

**State of North Carolina Primary Review
Title IV-E Foster Care Eligibility Report of Findings for
October 1, 2010-March 31, 2011**

Introduction

During the week of July 18, 2011, 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 North Carolina's Department of Social Services 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 cross-State participants from the State of Tennessee.

The purpose of the title IV-E foster care eligibility review was (1) to determine whether the North Carolina Department of Social 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 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 October 1, 2010 to March 31, 2011. 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 73 cases from the original sample and (7) 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 the 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 the expenditures were allowable under the title IV-E and to identify underpayments that were eligible for claiming.

Compliance Finding

The review team determined that 78 of the 80 cases met eligibility requirements (i.e., were deemed non-error cases) for the PUR. Two (2) cases were determined to be in error for either part or all of the PUR and two (2) 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 two (2) error cases and the two (2) non-error case with ineligible payments, are being disallowed. Because the number of cases in error is less than four (4), the North Carolina’s Department of Social Services is found to be in substantial compliance for the PUR.

Case Summary

The following charts record the two (2) error cases and the two (2) 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)
NC #24	The AFDC requirement of financial need was not met for initial AFDC eligibility. §472(a)(3)(A) of the Act; 45 CFR §1356.71(d)(1)(v)]. Ineligible entire foster care episode. Ineligible Payment Period: 02/01/11-02/28/11	\$104	\$715
NC #47	The AFDC requirement of financial need was not met for initial AFDC eligibility. [§472(a)(3)(A) of the Act; 45 CFR §1356.71(d)(1)(v)]. Ineligible entire foster care episode. Ineligible Payment Period: 10/01/10-05/31/11	\$2,620	\$5,721

Non-Error Cases with Ineligible Payments

Sample Number	Improper Payment Reason & Ineligibility Period	Maintenance Payments (FFP)	Administrative Costs (FFP)
NC #69	Judicial determination of reasonable efforts to finalize a permanency plan was not attained. [§472(a)(1) & §471(a) (15)(B) of the Act; 45 CFR §1356.21(b)(2)] Ineligible Payment Period: 6/1/10-9/1/10	\$1,135	\$2,102
NC #OS3	Title IV-E maintenance payment was claimed for the period prior to the judicial determination of reasonable efforts to prevent removal was made. [§472(a)(1) of the Act; 45 CFR §1356.21(c)] Ineligible Payment Period: 6/26/09-6/30/09	\$57.00	\$91.00

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: The child did not meet the financial need requirements for initial AFDC eligibility. Two cases were found to be in error because the requirement of “financial need” was not satisfactorily met. In each case (NC-24 and NC-47), according to the agency title IV-E eligibility worksheets, the family’s income was over the State’s income need standard for the family size.

Title IV-E Requirement: Eligibility for the Aid to Families with Dependent Children (AFDC) program, as in effect on July 16, 1996, is a requirement for title IV-E eligibility purposes, in accordance with §472(a)(3)(A) of the Act and 45 CFR §1356.71(d)(1)(v). To meet the AFDC requirements the child must be determined to be a “dependent child” meaning a child in need who has been deprived of parental support or care, has been living with a parent or other specified relative in a place maintained as the home of the relative, and has not reached the maximum age designated for program eligibility. The child’s financial need must be established based on the circumstances in the specified relative’s home from whom the child was removed through a voluntary placement agreement or judicial determination. The child must be financially needy during the month the voluntary placement agreement is signed or during the month the court proceedings leading to the child’s judicial removal were initiated. Using the AFDC State plan criteria in effect on July 16, 1996, the determination of the child’s financial need is made by considering all income and resources available to the members of the AFDC

family unit during the month of the voluntary placement agreement or the initiation of court proceedings to remove the child from his/her home. The child's income and resources in that month must be within the established guidelines for financial need.

Recommended Corrective Action: It is recommended that the State routinely review available income and eligibility verification systems when eligibility is determined regardless of whether primary verification sources, such as wage earning statements or benefit notices, are provided to the State. This will assist the State in ensuring correct eligibility determinations and improving data quality in information and verification systems.

Additionally, during the 2008 eligibility review, it was noted that the handwritten AFDC worksheets were not always clear, which sometimes made it difficult to determine the time period of eligibility or the eligibility factors covered in the determination. The revision made to the eligibility determination form (DSS-5120) and redetermination form (DSS-5120A) helped reduce the possibility of errors that occur in eligibility determination. However, work should continue to ensure that the forms are thoroughly completed and the documentation routinely include the basis of the eligibility decisions, the month for which eligibility is determined, and sufficient information to assure the appropriate process was followed in making the eligibility determination.

Issue #2: The judicial determinations regarding reasonable efforts to finalize a permanency plan not met. One non-error case (NC-69) had ineligible payments because the judicial requirement of "reasonable efforts to finalize a permanency plan" was not satisfactorily met. North Carolina, like most States, incorporated the Federal requirement of 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 the 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 a permanency plan.

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 foster care episode and no later than 12 months for the month in which the prior determination is obtained. If the judicial determination of "reasonable efforts to finalize a permanency plan" is not made 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: 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.

The Department of Social Services (DSS) and the Administrative Office of Courts (AOC) should continue their joint work to correct delays in judicial findings and to secure court orders that

reflect title IV-E criteria on legal authority, best interests, and reasonable efforts. Continued staff training and periodic quality checks of eligibility files will help to ensure that 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 #3: Title IV-E payments were made prior to a judicial determination of reasonable efforts to prevent removal. One non-error case (NC-OS3) had ineligible payments because although the judicial requirement of “reasonable efforts to prevent removal” was made timely within the 60 day period, title IV-E foster care maintenance payments were claimed for the period prior to the determination being attained. The child was removed from the home on June 26, 2009 with a judicial finding of contrary to the welfare. The judicial finding of reasonable efforts to prevent removal was made on July 1, 2009. Accordingly, title IV-E funds should not have been claimed for June 26, 2009 to June 30, 2009.

Title IV-E Requirement: Consistent with sections 472 and 475(4) 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, the State must document that foster care maintenance payments claimed for title IV-E reimbursement are for allowable expenditures in accordance with the statutory definition, are for eligible children, are in amounts conforming to the State rates of payment for the type and level of care provided, and are for non-duplicative costs of daily maintenance.

Recommended Corrective Action: Continued staff training and periodic quality checks of eligibility files will help to ensure that 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.

Strengths and Promising Practices

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

Judicial Determinations

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 case, and included explicit rulings that detailed services provided to the children and families that facilitated timeliness in finalizing the children’s permanency plans. North Carolina AOC and DSS maintain a close working relationship that involves training and support of judges, attorneys, and other court staff. DSS reported that its work with the courts stress the importance of title IV-E mandates and the court’s oversight in protecting children, in providing timely permanency plans for them, and in facilitating stable living arrangements for them. The strategies the State put in place generally have improved the extent and quality of court determinations that reflect an emphasis on ensuring the procedural protections are appropriately carried out in a meaningful way and on

including specificity in judicial determinations. Child-specific, explicit court orders, such as those noted by reviewers, can serve as models for continued statewide improvements in the documentation needed to initiate and maintain each child's title IV-E eligibility.

Licensing and Criminal Records Checks

DSS licenses child-placing agencies for foster care, child-placing agencies for adoption, residential child-care facilities, and foster homes. The agency has developed a detailed, compliance driven process that includes a tracking system to ensure that licenses are renewed timely. The licensing process was clearly documented and the licenses for foster care providers were available in the case records. To ensure timely renewal, DSS requires the county to have all re-licensing materials completed and dated within 180 days prior to expiration and the tracking system alerts staff to due dates and action steps along the compliance timeline. The criminal records checks were sufficiently documented and the safety-related requirements were met for children in the sample who were in foster family homes and childcare institutions in-state and interstate. In addition, DSS uses the Interstate Compact for the Placement of Children (ICPC) process to ensure their children are in licensed homes that meet the safety requirements when the child is placed out-of-state. The county DSS offices are required to submit to DSS central office written documentation that an out-of-state foster home, group home or childcare institution has been licensed, safety-related requirements are met, and that an ICPC form for the child to be placed out of state has been completed with necessary information and signed by both states.

Disallowances

A disallowance in the amount of \$3,916.00 in maintenance payments and \$8,629.00, 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 \$1,192.00 in maintenance payments and \$2,193.00 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 \$12,545.00 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

As noted earlier, CB has determined that North Carolina Department of Social Services' foster care program under title IV-E was found to be in substantial compliance with Federal eligibility requirements for the PUR. Because North Carolina was found to be in substantial compliance, a secondary review will not be required. The next primary review must be held in three years. CB is available to provide any technical assistance necessary to make the improvements in the eligibility process recommended in this report.