

**State of South Carolina
Primary Review
Title IV-E Foster Care Eligibility
Report of Findings for
April 1, 2008 – September 30, 2008**

Introduction

During the week of May 4, 2009, 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 South Carolina 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, and peer reviewers.

The purposes of the title IV-E foster care eligibility review were (1) to determine whether South Carolina’s 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 April 1, 2008 – September 30, 2008. A computerized statistical sample of 110 cases (80 cases plus 30 oversample cases) was drawn from State data submitted to the Adoption and Foster Care Analysis and Reporting System for the above period. Eighty (80) cases were reviewed, which consisted of 78 cases from the original sample plus two (2) oversample cases. Two (2) cases were excluded from the original sample because no title IV-E 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 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 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. In addition, 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. 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 the supplemental documentation received from the State, the improper payment findings for sample cases 54 and 57 were changed to non-error cases.

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 in error for either part or all of the PUR and eight (8) 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 error cases and non-error cases with ineligible payments are being disallowed. Because the number of cases in error is fewer than four (4), South Carolina Department of Social Services is in substantial compliance for the PUR.

Case Summary

The following charts record the error cases; 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	Improper Payments (FFP)
# SC-8	Judicial determination of contrary to the welfare not attained [§471(a)(15)(B)(i) and §472(a)(1) of the Act; 45 CFR §§1356.21(c)] Ineligible: Entire FC episode; 07/01/2008 – 03/31/2009	\$2,653 Maint. \$7,638 Admin.
# SC-53	Judicial determination of contrary to the welfare not attained [§471(a)(15)(B)(i) and §472(a)(1) of the Act; 45 CFR §§1356.21(c)] Ineligible: Entire FC episode; 12/01/2006 - 12/31/2006; 05/01/2007 - 5/31/2008	\$ 6,416 Maint. \$11,340 Admin.

Total: \$28,047

Non-error Cases with Ineligible Payments

Sample Number	Improper Payment Reason & Ineligibility Period	Improper Payments (FFP)
# SC-9	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: 05/01/2002 – 06/30/2002	\$498 Maint. \$1,257 Admin.
# SC-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: 10/01/2008 – 03/31/2009	\$1,503 Maint. \$4,970 Admin.
# SC-43	Judicial determination of reasonable efforts to finalize permanency plan not timely [§472(a)(2)(A)(ii) of the Act; 45 CFR §§1356.21(b)(2)] Ineligible: 12/01/2007 – 12/31/2007	\$283 Maint. \$825 Admin.
#SC-60	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: 02/01/2007 – 08/30/2007	\$2,069 Maint. \$5,569 Admin.
#SC-67	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: 10/01/2003 – 06/30/2004	\$2,335 Maint. \$6,216 Admin.

# SC-OS 1	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: 04/01/2001 – 08/30/2001	\$1,169 Maint. \$3,019 Admin.
# SC-OS 2	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: 04/01/2003 – 03/31/2005	\$5,318 Maint. \$16,569 Admin.
# SC-25	Foster family home not licensed [45 CFR §§1356.71(g)] Ineligible: 08/01/2007 – 10/31/2007	\$693 Maint. \$2,419 Admin.

Total: \$54,712

Areas in Need of Improvement

The findings of this review reflect the State’s need 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 that the State should undertake.

Issue #1: Lack of Judicial Determinations Regarding Contrary to the Welfare. Two (2) cases were in error because the judicial requirement of “contrary to the welfare” was not satisfactorily met. The judicial determination must be made in a valid court order that includes language to the effect that the required finding is rendered. For a judicial removal, there must be a determination to the effect that continuation in the home would be contrary to the child’s welfare or that placement is in the child’s best interest.

Title IV-E Requirement: For a child who is judicially removed and placed in foster care, Federal provisions at §472(a) (1) of the Act and 45 CFR §1356.21(c) require the State to obtain a judicial determination of “contrary to the welfare.” A child’s removal from the home must have been the result of a judicial determination (unless the child was removed pursuant to a voluntary placement agreement) to the effect that continuation of residence in the home would be contrary to the welfare, or that placement would be in the best interest, of the child. The contrary to the welfare determination must be made in the first court ruling that sanctions (even temporarily) the removal of a child from home. If the determination regarding contrary to the welfare is not made in the first court ruling pertaining to removal from the home, the child is not eligible for title IV-E foster care maintenance payments for the duration of that stay in foster care.

Recommended Corrective Action: The State should continue to develop and implement procedures to ensure timely judicial determinations of “contrary to the welfare.” 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 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 #2: Timeliness of Judicial Determinations Regarding Reasonable Efforts to Finalize a Permanency Plan. Seven (7) non-error cases had ineligible payments because the judicial requirement of “reasonable efforts to finalize a permanency plan” was not satisfactorily met. South Carolina, 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 all cases in the review sample, during the period under review court orders contained a definitive finding regarding reasonable efforts to finalize the permanency plan; however, many untimely court hearings and orders without required judicial determinations found in the cases reviewed would have caused these cases to be in error had it not been for eligibility staff changing the title IV-E eligibility status to stop claiming Federal funds. Untimely permanency hearings and the resulting lack of judicial determinations on reasonable efforts to finalize the permanency plan are costing the State significant Federal dollars.

In some court orders reviewed, the documentation of judicial determinations on reasonable efforts to finalize the permanency plan was only minimally acceptable for title IV-E eligibility purposes. The court orders need to be explicit on these findings.

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 judicial determination is made.

Recommended Corrective Action: We applaud the recent joint efforts by the Department of Social Services and the Administrative Office of Courts to make improvements that address the significant delays in permanency hearings and the lack of appropriate language in court orders. These efforts include monthly reports by county to address these issues and provide lists of non-eligible cases, as well as discussions at regional quarterly Department of Social Services meetings and Bench Bar Committee meetings and training 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. 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 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: Child placed in a licensed foster care facility. One (1) non-error case had ineligible payments because title IV-E foster care maintenance payments were made for a child placed in a foster family home that was not fully licensed. The State agency must document that the child's foster care placement is fully licensed or approved for the child's placement to be eligible for title IV-E payments. Federal financial participation (FFP) may not begin until the first day of the month in which full compliance with the State's licensing standards is met.

Title IV-E Requirement: Federal provisions at §472(c) and 45 CFR §1356.71(g) require that the child's foster care setting be fully licensed or approved in accordance with the State's licensing standards. For the title IV-E eligibility review, the State must provide sufficient information to support FFP for a child's foster care placement.

Recommended Corrective Action: The State should continue to develop and implement procedures to ensure that each foster care provider is fully licensed prior to claiming title IV-E foster care maintenance payments for a child's placement. As stated above, staff training will help to ensure 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.

Centralized Eligibility Unit: South Carolina has centralized the determination and re-determination of title IV-E eligibility in a specialized unit. The State agency centralized eligibility unit was put in place to manage the eligibility determination process by overseeing the tracking and monitoring of title IV-E eligibility determination, documenting compliance, and conducting quality assurance activities. The centralization of the eligibility determination function has facilitated training on title IV-E eligibility requirements and resulted in the development of a tracking system for eligibility events used by the unit. It also permits more accurate and consistent application of policy as well as timely issue and emerging trend identification and problem solving. CB has found that the work of the centralized eligibility unit has been a key component in enhancing the development and availability of documentation supporting title IV-E eligibility. CB also understands that staff in the unit work with field offices, courts, the State agency licensing staff and State agency fiscal officials to assure required actions and supporting paperwork are completed timely and that title IV-E claims are submitted only for those cases meeting all applicable requirements. It appears these efforts were instrumental in reducing the number and proportion of title IV-E claims for cases not documented as meeting the eligibility criteria, evidenced by the following results in this review:

- Judicial findings of Reasonable Efforts to Prevent Removal were found in all of the removal court orders reviewed.
- Initial eligibility determinations were completed in a timely manner.
- Licensure and safety requirements were met in all cases during the review period, with only one case with ineligible payments made outside the PUR. Requirements were met in a thorough and timely manner. The State's policy requires very detailed safety documentation, particularly from facilities, which is an excellent safety measure.
- In all cases reviewed for the PUR, court orders contained a definitive judicial finding regarding reasonable efforts to finalize the permanency plan, resulting in no error cases in this requirement. In cases where these findings were not made, the Department of Social Services title IV-E staff was very effective in removing the cases from IV-E claims for Federal funds, resulting in no error cases in this item. The title IV-E staff is also very efficient in re-instating title IV-E status when the required court orders are provided to allow claiming of Federal funds.

Disallowances

A disallowance in the amount of \$9,069 in maintenance payments and \$18,978 in related administrative costs of FFP is assessed for title IV-E foster care payments claimed for the error cases. Additional amounts of \$13,869 in maintenance payments and \$40,843 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 \$82,759 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 part of the State's ongoing efforts to improve its title IV-E foster care eligibility determination process, CB recommends South Carolina examine identified program deficiencies and develop measurable, sustainable strategies that target the root cause of problems hindering the State from operating a more accurate foster care eligibility program. Appropriate corrective action should be taken in instances of noncompliance with Federal laws and regulations.