

**State of Mississippi  
Secondary Review  
Title IV-E Foster Care Eligibility  
Report of Findings for  
April 1, 2010 – September 30, 2010**

## **Introduction**

During the week of June 20, 2011, the Children's Bureau (CB) of the Administration for Children and Families (ACF) conducted a secondary review of the State's title IV-E foster care program. The review was conducted in collaboration with the State of Mississippi's Department of Human Services (MDHS) and was completed by a review team comprised of representatives from the State agency, CB Central and Regional Offices, ACF Regional Grants Management, peer reviewers and a cross-State participant from the State of Alabama.

The purpose of the title IV-E foster care eligibility review were (1) to determine whether the Mississippi Department of Human Services' 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 secondary 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, 2010 through September 30, 2010. A computerized statistical sample of 180 cases (150 cases plus 30 over-sample cases) was drawn from State data submitted to the Adoption and Foster Care Analysis and Reporting System (AFCARS) for the above period. One hundred fifty (150) cases were reviewed from the original sample. No cases were excluded from the original sample. 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 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.

## Compliance Finding

The review team determined that 135 of the 150 cases met eligibility requirements (i.e., were deemed non-error cases) for the PUR. Fifteen (15) cases were determined to be in error for either part or all of the PUR and three (3) non-error cases were 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 fifteen (15) error cases and the three (3) non-error cases with ineligible payments, are being disallowed. Because the number of cases in error does not exceed fifteen, MDHS is found to be in substantial compliance for the PUR.

## Case Summary

The following charts record the fifteen (15) error cases; the three (3) non-error cases with ineligible payments; 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	Maintenance Payments (FFP)	Administrative Costs (FFP)
MS - 3	Judicial determination of reasonable efforts to finalize a permanency plan was not attained timely. [§472(a)(2) and §471(a)(15)(B) of the Act; 45 CFR §1356.21(b)(2)]  Ineligible Payment Period: 6/1/2010-9/30/2010	\$2,596.77	\$1,729.03
MS - 4	Judicial determination of reasonable efforts to prevent removal was not attained timely. [§472(a)(2) and §471(a)(15)(B)(i) of the Act; 45 CFR §1356.21(b)(1)]  Ineligible Payment Period: 9/5/2006-7/13/2010 The child is ineligible for the entire foster care episode.	\$7,956.40	\$10,463.50
MS - 25	Placement in unlicensed "foster family home" [§472(c); of the Act; 45 CFR 1355.20(a)(1); 45 CFR 1356.71(d)(1)(iv)]; Safety requirements for foster care provider were not met.	\$4,694.41	\$3,458.07

	[§471(a)(20)(A) of the Act; 45 CFR 1356.30] Ineligible Payment Period: 10/1/2009-10/15/2010		
MS - 32	Safety requirements for foster care provider were not met. [§471(a)(20)(A) of the Act; 45 CFR 1356.30] Ineligible Payment Period: 10/01/2009-8/16/2010	\$5,720.63	\$4,754.84
MS - 33	Placement in unlicensed "foster family home." [§472(c); of the Act; 45 CFR 1355.20(a)(1); 45 CFR 1356.71(d)(1)(iv)]; Ineligible Payment Period: 9/01/2010-9/13/2010	\$218.09	\$172.90
MS - 35	Title IV-E foster care maintenance payment paid for period after child left placement. [§475(4) of the Act; 45 CFR 1356.21(a)] Ineligible Payment Period: 4/1/2010-4/30/2010	\$2,070.33	\$432.26
MS - 87	Judicial determination of reasonable efforts to finalize the permanency plan was not attained timely. [§472(a)(2) and §471(a)(15)(B)(ii) of the Act; 45 CFR §1356.21(b)(2)] Ineligible Payment Period: 8/1/2010-8/31/2010	\$1,688.95	\$432.26
MS - 88	Safety requirements for foster care provider were not met. [§471(a)(20)(A) of the Act; 45 CFR 1356.30] Ineligible Payment Period: 9/1/2009-5/31/2011	\$10,305.56	\$8,596.75
MS - 95	Safety requirements for foster care provider were not met. [§471(a)(20)(A) of the Act; 45 CFR 1356.30] Ineligible Payment Period: 1/13/2009-4/30/2011	\$45,200.27	\$13,053.51
MS - 103	Safety requirements for foster care provider were not met. [§471(a)(20)(A) of the Act; 45 CFR 1356.30] Ineligible Payment Period: 4/4/2010-5/31/2011	\$7,497.23	\$6,867.72
MS - 105	Placement in unlicensed "foster family home." [§472(c); of the Act; 45 CFR 1355.20(a)(1); 45 CFR 1356.71(d)(1)(iv)]; Ineligible Payment Period: 2/1/2009-6/30/2010	\$1,862.14	\$432.26
MS-106	Safety requirements for foster care provider were not met. [§471(a)(20)(A) of the Act; 45 CFR 1356.30] Ineligible Payment Period: 2/1/2009-6/30/2010	\$9,066.95	\$8,016.84

MS-110	The AFDC requirement of deprivation of parental support not met for initial AFDC eligibility. [§472(a)(3)(A) of the Act; 45 CFR §1356.71(d)(1)(v)]  Ineligible Payment Period: 11/2005-5/2010  The child is ineligible for the entire foster care episode.	\$75,540.16	\$26,542.82
MS -111	Title IV-E foster care maintenance payment paid for period after child left foster family home. [§475(4)(A) of the Act; 45 CFR 1356.21(a)]  Ineligible Payment Period: 8/10/2010-8/31/2010	\$364.04	\$302.58
MS -128	Safety requirements for foster care provider were not met. [§471(a)(20)(A) of the Act; 45 CFR 1356.30]  Ineligible Payment Period: 8/20/2009-8/31/2010	\$6,324.57	\$4,754.84
	Total	<b>\$181,106</b>	<b>\$90,009</b>

**Non-error Cases with Ineligible Payments**

Sample Number	Improper Payment Reason & Ineligibility Period	Maintenance Payments (FFP)	Administrative Costs (FFP)
MS - 19	Judicial determination of reasonable efforts to finalize the permanency plan was not attained timely. [§472(a)(2) and §471(a)(15)(B)(ii) of the Act; 45 CFR §1356.21(b)(2)]  Ineligible Payment Period: 2/1/2009-6/30/2009	\$1,434.13	\$2,579.07
MS - 47	Safety requirements for foster care provider were not met. [§471(a)(20)(A) of the Act; 45 CFR 1356.30]  Ineligible Payment Period: 2/1/2009-2/28/2009 and 10/2009-2/2010	\$4,934.18	\$2,677.11
MS - 64	Judicial determination of reasonable efforts to finalize the permanency plan was not attained. [§472(a)(1) and §471(a)(15)(B)(ii) of the Act; 45 CFR §1356.21(b)(2)]  Ineligible Payment Period: 4/1/2009-4/30/2009	\$4,061.23	\$516.81
	Total	<b>\$10,430</b>	<b>\$5,772</b>

## **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: Timeliness of Judicial Determinations Regarding Reasonable Efforts to Finalize a Permanency Plan.** Two (2) cases were in error and two (2) non-error cases had ineligible payments because the judicial requirement of “reasonable efforts to finalize a permanency plan” was not satisfactorily met. Mississippi, like most States, incorporated the Federal requirement for a judicial determination of “reasonable efforts to finalize a permanency plan” into its court proceeding for the 12-month permanency hearing. However, if the permanency hearing is delayed or the court order does not contain the required determination, the State does not meet the requirements of Federal regulation. In most cases in the review sample, during the period under review court orders contained a definitive finding regarding reasonable efforts to finalize the permanency plan.

In some court orders reviewed, the documentation of judicial determinations on reasonable efforts to finalize the permanency plan had very little information about the work the agency was doing to achieve the permanency goal for the child. There were some court orders that were not child specific and lacked facts for which the judicial determinations were made to establish permanency goals.

**Title IV-E Requirement:** For a child who is judicially-removed and remains in foster care for 12 months or more, Federal provisions at §472(a)(2)(A) of the Act and 45 CFR §1356.21(b)(2) require the State to obtain a judicial determination of whether the State made “reasonable efforts to finalize a permanency plan” for the child. The judicial finding must occur at regular 12-month intervals for the duration of the foster care episode and no later than 12 months from the month in which the prior determination is obtained. If the judicial determination of “reasonable efforts to finalize” is not made or is not timely, the child becomes ineligible from the beginning of the first month after it is due and remains ineligible until the month the judicial determination is made.

**Recommended Corrective Action:** To address the delays in permanency hearings and the lack of determinations required under title IV-E in court orders, we recommend that the MDHS and the Administrative Office of Courts (AOC) engage in a joint effort to make improvements. For example, efforts can consist of quarterly reports, by county, that provide information such as: court orders that do not contain the required findings, delays in permanency hearings that create untimely judicial findings and court continuances that significantly delay decisions about achieving placement stability and permanency for children. These issues could be addressed at MDHS and AOC meetings, as well as in trainings for judges and attorneys. The requisite judicial determination need not be tied to a permanency or other court hearing. The judicial determination may be rendered by the court at any point during the 12-month period. The State should continue to develop and implement procedures to ensure timely judicial determinations of “reasonable efforts to finalize the permanency plan” regardless of the timing of the permanency hearing.

It also is noted that one (1) additional case was identified as being in error due to an untimely judicial determination of reasonable efforts to prevent removal of the child from the home. Although this case represents a very small percentage in the overall number of incidences of improper payments, strategies to prevent occurrences pertaining to any court finding required under title IV-E should be included in the corrective action plan developed between the State and AOC.

In general, the accuracy and reliability of eligibility determinations generally are increased through training of the judiciary and other court officials to correct delays in judicial findings, as well as to secure court orders that reflect title IV-E criteria on legal authority, best interests, and reasonable efforts. Staff training will help to ensure that workers make eligibility decisions based on the elements needed for compliance and to eliminate the authorization of payment prior to establishing compliance with the requirements.

**Issue #2: Placement in Licensed Foster Family Homes:** Three (3) cases were found to be in error because the foster family home did not meet the standards for full licensure or approval as established by the State. Probationary or provisional licenses that are issued to a foster family home because the home fails to satisfy all of the State's standards for full licensure or approval render the children who are placed in the foster family home ineligible for title IV-E funding.

**Title IV-E Requirement:** As required by 45 CFR 1355.20 and §472(c) of the Act, the term "foster family home" means a foster family home for children which is licensed by the State in which it is situated or has been approved, by the agency of such State having responsibility for licensing homes of this type, as meeting the standards established for such licensing. The regulation at 45 CFR 1355.20(a) further dictates that anything less than full licensure or approval is insufficient for meeting title IV-E eligibility requirements. Therefore, the child must be placed in a foster family home that has been fully licensed or approved by the State agency for title IV-E eligibility and compliance with the requirement must be documented before title IV-E foster care maintenance payments are claimed for an otherwise eligible child.

**Recommended Corrective Action:** The State must ensure the child's foster care placement is fully licensed as required by state policy. In addition, we encourage the State to establish a procedure to regularly monitor foster care providers to ensure that they meet licensing standards. The monitoring should ensure that local agencies adhere to licensing procedures, gaps in licensing do not occur, requirements for renewal are being met on a consistent and timely basis, and licensing decisions are documented. Internal fiscal controls also must be implemented to prevent title IV-E claiming for a period in which all the eligibility criteria have not been fully completed and documented.

**Issue #3: Safety Requirements of Foster Family Home:** Six (6) error cases and one (1) non-error case had ineligible payments because the safety requirements pertaining to the foster care provider were not satisfactorily met. The foster family homes were approved after October 1, 2008, and criminal records checks for the caretaker were not obtained timely. Accordingly, they were found during the review to not meet the Federal safety requirements.

**Title IV-E Requirement:** As required by 45 CFR 1356.30(a), and §471(a) (20) (A) of the Act, the State may not approve or license any prospective foster parent, nor may the State claim

Federal financial participation for any foster care maintenance payment made on behalf of a child placed in a foster home, including a foster home operated under the auspices of a child-placing agency, if the State does not have documentation that criminal records checks have been conducted.

**Recommended Corrective Action:** The State must ensure that the foster parents' licensing files contain documentation related to the safety consideration as required for children on whose behalf title IV-E payments are claimed. The State is encouraged to put in place a quality assurance system to monitor the accuracy of eligibility determination and claiming processes to ensure title IV-E maintenance payments are claimed only on behalf of eligible children.

### **Strength and Promising Practice**

The following positive practice and process of the title IV-E foster care eligibility program were observed during the review. This approach seemed to have led to improved program performance and successful program operations.

### **Collaboration with the Judicial System**

The State agency has worked with the Court Improvement Project (CIP) as well as judges and attorneys to refine court orders. The CIP and MDHS have developed Uniform Petition and Orders to use for various types of hearings. In addition, they have provided training to judges, county attorneys, county caseworkers and supervisors. The MDHS office also worked with judges in the State reviewing draft orders to determine if they contain the appropriate language but allow for explicit, child specific determinations for "contrary to the welfare" and "reasonable efforts." Through these efforts, the written orders issued by the court following a ruling have improved since the last review. However, more clarity about the specific finding and timeliness of findings are still a need in some court orders as previously noted. It is CB's recommendation that CIP and MDHS continue to collaborate on effective ways to improve court orders. Furthermore, MDHS should follow up on efforts to ensure title IV-E maintenance payments are claimed only on behalf of eligible children.

### **Disallowances**

A disallowance in the amount of \$181,106 in maintenance payments and \$90,009 in related administrative costs of FFP is assessed for title IV-E foster care payments claimed for the error cases. Additional amounts of \$10,430 in maintenance payments and \$5,772 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 \$287,317 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**

As noted earlier, CB has determined that MDHS foster care program under title IV-E was found to be in substantial compliance with Federal eligibility requirements for the PUR. Because Mississippi was found to be in substantial compliance, the next primary review must be held in three years. CB is available to provide any available technical assistance necessary to make the improvements in the eligibility and claiming process recommended in this report.