

State of Mississippi
Primary Review
Title IV-E Foster Care Eligibility
Report of Findings for October 1, 2013 - March 31, 2014

Introduction

During the week of August 18, 2014, the Children's Bureau 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 Mississippi's Department of Human Services (MDHS) and was completed by a review team comprised of representatives from the state agency, the Children's Bureau 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 MDHS' title IV-E foster care program was in compliance with the eligibility requirements as outlined in statute and regulation at section 472 of the Social Security Act (the Act) and 45 CFR §1356.71; and (2) to validate the basis of the MDHS 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 October 31, 2013 through March 31, 2014. 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 80 cases from the original sample. No oversample cases were utilized for this review.

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 §471(a)(20) 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 properly claimed 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 of 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 an allowable 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 state elected not to claim the payment or the filing period had expired. The CB and the state agreed 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.

Staff of MDHS, following the end of the onsite review, retrieved court orders from the court to document timely judicial findings of reasonable efforts to finalize the permanent plan for two cases, MS 59 and MS 62. The court orders were not available in the case files or other case material onsite to substantiate the eligibility requirement was met for these sample cases and title IV-E payments were claimed for each case without sufficient verification of eligibility. Acceptable documentation was provided after the fact that confirmed each of these children met all eligibility and payment requirements for the periods in question, thus changing the compliance finding from error to non-error. Even though the cases eventually were proven eligible and properly paid, MDHS is cautioned against claiming title IV-E maintenance payments on behalf of a child before the state has documented the child meets all eligibility requirements for the claimed period of activities. Title IV-E foster care maintenance payments, in accordance with §§472(a)(2) and 475(4) of the Act, may not be claimed for a period of activity unless it is first verified the child meets all of the title IV-E eligibility requirements including those related to the child's placement.

Compliance Findings

The review team determined 76 of the 80 cases met eligibility requirements (i.e., were deemed non-error cases) for the PUR. Four (4) cases were determined as in error for either part or all of the PUR. Four (4) non-error cases were determined to have received ineligible payments. The 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. Because the number of cases in error is not greater than four (4), MDHS is in substantial compliance for the PUR.

In addition to the above findings, three (3) non-error cases were identified to have periods of eligibility for which the state did not claim allowable title IV-E maintenance payments (underpayments). In accordance with federal regulations at 45 CFR §95.7, the state may claim the eligible payments for the non-error, underpayment cases by filing an increasing adjustment on its Title IV-E Programs Quarterly Financial Report (Form CB-496) in the next quarter, if the claim for the expenditures falls within two years after the end of the calendar quarter within which the state made the expenditure.

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. Note that the calculation of improper payments is based on the Federal Medical Assistance Percentages (FMAP) rates of maintenance costs for the applicable year(s) for each sample case.

Error Cases

Sample Number	Improper Payment Reason and Ineligibility Period	Maintenance Payments (FFP)	Administrative Costs (FFP)
MS #47	Safety requirements for staff of childcare institution were not met. [§471(a)(20) of the Act and 45 CFR §§1355.20 and 1356.30] Ineligible Period: 10/01/13 – 6/30/14	\$4,552.91	\$5,064.70
MS #52	Valid removal- Court order removing child occurred on 4/12/13, however, physical removal did not occur until 4/30/13. [§472(a)(l) of the act and 45 CFR § 1356.21(k)(2)] Ineligible Period: Entire Foster Care Episode Disallowance Period: 11/01/13 – 06/30/14	\$4,035.91	\$4,501.96
MS #55	Safety requirements for family foster home were not met and this home was not licensed for foster care. [§471(a)(20) of the Act and 45 CFR §§1355.20 and 1356.30] Ineligible Period: 08/28/13 – 11/08/13	\$4,804.81	\$1,329.36
MS #57	Child was placed in a non-IV-E Placement (Medicaid Care Center) [§472(c)(20) of the Act] Ineligible Period: 01/14/14 – 1/20/14	\$739.11	\$127.07

Total Maintenance FFP **\$14,132.74**
Total Administrative FFP **\$11,023.09**
Total FFP **\$25,155.83**

Non-error Cases with Ineligible Payments

Sample Number	Improper Payment Reason and Ineligible Period	Maintenance Payments (FFP)	Administrative Costs (FFP)
# MS 22	Judicial determination of reasonable efforts to finalize permanency plan not attained [§472(a)(2)(A)(ii) of the Act; 45 CFR §§1356.21(b)(2)] Ineligible: 08/16/12–08/31/12 (per payment history)	\$259.12	\$290.43
# MS 32	Duplicate payments were made for the incorrect resource home. Ineligible: 05/01/2012–08/31/2012	\$575.93	\$562.74
# MS-42	Judicial determination of reasonable efforts to finalize permanency plan not attained [§472(a)(2)(A)(ii) of the Act; 45 CFR §§1356.21(b)(2)] Ineligible: 05/01/2012–08/31/2012	\$2,022.82	\$ 2,126.47
# MS-68	Judicial determination of reasonable efforts to finalize permanency plan not attained [§472(a)(2)(A)(ii) of the Act; 45 CFR §§1356.21(b)(2)] Ineligible: 06/01/12 – 10/31/12	\$2,514.56	\$2,319.09

Total Maintenance FFP	\$5,372.43
Total Administrative FFP	\$5,298.73
Total FFP	\$10,671.16

Underpayments

Sample Number	Reason for Underpayment	Maintenance Payments (FFP)	Administrative Costs (FFP)
MS #22	Child was eligible for title IV-E; however, MDHS did not claim title IV-E for three months. [§§471(a)(15)(b) and 472(a)(2) of the Act and 45 CFR §§1356.21(b), (c), & (d)]. Eligible Period: 11/01/13 – 02/28/14	\$2,001.28	

Sample Number	Reason for Underpayment	Maintenance Payments (FFP)	Administrative Costs (FFP)
MS #43	Child was eligible for title IV -E; however, MDHS did not claim title IV-E for one month of eligibility. §§471(a)(15)(b) and 472(a)(2) of the Act and 45 CFR §§1356.21(b), (c), & (d)]. Eligible Period: 3/01/2013 – 3/31/2013	\$517.00	
MS #56	Child was eligible for title IV-E; however, MDHS did not claim title IV-E for two months after the child became eligible. [§§471(a)(15)(b) and 472(a)(2) of the Act and 45 CFR §§1356.21(b), (c), & (d)]. Eligible Period: 10/28/13 – 12/31/13	\$1,084.03	
		Total Maintenance FFP	\$3,602.31

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 -Safety and Licensing Requirements Pertaining to the Child's Placement: In two (2) of the four (4) error cases, safety checks were not completed timely for caregiver staff working in Child Care Institutions (CCIs). In these cases, children were placed in CCIs where staff had not completed one or more of the background checks required by MDHS policy for full licensure of the facility. Each child whose placement in such a CCI during the PUR was not eligible for title IV-E for a period in the PUR, and thus the child's case is in error.

In one (1) of the four cases, the national crime information databases (NCID) checks were not consistently conducted on the foster family home (FFH) due to the family refusing to participate in the licensing process for the foster care program. However, title IV-E maintenance was paid on behalf of the child placed in the home during the PUR. It was determined that the FFH was an adoptive placement and the child placing agency made the determination to have the child remain in the home pending the adoption proceeding within the next month. The child placing agency failed to inform the agency of the change in licensing status.

In the last of the four (4) error cases, the child was placed in a licensed Medicaid facility and title IV-E funds were paid for the period of the child's stay in this facility. This facility is not a licensed foster care provider. Therefore, it is not an allowable foster care placement setting for the title IV-E program.

Title IV-E Requirement: Consistent with 45 CFR §1356.30(f), the title IV-E agency must provide evidence that safety considerations with respect to the caregiver staff of the childcare institution have been addressed in accordance with the requirements of the state where the childcare institution is located. The state is responsible for determining the type and frequency of background checks necessary to meet the standards established by the state in which the foster care provider is located. Accordingly, the Children's Bureau will look to governing state provisions to determine how to review for safety considerations under 45 CFR §1356.30(f). The reviewers examined documentation provided by the state to determine: 1) whether the state's established policies with respect to safety considerations for caregiver staff of childcare institutions were followed for the most recent period of the state's safety check schedule prior to (or, if applicable, during) the PUR; and 2) whether the safety requirements were satisfied before the title IV-E foster care maintenance payments were paid on behalf of a child during the PUR. For purposes of the title IV-E eligibility review, the documentation must verify that all of the governing safety requirements were met prior to the title IV-E maintenance payments being made on behalf of a child in the childcare institution during the PUR.

The provisions at §471(a)(20) of the Act for a fingerprint-based check of the NCID govern FFH newly licensed on or after October 1, 2008 and require documentation to verify that: (1) a criminal records check is completed that includes a fingerprint-based check of the NCID; (2) the foster parent has not been convicted of any of the prohibited felonies listed in §§471(a)(20)(A)(i) and (ii) of the Act; and (3) title IV-E maintenance payments are not made for a period in the PUR prior to these conditions being met. The preferred documentation is the actual results of the criminal records check (CRC), which includes a finger-print based check of the NCID, conducted by the state where the foster parent's home is located. However, other acceptable documentation may include a letter or report signed by appropriate title IV-E agency staff or licensing staff that details the CRC results, electronic documentation of the CRC results maintained in the title IV-E agency's automated information system, or other official evidence that clearly verifies compliance with the background check requirements.

In addition to meeting the safety requirements for title IV -E eligibility, the child's place of stay must be the type of foster care placement specified under §472(c)(2) of the Act and 45 CFR 1355.20. An allowable foster care placement within these federal provisions is a foster family home, group home, public childcare institution of 25 children or fewer, or private childcare institution.

Recommended Corrective Action: Mississippi's Automated Child Welfare System (MACWIS) should be reviewed to ensure there are adequate edits in place to prevent title IV-E from being claimed for a child placed with a provider that does not meet the licensing and safety requirements of the title IV-E program. Eligibility and licensing staff should work together to ensure that current licensing information is shared and to establish a system of reviewing compliance with the provider requirements periodically. The MDHS also should review its licensing and record-keeping practices to ensure that sufficient oversight of licensed homes and licensing decisions are documented. Training and technical assistance should be provided to ensure facility staff is adequately knowledgeable about the safety check process; licensing staff are ensuring compliance on their licensing visits; and proper placement information is uploaded into MACWIS and updated

accordingly whenever a change in placement occurs. Further, MDHS should adopt a plan to extend its Continuous Quality Improvement process to the eligibility component of program operations to routinely check and review all cases for accuracy.

Issue #2: Valid Removal: There was one (1) error case where the child was left in the home for a period after the judicial ruling granting MDHS placement and care responsibility and the finding that it was contrary to the child's welfare to remain in the home. The removal court order did not sanction an alternative timeframe for the child's physical removal from the home.

Title IV-E Requirement:

Federal regulations at 45 CFR 1356.21(k)(2) require the physical removal from the specified relative to coincide with the judicial finding of Contrary to Welfare sanctioning the removal. If the physical removal does not take place by the end of the next business day following the judicial finding and the court order does not specify an alternative time frame for removal, the child is ineligible for the entire foster care episode unless there is a documented extenuating circumstance that delays the physical removal.

Recommended Corrective Action: The MDHS should provide additional and recurrent training for frontline staff related to making documentation of diligent efforts to perform a physical removal in the event that the child's location becomes unknown to the agency. Eligibility staff should be trained to ensure that, before approving a child's title IV-E eligibility, the physical removal of the child coincides with the judicial order authorizing the removal.

Issue #3: Timeliness of Judicial Determinations Regarding Reasonable Efforts to finalize a Permanency Plan

Three cases had ineligible payments because the requirement regarding a judicial determination that the agency make reasonable efforts to finalize a permanency plan was not satisfactorily met.

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 or not 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 the permanency plan 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 first day of the month the judicial determination is made.

Recommended Corrective Action:

The state should continue to develop and implement procedures to ensure timely judicial determinations of reasonable efforts to finalize the child's permanency plan regardless of the timing of the permanency hearing. The accuracy and reliability of eligibility determinations are generally increased through training of the judiciary and other court officials to correct delays in

best interest, and reasonable efforts. Staff training will help to ensure eligibility workers make eligibility decisions based on the elements needed for compliance and to eliminate the authorization of payments prior to establishing compliance with the requirements.

Issue #4: Underpayments:

In this primary review, 3 cases were identified as having underpayments. During the review it was determined that MDHS had met the requirement for reasonable efforts to finalize the permanency plan and could have claimed title IV-E funds. However, in all three cases, MDHS stopped claiming title IV-E funds because the state was not aware the children were eligible for the period in question and utilized title IV-B funds for the children's funding source.

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:

We recommend that Mississippi put processes into place to ensure that it is maximizing its claiming of title IV-E funds for eligible children. We understand that Mississippi is being cautious in tracking the timeliness of the reasonable efforts to finalize the permanency plan finding. However, in order to maximize its title IV-E maintenance funds, MDHS should ensure that it claims title IV-E funds until the end of the month in which the judicial determination is due. Title IV-E claims for an eligible child may begin again on the first day of the month in which MDHS obtains the finding. Similarly, we encourage MDHS to examine its internal communication processes so that it ensures that the state claims title IV-E funds on behalf of eligible children for the entire period they are eligible for title IV-E benefits.

Program Strengths and Promising Practices

We noted several positive practices to Mississippi's title IV-E foster care eligibility program during this review. The following positive practices and processes have led to improved program performance and successful program operations:

Judicial Determinations

Although there were cases with improper payments pertaining to judicial findings, the agency and the court have implemented practices within their collaborative systems' approach to strengthen the efficiency of their judiciary processes. A strong working relationship between the two agencies' systems was evident throughout the review process and judicial determinations were well-documented in the majority of the court case files and court orders. Judicial determinations were

child-specific and those pertaining to the child's removal clearly outlined the circumstances under which the child was removed from the home. The judicial determinations were timely, except in the noted cases, and included rulings that facilitated timeliness in finalizing the children's permanency plans. Permanency hearings generally are held every six months, which helps to ensure the reasonable efforts to finalize the permanency plan requirement is met timely. Mississippi also has made an effort to establish a universal court order system which is accessible through the Mississippi Youth Court Information Delivery System (MYCIDS). This computer-based system allows MDHS to have immediate access to current court orders and ensures a universal system of court order creation is available to youth courts throughout the state.

Eligibility Determinations

With regard to eligibility determinations, it has been noted that all cases in the sample have met AFDC-related requirements for title IV-E eligibility and the determination of eligibility was clearly documented. The MDHS has developed a comprehensive, integrated process for establishing financial need and deprivation. This automated process, through a system of interfaces, allows access to verifications systems and other documentation sources.

Disallowance

A disallowance in the amount of \$19,505.17 in maintenance payments and \$16,321.82 in related administrative costs of Federal Financial Participation (FFP) is assessed for title IV-E foster care payments claimed for the error cases and non-error cases with ineligible payments. The total disallowance as a result of this review is \$35,826.99 in FFP. The state 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 requirements are met.

Next Steps

The Children's Bureau recommends that the state look at the areas of concerns identified in this report and undertake any necessary corrective measures. The Region IV program staff will continue to work with the state to provide technical assistance in addressing the issues and concerns raised during this review.