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

Introduction

During the week of June 8, 2009, the Children's Bureau (CB) of the Administration for Children and Families (ACF) conducted a primary review of the State of Tennessee's title IV-E foster care program. The review was conducted in collaboration with the State of Tennessee's Department of Children's Services and was completed by a review team comprised of representatives from the State agency, CB Central and Regional Offices, ACF Regional Grants Management Office, and peer reviewers.

The purposes of the title IV-E foster care eligibility review were (1) to determine whether Tennessee's Department of Children's 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 through September 30, 2008. A computerized statistical sample of 100 cases (80 cases plus 20 over sample 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 72 cases from the original sample plus 8 over sample cases. Eight (8) 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 over sample.

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 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 child care institution in which 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 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 a title IV-E payment was made. A sample case was cited as non-error with ineligible payment when (1) the child was not eligible on the activity date outside the PUR; or (2) the child was eligible in the PUR on the service date of an unallowable activity and a title IV-E payment was made for the unallowable activity. In addition, underpayments were identified for a sample case when itle 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 to have an ineligible payment. Based on staff review of supplemental documentation submitted to the CB Regional Office, the initial undetermined status for sample cases 2, 4 and 33 was changed to the improper payment finding of error cases.

Compliance Finding

The review team determined that 74 of the 80 cases met eligibility requirements (i.e., were deemed non-error cases) for the above PUR. Six (6) cases were in error for either part or all of the PUR and one (1) non-error case 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 case, are being disallowed. There were no underpayments.

Pursuant to 45 CFR §1356.71(i), you are required to develop a Program Improvement Plan (PIP) designed to correct those areas determined not to be in substantial compliance. As stated in the cover letter transmitting this report, the PIP will be developed by the State, in consultation with ACF Regional Office staff, and must be submitted to the ACF Regional Office 90 days from the date of the cover letter. Once the State agency has satisfactorily completed the PIP (within a one-year period of time), a secondary review of a sample of 150 title IV-E foster care cases will be conducted.

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	Maintenance Payments (FFP)	Administrative Costs (FFP)
TN - 2	Safety requirements for foster care provider not met [472(b)(c); 45 CFR 1356.71(d)(1)(iv), 1355.20] Ineligible: 02/19/2008 – 09/03/2008	$7,254	$1,062
TN - 4	Safety requirements for foster care provider not met [472(b)(c); 45 CFR 1356.71(d)(1)(iv), 1355.20] Ineligible: 03/25/2008 – 09/30/2008	$7,043	$1,018
TN - 11	Foster care maintenance payment made while child went home for a trial home visit [45 CFR 1356.21(a)(e)] Ineligible: 06/20/2008 – 06/30/2008	$292	$60
TN - 33	Safety requirements for foster care provider not met [472(b)(c); 45 CFR 1356.71(d)(1)(iv), 1355.20] Ineligible: 03/02/2008 – 06/26/2008	$3,860	$626
TN - 74	Judicial determinations of reasonable efforts to finalize the permanency plan not timely [472(a)(2)(A)(ii) of the Act; 45 CFR 1356.30(f)] Ineligible: 07/01/2008 – 07/31/2008	$1,118	$162
TN - 77	Safety requirements for foster care provider not met [471(a)(20); 45 CFR 1356.71(g)(2)] Ineligible: 04/02/2008 – 06/15/2008	$1,269	$399
	Total	$20,836	$3,327

Non-error Cases

TN – 82 (OS #2)	Safety requirements of the licensed foster care provider were not met [471(a)(20); 45 CFR §§1356.21(b)(2)] Ineligible: 10/30/2007 – 11/28/2007	$796	$162
	Total	$796	$162

Areas in Need of Improvement

The findings of this review indicate 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: *Timeliness of Judicial Determinations of Reasonable Efforts to Finalize a Permanency Plan*. One (1) error case had ineligible payments because the judicial requirement of "reasonable efforts to finalize a permanency plan" was not satisfactorily met. Tennessee, 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, the delay results in the State obtaining a judicial determination beyond the 12 months required by Federal regulation.

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)(i) 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: 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 reduce 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. In addition, CB suggests that the State put in place a quality assurance system to monitor the accuracy of eligibility determination and claiming processes.

Issue #2: *Safety Requirements of Provider:* In some of the cases reviewed, the annual reassessment of the safety requirements of the childcare institutions where the child was placed during the PUR had not been completed timely. The foster care provider was re-approved without receipt of criminal records checks on some of the staff. This was found during the review not to meet Federal safety requirements since Tennessee's Department of Children's Services licensing requirements state that "All prospective and existing staff shall undergo a criminal records check prior to commencing work at any facility." In some cases, it also was determined the State did not adhere to its policy that requires the completion of the child protective service clearances.

Title IV-E Requirement: As required by 45 CFR 1356.30(f), in order for a childcare institution to be eligible for title IV-E funding, the licensing file for the institution must contain documentation which verifies that safety considerations with respect to the staff of the institution have been addressed.

Recommended Corrective Action: The State must ensure that files in the childcare institutions contain documentation related to the safety consideration of all staff as required by State policy. In addition, we suggest that the State establish a procedure to monitor the childcare institutions' timely implementation of background checks for their staff in accordance with State requirements.

Issue #3: *Court Documentation:* Reviewers found it difficult to determine the actual date of the hearing on some court orders. These dates are critical in determining eligibility, as determinations must be made within specific timeframes.

Title IV-E Requirement: As required in Section 472 of the Act and 45 CFR 1356.21(d), the judicial determinations regarding contrary to the welfare, reasonable efforts to prevent removal, and reasonable efforts to finalize the permanency plan in effect, including judicial determinations that reasonable efforts are not required, must be explicitly documented.

Recommended Corrective Action: We suggest training of legal staff and DCS staff as well as the development of model court orders to help improve the quality of judicial determinations.

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.

Court Orders: Court orders were generally clear, comprehensive, and child-specific. Most court orders documented specific reasons for removal. Findings of "contrary to the welfare" and "reasonable efforts to prevent removal" judicial determinations were timely and consistently found in the initial court orders.

AFDC Eligibility: AFDC determinations based on income, resource and deprivation were well-documented and supported in the eligibility file.

Staff: DCS program, fiscal, eligibility and legal staff appear to be working well together to ensure that the Federal mandates are implemented appropriately.

We certainly wish to recognize the exemplary work done by Ms. Sandra L. Wilson and her staff in preparation for, as well as in the conduct of, the review. The organization and completeness of the eligibility case documentation and their technical assistance during the review enabled us to complete the review in the most efficient and orderly manner.

Disallowances

A disallowance in the amount of $20,836 in maintenance payments and $3,327 in related administrative costs of Federal financial participation (FFP) is assessed for title IV-E foster care payments claimed for the error cases. An additional amount of $796 in maintenance payments and $162 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 $25,121 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 Tennessee examine identified program deficiencies and develop measurable, sustainable strategies that target the root cause of problems hindering the State from operating an accurate foster care eligibility program. Appropriate corrective action should be taken in instances of noncompliance with Federal laws and regulations. We are available to work with the State in identifying technical assistance needs and obtaining assistance through our funded Training and Technical Assistance Network to help the State develop and implement program improvement strategies. We look forward to working with you in improving the system.