

Oregon Title IV-E Foster Care Eligibility Review Final Report July 21 - 24, 2008

Introduction

During the week of July 21, 2008 in Salem, Oregon, the Children's Bureau (CB), within the Administration for Children and Families (ACF), conducted a primary eligibility review of Oregon's title IV-E foster care program. The on-site review was conducted by a team comprised of staff from CB's Central and Region X offices, ACF's Region X Office of Grants Management, and Oregon's Children, Adults and Families (CAF) Division, and cross-State reviewers. The purposes of the title IV-E foster care eligibility review were: (1) to determine whether Oregon was in compliance with the eligibility requirements as outlined in regulation and statute at 45 CFR 1356.71 and Section 472 of the Social Security Act (the Act); and (2) to validate the basis of Oregon's financial claims to ensure that appropriate payments were made on behalf of eligible children residing in licensed or approved foster family homes and child care institutions.

Scope of the Review

The Oregon title IV-E foster care review encompassed a sample of all of the title IV-E foster care cases that received a foster care maintenance payment during the period under review (PUR) of October 1, 2007 through March 31, 2008. A computerized statistical sample of 100 cases (80 cases plus 20 over-sample cases) was drawn from the Adoption and Foster Care Analysis and Reporting System (AFCARS) data for the PUR, and was transmitted by the State agency to ACF. A review of the expenditure history of these cases by State and Federal staff determined that 7 of the original sample of 80 cases did not receive any title IV-E payments during the PUR. After the review it was determined that one additional case (#60) did not qualify for the sample because there were no title IV-E payments made during the PUR. As a result, eight (8) cases were selected from the over-sample to replace those cases that had not received a title IV-E payment. The 8th over-sample case was reviewed in CB's Region X office by the Federal team leader and a State agency staff person on September 29, 2008.

Of the 80 cases reviewed, 77 cases were determined to be eligible for title IV-E and three cases were determined to be in error for either part or all of the PUR. Since the number of error cases is less than four, CB determined that Oregon is in substantial compliance for this primary review.

In addition to the three error cases, eight non-error cases were identified which contained payments that were not claimed properly. These non-error cases with ineligible payments were not considered in determining the State's substantial compliance.

Case Record Summary

The State may not claim title IV-E foster care maintenance payments for a child who is not in a licensed or approved foster family home as required in Section 472(b)(1) and (c) of the Act. One case was determined to be in error because title IV-E funds were claimed for a period of time during the PUR when the child was in an unlicensed placement.

The State may not claim title IV-E foster care maintenance payments for a child prior to a judicial determination to the effect that the State agency made reasonable efforts to prevent the removal of the child from the home, or that reasonable efforts were not necessary, as required in Sections 472(a)(2)(ii) and 471(a)(15)(B)(i) of the Act. One case was determined to be in error because title IV-E funds were claimed but there was not a judicial finding of reasonable efforts to prevent removal for the foster care episode.

To maintain eligibility following removal, there must be a judicial determination that reasonable efforts were made to finalize the child's permanency plan at least once every 12 months while the child is in foster care, as required in Section 471(a)(15)(B)(ii) and (C) of the Act, and 45 CFR 1356.21(b)(2)). The courts may rule on the plan in effect at the time of the finding, a plan that has been in effect for a brief period of time, or the activities related to achieving permanency that took place over the prior 12 months leading to the finding. States may not claim title IV-E foster care maintenance payments for a child if the judicial determination is not made within 12 months from the date the child entered foster care or from the date of the most recent judicial determination of reasonable efforts to finalize the permanency plan. One case was determined to be in error because title IV-E funds were claimed during the PUR prior to a valid determination of reasonable efforts to finalize the permanency plan.

Below is the summary of the findings for the three cases determined to be in error:

- Sample number 29 was determined to be in error because title IV-E maintenance payments were claimed during the PUR while the child was in a placement that was not fully licensed; the provider had a provisional certification. Although the eligibility worker noted that the child was no longer eligible for title IV-E, the State continued to claim payments for this provider. (Section 472(b)(1) and (c) of the Act; 45 CFR 1356.71(d)(1)(iv))
- Sample number 39 was determined to be in error because title IV-E maintenance payments were claimed despite the fact that there was not a judicial finding of reasonable efforts to prevent removal during the foster care episode. The transcript of the hearing provided by the State did not provide any additional evidence to support a judicial finding of "reasonable efforts to prevent removal." There were two placement episodes during the PUR for this case. An appropriate finding of reasonable efforts to prevent removal was made for the second foster care episode. (Section 472(a)(1); 471(a)(15)(B)(i) of the Act; 45 CFR 1356.21(c))
- Sample number 52 was determined to be in error because title IV-E maintenance payments were claimed during the PUR prior to a valid judicial determination of reasonable efforts to finalize the permanency plan. In this case, the court order stated that the Department of

Human Services “has made reasonable efforts to effect the return of the child to the parents.” However, reunification was not the permanency plan for the child during the 12 months leading up to the judicial finding. Therefore, this finding is not acceptable for meeting a judicial determination of reasonable efforts to finalize the permanency plan that was in effect. The transcript of the hearing provided by the State did not provide any additional evidence to support a judicial finding of “reasonable efforts to finalize the permanency plan.” (Section 472(a)(1), 471(a)(15)(B)(ii) and (C) of the Act; 45 CFR 1356.21(b)(2))

The eight non-error cases with ineligible payments are discussed below in the section under “Payment Issues.”

Strengths

In the title IV-E cases reviewed, the following strengths were noted:

Court orders:

- “Contrary to the welfare to remain in the home” was consistently addressed as a finding in the first removal order.
- “Reasonable efforts to prevent placement” was almost always addressed as a finding in the first removal order. In a few cases the finding was made in a subsequent order within the same month.
- “Reasonable efforts to finalize the permanent plan” judicial determinations were timely and made at least every 12 months.
- Court orders usually contained very good individualized case specific judicial determinations.
- The success of the Court Improvement Project’s (CIP) efforts around developing model court orders and providing training is reflected in the timeliness and quality of judicial determinations.
- The two cases in the sample with voluntary placement agreements both had timely judicial findings regarding best interest.

Aid to Families with Dependent Children (AFDC) eligibility:

- Eligibility files were noted by reviewers as well organized.
- The narrative in the AFDC eligibility files concerning initial determinations and redeterminations of eligibility were very thorough.
- AFDC eligibility determinations based on income, resources, and deprivation were well-documented and supported in the eligibility files.
- Redeterminations of eligibility were completed every 12 months.

Oregon has dedicated and knowledgeable eligibility specialists who work to ensure title IV-E funds are paid for all eligible children.

Licensing:

- Title IV-E generally was not claimed until homes were fully certified.
- Certifications were always timely. Reviewers did not see lapses in eligibility due to certification or licensing issues.
- Many children are being placed with relatives certified to provide for their care.

Concerns

In the sample cases reviewed, the following concerns were noted:

Court orders:

- Some court orders did not provide the date of the hearing on the order itself, and provided only the date that the order was actually signed. Including the date of the court proceeding in the order improves the quality of the written order.
- Sometimes an older version of a court order was used that did not reflect current practice or Federal law. When an outdated form is used, it is necessary to review the court transcript of the proceedings to determine whether the judicial determination requirement was met. Obtaining a court transcript can be costly and time-consuming.
- Oregon uses the Federal definition of “date child entered care” to establish when the first judicial finding of reasonable efforts to finalize the permanency plan must be obtained. This date is the earlier of a court finding of child abuse and neglect (CA/N) or 60 days after the child is physically or constructively removed. The judicial finding of CA/N refers to the court’s final ruling on the formal allegation of child maltreatment. Reviewers identified court orders from dispositional and adjudicatory hearings that did not contain a child-specific finding of CA/N. Often the order simply cited the Oregon code that lists the several definitions of CA/N.
- Judicial findings must address reasonable efforts for the permanency plan in effect during the 12 months leading up to the finding. Some court orders addressed reasonable efforts for a plan that the agency had abandoned prior to the onset of the 12-month period of the finding. This is problematic because the court’s finding on an outdated plan does not reflect an assessment by the courts of the agency’s current efforts to finalize the permanency plan in effect for the child.

Eligibility:

- Eligibility files must include all pertinent court orders in order for the eligibility specialist to see the whole picture and to allow the file to stand on its own.
- AFDC eligibility for judicial removals is based on the family circumstances in the month the court proceedings leading to the removals are initiated. If a petition is filed to initiate proceedings for these removals, the filing month should be used as the initial eligibility month. Currently, the eligibility specialists use the date of the first court order, which sometimes is not the same as the petition month or is later than the petition month.
- Oregon, as stated above, uses the Federal definition of “date child entered care.” However, we found that caseworkers relied on the court date listed in the information system instead of looking at the adjudicatory or dispositional court order to confirm the finding of CA/N. We are concerned about this practice as the wrong date could be used if a finding was made in an

early adjudicatory hearing but the “date child entered care” is calculated as 60 days from when the child was removed instead of using the earlier date of the hearing. The later date extends the timeframe for obtaining the initial judicial finding of reasonable efforts to finalize the permanency plan, which may result in an untimely finding.

- The initial eligibility and redetermination forms should be revised to include information on income and resources. Currently, income is noted on the forms and resources are noted in the narrative.
- Redetermination narratives noted the date of the redetermination, not the review period. The review period must be clearly noted in narratives and on forms.
- It was difficult to understand the case activity month by month during a redetermination period. Sometimes narratives noted a change in eligibility, but not the exact date that the change occurred. This is particularly important when a change immediately impacts title IV-E eligibility status.

Licensing:

- The information system and case records do not adequately capture the physical location of children placed in child-placing agency homes or facilities. This was noted in prior title IV-E and Child and Family Services Reviews (CFSR), yet continues to be an issue. Placement histories in the information system list the address of the parent organization but not the actual home or facility where the child is located. This potentially impacts Oregon’s compliance with the requirements of Section 422(b)(8)(A)(i) and the accuracy of Oregon’s performance on the placement stability national standard for the CFSR.
- Oregon must develop a protocol and instrument for safety reviews of facilities to ensure consistency across the State. This issue also was noted on the previous title IV-E review. Currently there is no standard tool or checklist used to monitor facilities.
- Oregon must be able to ensure a review of criminal background checks of employees and of the director of the actual facility where the child is located. The current practice is to review a random sample of personnel files and the file of the agency director at the parent agency. This does not assure that the personnel files of the director and employees of the facility where the child is located are reviewed.

Payment Issues

Miscellaneous Ineligible Payments

The review identified miscellaneous ineligible payments totaling \$3,360 Federal Financial Participation (FFP) as identified on Attachment B and as follows:

- Three cases (Sample numbers 12, 74, and 81) included charges that do not meet the title IV-E maintenance payment definition at 45 CFR 1355.20, which is defined as “the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child’s personal incidentals, liability insurance with respect to a child, and reasonable travel for a child’s visitation with family, or other caretakers” as follows:

- Sample numbers 12 and 81 - Transportation for Non-IV-E reasons. Transportation costs are discussed further under the Other Payment Issues in the section below.
- Sample number 74 - Adoption Preparation, Mental Health Assessment Cost. This cost item might be allowable as non-recurring costs of adoption, and claimable as Adoption Assistance Administration.
- Two cases (Sample numbers 7 and 9) were found prior to the PUR to include payments prior to the Contrary to the Welfare (CTW) and Reasonable Efforts (RE) to Prevent determinations.
- One case (Sample number 57) was found subsequent to the PUR to include payments prior to the RE to finalize the Permanency Plan determination.
- Two cases (Sample numbers 21 and 78) included payments outside of the PUR that were correctly identified as ineligible after the sample was transmitted to the State.

Underpayments

The review identified potential underpayments totaling \$761 FFP, which are identified on Attachment E. Upon further research to determine if corrections have already been made, the State may submit a prior period increasing adjustment on its Quarterly Report of Expenditures (Form ACF-IV-E-1) to claim the following. The claim may not be made later than 2 years after the calendar quarter in which the State made the expenditure, per the Federal regulations at 45 CFR §95.7.

- Adjustments to claim title IV-E were not made for retroactive eligibility corrections and incorrect eligibility redeterminations.
- Transportation for allowable activities, such as foster care child transportation to visitation (maintenance) and transportation to administrative reviews (administration).

Other Payment Issues

Transportation Costs: All transportation payment issues, including the underpayment, were the result of Object Code 983017, titled Transportation - Non IV-E. State staff indicated that this object code erroneously maps to the Federal claim for an otherwise eligible child. Additionally, the State Policy Manual lists transportation costs for visitation and school incorrectly as State-only costs. The Child Welfare Policy Manual at Section 8.3B.1, Question & Answer #4 can give you guidance as to what costs are allowable as either title IV-E maintenance or administrative costs.

Action Required: The State must revise the mapping for the above referenced object code. Additionally, the State must review and adjust the title IV-E claim retroactive to October 1, 2007 for the object code.

Educational Costs: The State Policy Manual identifies the educational costs that are not eligible for title IV-E funding. However, some of those costs, such as fees for musical instruments and high school graduation costs are allowable under title IV-E. The Child Welfare Policy Manual at Section 8.3B.1, Question & Answer #9 can give you guidance as to what costs are allowable.

Disallowances

Based on the results of the review, the State has been determined to be in substantial compliance as three cases were in error for funding under title IV-E foster care.

The disallowed amounts associated with the error cases and the ineligible payments were calculated as indicated in the following chart, attached mathematical spreadsheets and disallowance notice. Ineligible payments associated with the cases reflect all periods of ineligibility through June 30, 2008.

Summary of Ineligible Payments						
	FFY 08	FFY 07	FFY 06	Total		Attachment
Maintenance						
Error Cases:						
29	755.29			755.29		A
39	106.75			106.75		
52	4,803.12	3,261.00		8,064.12	*	
Subtotal	5,665.16	3,261.00	0.00	8,926.16		
FMAP	60.86%	61.07%	61.57%			
FFP	3,447.82	1,991.49	-	5,439.31		
Other Ineligible Payments:						
07	75.78			75.78		B
9			402.00	402.00		
12	70.32	301.48		371.80		
21		3,521.80		3,521.80		
52	132.15			0.00	*	
57	414.00			414.00		
74	309.15			309.15		
78	399.00			399.00		
81	10.00			10.00		
Subtotal	1,278.25	3,823.28	402.00	5,503.53		
FMAP	60.86%	61.07%	61.57%			
FFP	777.94	2,334.88	247.51	3,360.33		
Total - FFP	4,226	4,326	248	8,800		
Administration:						
Error Cases:						
29				-		C
39				-		
52	3,887	1,244		5,131		
Subtotal - FFP	3,887	1,244	-	5,131		
Other Ineligible Payments:						
07				-		D
9			396	396		
12				-		
21		3,733		3,733		
57	432			432		
74				-		
78	432			432		
81				-		
Subtotal - FFP	864	3,733	396	4,993		
Total - FFP	4,751	4,977	396	10,124		
Grand Total - FFP	8,977	9,303	644	18,924		