were occurring every 90 days;
- Placement and Care language in court orders (including those cases where placement and care was being transferred to Tribal courts) were clear and well documented;
- Best Interest findings for Voluntary Placement Agreement cases were occurring within 180 days of the agreement being signed, and;
- The use of Scheduling Orders in the 10th District were signed by a judge and contained benchmark dates for court hearings aimed at tracking and moving cases towards permanency.

AFDC Eligibility Determinations:

The DHS has made progress in the area of AFDC eligibility determinations resulting in fewer improper payments. During the review it was determined that seventy-nine (79) of the eighty (80) cases met AFDC eligibility. The previous title IV-E review conducted March of 2010, revealed only seventy-seven (77) of the eighty (80) cases met AFDC eligibility. The DHS continues to use its Social Services Information System (SSIS) and its statewide automated MAXIS through automated interface to determine and document title IV-E foster care eligibility, including the AFDC relatedness components. Relevant placement information and court determinations are entered and maintained in SSIS where final eligibility determinations are completed within the MAXIS system. The DHS provides ongoing training and technical assistance to counties and tribes on AFDC eligibility policy statewide as it relates to IV-E eligibility. The following strengths were noted during the on-site review:

- AFDC worksheets demonstrating the months used to determine AFDC eligibility and the path to eligibility were complete and easy to discern, and;

- Deprivation, dependency and financial need of the family unit was detailed and well documented.

One (1) case failed to meet AFDC eligibility requirement of living with specified relative within the six (6) months of the voluntary placement agreement. The child had not lived with the specified relative (mother) within 6 months of the signing of the voluntary placement agreement. As a result the removal was deemed invalid and the case was determined to be an error case and ineligible for Federal IV-E funding for the entire foster care episode. Sections 472(a)(1) and (3) of the Act and 45 CFR §1356.21(l) require a child to have lived in the home of a parent or other specified relative at some time within the six months prior to the month of the initiation of court proceedings leading to the judicial removal or of the voluntary placement agreement being signed. It is recommended that the State continue to re-emphasize, through training and appropriate administrative guidance to all of its Counties and Tribes the requirements for meeting “living with” a specified relative as it relates to title IV-E eligibility. Guidance and training for title IV-E eligibility determinations should specify the verification requirements and sources that are appropriate to document compliance with all elements 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 ensure that title IV-E eligibility determinations, specifically around “living with” specified relative requirements are well documented, accurate and timely.

Licensing:

The DHS Licensing Division delegates the licensing process for family foster homes to county social service agencies and private agencies to license foster family homes. Upon the recommendations of the county or private agency, DHS Licensing Division then issues the family foster care licenses. The DHS Licensing Division oversees these licensing entities by conducting regular reviews of the licensing agencies’ practices to ensure the reliability of the licensing processes and provides training and technical assistance when required. The DHS Licensing Division is directly responsible for the licensing of most child caring institutions. Through an interagency agreement between the DHS Licensing Division and the Department of Corrections, the Department Of Corrections does license a small number of child caring residential facilities. The DHS licensing and the Department of Corrections work collaboratively to implement and administer the State’s licensing standards. During the on-site review of licensing records for both foster family homes and child caring institution the following was noted: licenses clearly documented the foster parents’ names and dates of licensure, when licenses needed to be extended the appropriate documentation was provided to support the extension and once the license was issued it was done so timely, and child caring institution licenses were clear as to the facility name, capacity, age of the residents and the type of residential setting (i.e. group home, secure correctional facility or shelter) and very easy to understand.

Safety Requirements for Child Caring Institutions:

Minnesota has a law (§245.05) where the Departments of Corrections and Probation are required to notify DHS Licensing of an individual’s conviction for a potentially disqualifying offense if the individual has been affiliated with programs licensed by Department of Human Services, Minnesota Department of Health and or Minnesota Department of Corrections. The DHS also has a statewide automated system that receives daily reports of individuals with a finding of

maltreatment of minors or vulnerable adults. Every day DHS Licensing runs the names of those individuals against all previous background studies submitted. The results of this process allow the State to notify agencies and or facilities if they have an individual that has a finding of maltreatment of a minor or vulnerable adult so the appropriate action can be taken to minimize safety risks. Additionally, a statewide database of individuals disqualified from working with children has been developed. During the on-site review of safety check records for child caring institutions the following was noted as factors that seemed to contribute to there being no improper payments for children placed in child caring institutions:

- The initial background studies on individuals working in child caring institutions were being conducted timely and as required by Minnesota law, and;
- Evidence of the automated daily checks of individuals working in the child caring institutions against the findings of child abuse and vulnerable adults statewide registry was found in the licensing files provided for each of the institutions reviewed.

Areas in Need of Improvement

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

Issue #1: Safety Requirements for Foster Family Homes Licensed by Tribes:

During the on-site review it was revealed that the State and the four (4) Tribes in Minnesota with title IV-E agreements were under the belief that Tribes were exempt from the section of §471(a)(20) of the Act requiring fingerprint-based criminal record checks from the national crime information databases for prospective foster and adoptive parents. Additionally, a review of the current Tribal/State title IV-E agreements determined that the language was not particularly clear around the required background checks. As a result, in two (2) cases children were placed in homes (during the PUR) with foster parents that were licensed on or after October 1, 2008 by Red Lake Band but did not have completed fingerprint based, National Crime Information Databases (NCID) background checks. Both cases were determined to be in error and ineligible for Federal title IV-E funding for a period of claiming.

Title IV-E Requirement:

Section 471(a)(20)(A) of the Act and 45 CFR §1356.30 of the Federal code places requirements on the State as a condition of the title IV-E State plan and places additional requirements for claiming title IV-E foster care maintenance and adoption assistance payments on behalf of a title IV-E eligible child. As a condition of the title IV-E State plan, the State title IV-E agency must have procedures for criminal background checks for prospective foster and adoptive parents. The procedures for criminal background checks must include fingerprint-based criminal record checks of the National Crime Information Databases for prospective foster and adoptive parents newly licensed on or after October 1, 2008, or the State's approved delayed effective date for implementing the fingerprint-based requirement. The State title IV-E agency and its agents, must conduct the checks and otherwise apply the procedures for prospective parents whom it will license or approve to care for a participant in the State's title IV-B/IV-E program (section 471(a)(20)(A) of the Act). Agents of the title IV-E agency include a State licensing authority and any other agency that is under contract with the title IV-E agency to issue licenses or approvals. Further, in order for a State to claim title IV-E foster care maintenance or adoption

assistance payments for an otherwise title IV-E eligible child, the criminal records check must reveal that the prospective foster or adoptive parent has not been convicted of one of the prohibited felonies and, the foster family home must be licensed or approved (section 471(a)(20)(A)(i) and (ii) of the Act). These rules apply regardless of the entity that licenses or approves the prospective parent (e.g., a private adoption agency, an Indian tribe either with or without an agreement under section 472(a)(2)(B)(ii) of the Act, or a private child placing agency not under contract with the State agency).

Recommended Corrective Action:

It is recommended that the State provide training and technical assistance to the State, County and Tribes on section §471(a)(20)(A) of the Act and 45 CFR §1356.30 as these Federal mandates relate to fingerprint-based criminal record checks of the national crime information databases for prospective foster and adoptive parents and title IV-E eligibility. In addition, the State and Tribes with title IV-E agreements should work together to review current title IV-E agreements to ensure that §471(a)(20)(A) of the Act is properly and plainly addressed within the agreements to ensure the proper administration of the title IV-E program.

Issue #3: Underpayments:

During the review, there were four (4) cases identified where the State did not claim title IV-E maintenance payments for periods for which they were entitled. In all four (4) cases, the children met all of the title IV-E eligibility requirements including placement in a fully-licensed foster care setting that complied with the safety requirements. The State reported that the Counties and/or Tribes did not submit claiming for these cases, but could not determine why they did not claim for these periods of time. These underpayments amount to \$1,328.00 in allowable claims.

Title IV-E Requirement:

Federal regulations at 45 CFR §1356.60 provide that title IV-E foster care maintenance payments may be claimed 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 the foster care placement in the month in which all title IV-E eligibility criteria are met. The payment may be claimed for the entire month when an eligible child has resided in the foster care placement for the entire month. However, if the eligible child is placed on a date in the month other than the first of the month, title IV-E funds may be claimed for the period beginning with the actual date of foster care placement.

Recommended Corrective Action:

It is recommended that the State review the underpayments to determine any systemic issues that may have been integral in episodes of title IV-E foster care maintenance payments going unclaimed for eligible children. Additional training should be developed and provided to focus on eliminating improper payment errors, including ineligible payments and eligible payments that could potentially contribute to the oversight of claiming for eligible children. The focus on underpayments would allow the State to maximize reimbursements for allowable costs of care for eligible children under title IV-E.

Disallowances

A disallowance in the amount of \$9,060.00 in maintenance payments and \$18,645.00 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 \$747.00 in maintenance payments and \$695.00 in related administrative costs of FFP are disallowed for title IV-E foster care payments claimed improperly for the non-error case.

The total disallowance as a result of this review is \$29,147.00 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.

Next Steps

Since Minnesota was found to be in substantial compliance, no formal corrective action plan is required in follow-up to this review. We commend the State for its ongoing efforts in examining program deficiencies and implementing measures that have resulted in improvements to its title IV-E program. As part of the State's continued efforts to improve its title IV-E foster care eligibility program, CB recommends that DHS examine identified program deficiencies and develop measurable, sustainable strategies that target the root cause of any areas hindering the State from operating an accurate foster care eligibility program and implement a quality assurance system to regularly monitor eligibility and payment decisions to reduce or eliminate ineligible payments and underpayments. The CB Regional Office is available to assist the State in identifying strategies and obtaining existing technical assistance to support the proper and efficient administration of the title IV-E foster care maintenance program. The next title IV-E foster care eligibility review will be held in three years.