

**Ohio Department of Job and Family Services**  
**Primary Review**  
**Title IV-E Foster Care Eligibility**  
**Report of Findings for**  
**October 1, 2009 – March 31, 2010**

**Introduction**

The Children's Bureau (CB), Administration for Children and Families (ACF), conducted a primary review of Ohio's title IV-E foster care program July 19 through 23, 2010. The review was conducted by CB Central and Regional staff in collaboration with ACF Grants management staff, representatives from the Ohio Department of Job and Family Services (ODJFS), representatives from Ohio county agencies, and one peer reviewer.

The purposes of the title IV-E foster care review were (1) to determine whether Ohio's title IV-E foster care program was in compliance with the eligibility requirements as outlined in statute and regulations in 45 CFR 1356.71 and section 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 six-month period under review (PUR) of October 1, 2009 through March 31, 2010. A computerized statistical sample of 105 cases (80 cases plus 25 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 fifty-nine (59) cases from the original sample plus twenty (21) oversample cases. Twenty-one cases were excluded from the original sample because no 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 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 documented. Payments made on behalf of each child were reviewed to verify that 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 service date of an unallowable activity, and title IV-E maintenance was paid for the unallowable activity. 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. 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. Based on supplemental documentation, the findings for sample case numbers 03, 75 and 81 were changed from error to non-error.

### **Compliance Finding**

The review team determined that 77 of the 80 cases met eligibility requirements (that is, were deemed non-error cases) for the PUR. Three (3) cases were determined in error for either part or all of the PUR. There were no cases in the category of non-error cases with ineligible payments. Accordingly, Federal funds claimed for title IV-E foster care maintenance payments, including related administrative costs, associated with the error cases are being disallowed. In addition, four (4) non-error cases were found 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 fewer than four (4), Ohio 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**

<b>Sample Number</b>	<b>Improper Payment Reason &amp; Ineligibility Period</b>	<b>Improper Payments (FFP)</b>
53	The agency continued to make foster care maintenance payments after the child exited foster care for reunification with his parent. [§472(a)(2)(B) of the Act and 45 CFR §1356.71(d)(1)(iii)]  Ineligible: 11/01/2009-01/31/2010	\$2,760.00 Maint. \$1,899.91 Admin.
86	The court did not make a definitive determination that the agency had made reasonable efforts to finalize the child's permanency plan. [§472(a)(2)(A) of the Act and 45 CFR §1356.21(b)(2)(ii)]  Ineligible: 06/01/2007-03/31/2010	<u>Outside the PUR</u> \$27,522.04 Maint. \$17,040.94 Admin.  <u>During the PUR</u> \$3,346.61 Maint. \$3,166.52 Admin.
93	The child reached age 18 on December 22, 2009 and was not attending school full time, so the child was eligible only through December 31, 2009. The agency continued to make foster care payments January 1, 2010 through March 31, 2010. [§472(a)(3) of the Act and 45 CFR §1356.71(d)(1)(v)]  Ineligible: 01/01/2010-03/31/2010  The State backed out the claims on July 6, 2010, which was after the receipt of the review sample from CB. To avoid penalizing the State twice, the amounts will be deducted from the review disallowance amount.*	\$2,879.26 Maint. \$1,899.90 Admin.

Total: \$60,515.18  
 \*(2,879.26)  
 \*(1,899.90)  
 \$55,736.02

**Underpayment Cases**

<b>Sample Number</b>	<b>Improper Payment Reason &amp; Ineligibility Period</b>	<b>Improper Payments (FFP)</b>
10	The judicial determination of reasonable efforts to finalize the permanency plan was due August 26, 2009. The determination was made October 2009. ODJFS did not claim title IV-E funds for August and September. The State could have claimed for August since reimbursement is allowed for services through the last day of the month in which the finding should be made.  Eligible: 08/2009	\$1,111.98 Maint.

13	The judicial determination of reasonable efforts to finalize the permanency plan was due January 7, 2010. It was not made. The child would have become ineligible the first day of the month after it was due; that is, February 1, 2010. The agency erroneously backed out the January 2010 claim. It is not clear why the payment for December 2009, when the child met all eligibility requirements, was also backed out.  Eligible: 12/2009 and 01/2010	\$3,717.81 Maint.
14	The case was eligible for title IV-E funding but the agency did not claim for February 2010 and March 2010.  Eligible: 02/2010 and 03/2010	\$11,669.00 Maint.
65	The agency backed out the claim for the month of September 2009 -- a month in which the child met all eligibility requirements. The agency erroneously counted the receipt of Supplemental Security Income by the child's mother as income available to the child. This was corrected and payment was reinstated beginning with the payment for October 2009, but the agency did not subsequently claim for September 2009.  Eligible: 09/2009	\$1,035.00 Maint.

Total: \$17,533.79

### 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. 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: Responsibility for Placement and Care with the State agency.

One case (#53) was in error because the agency claimed title IV-E funds when it no longer maintained responsibility for the placement and care of the child. The child exited foster care for reunification with his father.

Title IV-E Requirement: Section 472(a)(2) of the Act requires that the responsibility for placement and care of a child be with the agency administering the title IV-E plan approved under Section 471 of the Act, or any other public agency with whom the State agency has a written agreement in effect. During the onsite review, the State agency must present documentation that it has responsibility for placement and care of the child for the entire PUR. If the State agency does not present this documentation, the case will be cited as an error case.

Recommended Corrective Action:

ODJFS should review the coordination among court, agency and payment systems to ensure that payments do not continue for cases that are no longer eligible and have been closed.

Issue #2: Judicial Determinations Regarding Reasonable Efforts to Finalize a Permanency Plan. One case (#86) was in error because the requirement of a judicial determination regarding “reasonable efforts to finalize a permanency plan” was not 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 the State made “reasonable efforts to finalize a permanency plan” for the child. The judicial determination must be made in a valid court order; made on a case-by-case basis and be child-specific; be explicitly stated in the court order; and be in conformity with Federal regulatory timeframes. 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 as required the child becomes ineligible from the beginning of the first month after it is due and remains ineligible until the requisite judicial determination is made.

This was an error case because the court did not make an explicit finding of whether the agency had made reasonable efforts to finalize the child’s permanency plan as required by 45 CFR 1356.21(b)(2). The precise language “reasonable efforts” does not have to be included in the court ruling. However, in the Departmental Appeals Board (Board) Decision No. 1998, the Board stated that the term “explicit” in regulation requires that there be an expressed statement by the court that clearly conveys that the court found the agency had made reasonable efforts to finalize the permanency plan. The Board further concluded mere adoption or approval by the court of the permanency plan is not sufficient.

Recommended Corrective Action: The State should continue to develop and implement procedures through collaboration with the judiciary and other court officials to secure court orders that meet title IV-E criteria.

Issue #3: Eligibility for Aid to Families with Dependent Children (AFDC) under the State plan in effect July 16, 1996. One case (#93) was in error because the agency continued to make foster care maintenance payments for two months after the month in which the child reached age 18.

Title IV-E Requirement: ODJFS elected the option in its State plan to allow AFDC eligibility to continue for children past their 18<sup>th</sup> birthday if they are full-time students in a secondary school or an equivalent vocational or technical school and are reasonably expected to complete the program before reaching age 19. In this case, the child reached age 18 and was not a student. His eligibility ended at the end of December 2009, the month he reached age 18.

Recommended Corrective Action: ODJFS should develop and implement procedures for eligibility workers and its payment systems to ensure that payments do not continue for children who reach age 18 and are not attending school and expected to graduate before reaching age 19.

Issue #4: Correct coding of AFCARS data element 59. Twenty-one (21) cases were excluded from the original sample and replaced with cases from the oversample. Documentation provided by the State confirmed that case replacements were necessary because a title IV-E maintenance payment was not made during the PUR.

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 assure a common understanding among staff to indicate only whether a title IV-E foster care maintenance payment was paid on behalf of the child during the reporting period in answering foster care element 59.

### **Observations and Recommendations**

As permitted by Ohio statute, ODJFS contracts with the Ohio Department of Mental Health (ODMH) to license some childcare institutions. To ensure the safety of youth placed in residential facilities throughout Ohio and to ensure its eligibility for title IV-E reimbursement, ODJFS should assure that ODMH is reviewing against the same requirements that ODJFS uses when it issues licenses to childcare institutions.

In addition to the above, the following practice raises concerns. In case #3, the court, at the request of the county agency, ordered the agency to remove a child from his home and place him in foster care. The child remained in the home for seven days before he was removed. This situation was the result of the practice (required by State civil laws and court procedures) of carrying out judicial orders only after they are entered in the court’s journal. ODJFS staff agree with us that this is a very poor practice that could lead to unsafe and potentially very dangerous situations. It is likely that safety concerns for the child were the reason for the agency’s involvement and its petition to remove the child. We urge ODJFS to caution the county agency of the danger of this practice and to provide technical assistance as appropriate. Further, the county should assure that safety plans are in place to protect children in their homes in these situations.

### **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. The following are examples:

The collaborative efforts between ODJFS and the State Court Improvement Program have resulted in judges' increased understanding of title IV-E eligibility requirements, documentation criteria, and the importance of meeting these requirements to ensure financial support of the child in foster care and to ensure judicial oversight that promotes the timely completion of the child's permanency plan. Another beneficial result is that agency staffs have a better understanding of the information they should provide to the courts so that the courts can make informed, child-specific findings. We encourage continued collaboration to support safety, permanency and well-being.

The ability of the Statewide Automated Child Welfare Information System (SACWIS) to provide documentation of criminal background check information, to monitor the timeframes for required actions related to voluntary placements agreements, and to determine initial AFDC eligibility are examples of system capability that contribute to program efficiency and the goal of supporting statewide comprehensive automated case management practice.

### **Disallowances**

A disallowance in the amount of \$33,628.65 in maintenance payments and \$22,107.37 in related administrative costs of Federal Financial Participation (FFP) is assessed for title IV-E foster care payments claimed for the error cases. The total disallowance as a result of this review is \$55,736.02 in FFP. The State also must identify and repay any ineligible payments that occurred for the 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 part of the State's ongoing efforts to improve its title IV-E foster care eligibility determination process, CB recommends that ODJFS examine identified program deficiencies and develop strategies that target their cause. Appropriate corrective action should be taken in instances of noncompliance with Federal laws and regulations. CB Regional Office is available to assist you in identifying and obtaining technical assistance to facilitate the State's strategies for corrective action.