

## **Questions and Answers IV-E Foster Care Eligibility**

### **Questions as of March 2005**

**Question 1: In Article 10 cases, where a disposition has not been attained within 12 months, a Permanency Hearing is required by ASFA, must a second reasonable efforts determination be obtained and if not, is the first determination sufficient to provide continuous eligibility for Title IV-E.**

Answer 1: The federal requirement of a court finding of reasonable efforts relating to the finalization of the child's permanency plan for a child in foster care applies whether the fact finding has been issued or not. There is no federal standard that tolls the federal IV-E rules for the initial or subsequent permanency hearings because of the absence of the fact-finding of a child in foster care. The impact of the failure to secure a timely finding of reasonable efforts to enable the child to return home safely or to finalize the child's permanency plan in such cases is the loss of federal IV-E reimbursement, unless and until such a finding is made.

**Question 2: What if there was a clerical error on the court order and the wrong box was checked (not in the best interest). This was brought to the courts attention and an amended order was issued - the question is then this is not the initial order. Is this acceptable?**

Answer 2: No. The amended order, which is an order issued by the court after the initial order, would not satisfy federal documentation requirements relating to the court finding of best interests. Such an order would be viewed by the federal government as a *nunc pro tunc* court order. The remedy for the agency would be to secure the transcript of the court proceeding where the issue of best interests was initially addressed and be prepared to identify where in such transcript that issue was adequately addressed.

If the issue in question is compliance with the federal requirement relating to reasonable efforts to prevent removal, if an initial court order is issued which does not adequately address the issue of reasonable efforts but a subsequent court order is issued within 60 days of removal of the child which adequately addresses reasonable efforts, the federal standard is met because a court order has been issued within the federally prescribed time period of 60 days. Since the best interests finding must be reflected in the initial court order sanctioning removal, any order issued after the initial order is deficient.

3/22/2005

**Question 3: Do you count a live in boyfriend's wages in the IV-E household income? He is not a parent or responsible for the children.**

Answer 3: No.

**Question 4: Why isn't surrender or termination of a parent's rights used as a deprivation factor as Title IV-E Initial Determination?**

Answer 4: Federal rules do not permit it.

**Question 5: When the Initial Foster Child Eligibility Checklist was revised, why didn't the State include a section for the Title XX Below 200% of Poverty eligibility determination?**

Answer 5: Complete Section II of the Family Eligibility Checklist (LDSS-4811) to make this determination.

**Question 6: When making this determination for Title IV-E parental deprivation, is it the calendar month, the business month or the date the court petition leading to removal was filed/voluntary placement agreement was signed?**

*From the Eligibility Manual page 1-14 & 15*

**Parental Deprivation.** Was the child deprived of parental support and care for one or more of the following reasons?

- (1) absence of parent from home;
- (2) incapacity of parent;
- (3) unemployed/underemployed parent;
- (4) death of parent.

Check YES if the child was deprived of parental support and care for one or more of the above reasons. *Circle all the reasons that apply.*

Check NO if the child was not deprived of parental support and care for one or more of the above reasons.

? Go to Section III to determine eligibility for TANF-EAF

***Explanation:***

During the month of removal (using the date of the court petition leading to the child's removal

from the home or Voluntary Placement Agreement signed by all parties), the child must be deprived of parental support or care because of one or more of the following reasons: (1) absence of parent from the home; (2) physical or mental incapacity of parent; (3) unemployment/ underemployment of parent; or (4) death of parent. This is part of the ADC eligibility process.

3/22/2005

**Question 7: Once a Title IV-E eligible child is freed for adoption and placed with adoptive parents but the adoption has not been finalized, do we still need to do a Title IV-E Foster Care Re-determination?**

Answer 7: Yes, if you want to continue reimbursement.

**Question 8: The Eligibility Manual (page 1-26: re-determination) indicates that incapacity of one of the parents must relate to the child's need for placement. This information is not in the manual for initial determinations, is this correct?**

Answer 8: The incapacity may be related to the foster care but only has to be related to the parents' inability to care for the child.

**Question 9: When doing a WMS scratchpad budget, if we have a weekly figure, how do we convert it to monthly? The local MA unit informed Services they were doing the conversions wrong. (They multiply the weekly amount by 4.3 to arrive at a more accurate amount.) Is there a standard conversion chart that can be used across program areas and if so, can it be shared with Services staff?**

Answer 9: The 4.3 is the correct conversion. The policies came from income maintenance, now called TANF.

**Question 10: For the deprivation factor, is it always the biological parent? Can it be the legal or adoptive parent?**

Answer 10: It can be the adoptive parent. A legal parent is the husband the woman was married to at the time of the child's birth, even if he is not the child's biological father.

**Question 11: If at re-determination, the parent who was absent has returned home and has income above the medically needy level and there is no other deprivation factor, do we disallow the Title IV-E from the date that the absent parent returned home, the date the absent parent began working, the date the agency discovered that the absent parent is employed or is it from the date of the re-determination?**

Answer 11: Use the date the absent parent returned home barring any other deprivation factor. Districts should go back to the date of the event.

## Questions of December 2004

### Question

This relates to the requirements of 45 CFR 1356.21(k) and (l) relating to removal and living with a specified relative. On occasion, we have cases where the agency files a neglect petition seeking removal. The court grants removal but places the child directly with a relative. Thereafter, the relative and/or the agency request a modification of the original order placing the child in the custody of the agency. I read the examples in the commentary for the 2000 regulations. The fact pattern here appears a little different where an informed arrangement is made. Here, the removal was the result of court intervention based on a petition filed by the agency.

The question is to which event do we look towards compliance with the removal and living with specified relative standards. The first or second removal or both?

### Answer

The first removal is the critical event for title IV-E eligibility purposes in a case where, as the question states, a “modification” of the order is sought to transfer custody to the agency. However, if the child is removed from the custodial relative, via a “constructive removal” (a second and separate removal), this becomes a new removal in its own right and the child’s title IV-E eligibility would be determined based on the second removal.

### Discussion

In accordance with **45CFR 1326.21(l)(3)** ---“A child is considered constructively removed **on the date of the first judicial order removing custody, even temporarily,** from the appropriate specified relative **or** the date of the voluntary placement agreement is signed by all relevant parties.”

### Further

In accordance with the **Child Welfare Manual—8.3A.11— Question 1---**

[http://www.acf.hhs.gov/programs/cb/laws/cwpm/policy\\_dsp.jsp?citID=38](http://www.acf.hhs.gov/programs/cb/laws/cwpm/policy_dsp.jsp?citID=38)

“To be eligible for title IV-E funding, a child must, among other things, be removed from the home of a relative as the result of a voluntary placement agreement or a judicial determination that continuation in the home would be contrary to the child’s welfare. The statute allows a six-month period of time during which the child can live with an interim caretaker, relative or non-relative, and still be eligible for title IV-E. Under prior policy, we interpreted the term “removal” to mean a physical removal. As a result, if the interim caretaker was a relative, and the State intended to remove custody from the parent but let the child remain with that interim caretaker relative, the child could not be eligible for title IV-E funding because the child was not physically removed from the home of a relative. This policy created a disincentive for relative placements. To remove this inequity between relative and non-relative caregivers, **we now permit the removal of the child from the home, in this circumstance, to be a “constructive” (i.e.,**

**nonphysical, paper, or legal) removal.**

- **Source/Date:** Preamble to the Final Rule (65 FR 4020) (1/25/00)
- **Legal and Related References:** Social Security Act - section 472 (a)(1); 45 CFR 1356.21 (k) and (l)

**Questions as of September 2004**

**Question 1: Is the date of placement the effective date for initiating Title IV-E funding?**

Answer 1: “For children in foster care, Title IV-E reimbursement may be claimed from the initial date of placement throughout the life of the foster care placement or until the child turns 18 (until age 19 if in secondary school and expected to graduate before turning 19) when and if all of the initial and re-determination eligibility criteria are met and remain in effect.”

See manual, page 1-4 second paragraph.

**Question 2: For JD or PINS foster children; does financial eligibility need to be done for the month in which the petition leading to the removal was filed?**

Answer 2: Yes. That rule is followed for all children for whom petitions are filed and adjudicated under Article 3, 7, or 10 of the Family Court Act.

**Question 3: Which court petition date do we use for PINS in order to evaluate best interest and reasonable efforts court determinations, i.e. an adjudication that doesn't result in a removal or a violation that does?**

Answer 3: The petition that results in the removal of the child from the home **MUST** be used to evaluate best interest and reasonable efforts determinations. This may be the petition seeking an order of violation, if the child is placed as a result of the violation.

**Question 4: Do we count the money that a child inherits from a deceased parent as resources? If we have an 18-year-old child getting a trust (substantial money), is he/she eligible for Title IV-E?**

Answer 4: Money is counted only if it accessible. In most instances, the money is placed in a trust/irrevocable trust where the funds are not accessible. If it is not accessible, it is not counted. If the child is remaining in foster care and the money is accessible, upon re-determination the resources must be

counted as part of determining financial eligibility (resources must be under \$10,000).

**Question 5: A local district determines a child is eligible for Title IV-E, but is receiving SSI. The local district decides to continue the SSI, and later the child loses SSI. Can the district then begin claiming Title IV-E?**

**Answer 5:** “If a child or a parent is in receipt of Supplemental Security Income (SSI) at the time of the removal from the home, the ADC budget calculation should be done excluding both the SSI recipient as a case member and the SSI recipient’s income. (This is known as the SSI “invisibility” rule.) If the family is found to be financially eligible for ADC, the financial part of the Title IV-E test has been met.

When assessing the benefits of Title IV-E eligibility for children in receipt of SSI at the time of placement, keep in mind that the effect on foster care funding differs between the two programs. Although concurrent receipt of SSI and Title IV-E is allowed, the SSI benefit would be reduced dollar for dollar by the Title IV-E payment. Title IV-E provides 50% federal reimbursement for all costs for room and board, allowable administrative expenses, and clothing. The SSI benefit is a fixed amount. Therefore, social services districts should consider the overall Title IV-E reimbursement benefit as contrasted to the SSI income that can be used to offset room and board costs. Generally, whenever a child is placed in a group foster care program, Title IV-E will provide the greater funding as compared to SSI. “

Yes, if the child had been initially determined eligible for Title IV-E, but the LDSS had chosen SSI, and if SSI is later lost, the LDSS can do a re-determination of Title IV-E and begin claiming if all Title IV-E requirements continue to be met.

See manual, page 1-16 last two “Notes”.

**Question 6: How do Social Security Benefits differ from SSI in regards to financial eligibility determinations for Title IV-E?**

**Answer 6:** Social Security Benefits are based on worker’s employment history, are counted as income, and would be budgeted as such. SSI is a form of cash assistance administered by the federal government. Eligibility for SSI is based on a documented disability, as well as income and resource standards. The Title IV- E ADC budget calculation must be computed, excluding both the SSI recipient as a case member and the SSI recipient’s income.

**Question 7: A. If, in the initial removal order, a child is placed in the direct custody of a relative, is the child still eligible for Title IV-E funding?**

**B. If, in the initial removal order, a child is remanded to detention, is the child still eligible for Title IV-E funding?**

Answer 7: A. If child is placed directly with a relative and not in a foster care placement, it is not a foster care case and, the child is not eligible for Title IV-E funding. The district or OCFS must have care and custody of the child to be eligible for Title IV-E. If this same child is placed with an approved relative (foster parent) under the care and custody of the local district or OCFS and the child meets all the other eligibility criteria, the child is eligible for Title IV-E funding.

B. If the child is remanded to a detention facility without care and custody awarded to the local district or OCFS, the child is not eligible for Title IV-E funding, while in detention. If the same child goes directly into foster care from detention, the language of the initial detention order must meet the eligibility criteria of best interests.

See manual, page 1-12 and page 1-13 (Living with Specified Relative).

**Question 8: A Title IV-E eligible foster child goes home on trial discharge. Should the eligibility code be changed, although legal authority is still with local district?**

Answer 8: The eligibility code remains the same. WMS purchase of service (POS) code 61 or 62 ends. It is necessary to have a court order that continues custody with the Commissioner. The trial discharge period generally lasts for up to six months and administrative costs can be claimed as Title IV-E for up to six months.

**Question 9: If the county commissioner signs the application for Foster care on behalf of the child and the county wants to pursue income verification for a parent, can it be done when the parent has not authorized the agency to do so?**

Answer 9: Yes, the social services district must comply with the standards set forth in 18 NYCRR Part 422 in regard to deciding whether to refer a family to its Child Support (IV-D) Unit. If a referral is made, information on the parent's income may be obtained from the IV-D unit, without specific authorization from the parent. Any financial information, though, must be relevant at the time the petition to seek the child's removal is filed or the voluntary placement agreement is signed.

**Question 10: How do we go about obtaining pay stubs-proof of earnings for employed parents?**

Answer 10: Check WMS to see if parent receives or received any type of assistance (TA, FS, MA, HEAP, FS). If so, look at the budget; it may contain that parent's earned income or the record may contain employment history. If there is an active PA case, you would not need to obtain pay stubs. Otherwise proof of earnings may be obtained through the court. When CPS is involved, caseworkers should routinely attempt to obtain this information. Also consider that sometimes when the parent is willing to work towards regaining custody, s/he is more willing to cooperate.

**Question 11: If a parent claims there is no income, are case record/progress notes sufficient for documentation? Or similarly if the family can't or won't provide wage stubs and the family is not on any type of assistance, what is used to verify a "no income" situation?**

Answer 11: Progress notes/case records can be used but need to clearly and specifically document the situation, e.g.: homeless, living in shelter, living with a relative, incarcerated, etc. For example:

- The parent was arrested and there are copies of a court document or probation report that verifies the arrest. This substantiates the progress notes.
- If this is a family that has income, but you cannot document the income, then the case cannot meet the ADC financial eligibility criteria, and will not be Title IV-E eligible. Each case has to be looked at individually.

**Question 12: If placement in local district DSS custody is ordered and best interest and reasonable efforts are addressed by the judge but the court order is not signed and received in a timely fashion is case eligible for Title IV-E funding?**

Answer 12: If you don't have a signed order, generally you do **not** have sufficient documentation in order to complete an eligibility determination (the only other acceptable documentation would be a transcript of the court proceedings). Once you obtain a signed order, an otherwise eligible child could be eligible for Title IV-E if the court order complies with the best interest and reasonable efforts requirements. Title IV-E funding may begin (retroactively) from the first day that the order is signed or that the hearing is held, whichever is earlier.

See manual, page 1-8.

**Question 13: Is there a timeframe that the order must be signed by the judge to be eligible for Title IV-E funding?**

Answer 13: No. There is no timeframe. In instances where an order is signed late, the date that matters is the hearing date, not the date the order was signed.

**Question 14: For an 18 year old who is not in a graded school program, how can it be determined if child will complete such program by age 19 years? Can child remain Title IV-E eligible until the end of the school year: e.g., end of school year is June 2004 and child will turn 19 in May 2004?**

Answer 14: If the child is not expected to graduate from the program by age 19, then Title IV-E must end on the 18<sup>th</sup> birthday.

**Question 15: What is acceptable “secondary education”? For example, if a voluntary agency has a GED program does the GED programs qualify as acceptable “secondary education”?**

Answer 15: Yes. GED programs qualify as acceptable “secondary education”. The GED is an equivalent to secondary education.

“Title IV-E eligibility is limited to children under 18 years of age, *or* to children under 19 years of age who are full-time students expected to complete a program of secondary school or equivalent level of vocational or technical training before reaching age 19.”

See manual page 1 – 24

**Question 16: We have a pregnant 18 year old in care. She wants to leave care in February; her baby is due in March. How do we fund this case?**

Answer 16: In New York State a child cannot enter foster care after the age of 18. If she entered prior to that time a Title IV-E eligibility determination would have needed to be done. If she was eligible, she must be expected to graduate by age 19 in order to retain her eligibility. If that is not the case, an eligibility determination for TANF-EAF is necessary.

**Question 17: When temporary orders end prior to the maximum period permitted by statute, does another court order need to be obtained for the child to remain eligible for Title IV-E?**

Answer 17: Yes. Another court order needs to be obtained to avoid any lapse in legal authority or a late permanency hearing. If there is a lapse in legal authority or a late permanency hearing, the child loses eligibility after the last day of the month in which the order expires. Once a new court order is obtained, eligibility can resume on the first day of the month in which the order is issued.

**Question 18: What happens if child's countable earned income renders the child ineligible for Title IV-E at re-determination? Does worker have to do another re-determination the following month?**

Answer 18: Look carefully at child's income; child earnings are usually not countable. If child's countable income is greater than the foster care costs, then the case would not be Title IV-E eligible. The case should be flagged for future review, although it does not need to be reviewed every month.

**Question 19: If a parent is employed but not full time, would the case meet the deprivation criteria? Is there a limit on the number of hours a parent has to work to meet the deprivation factor for unemployed/under employed parent?**

Answer 19: The State Plan for Title IV-E defines the unemployed/underemployed parent factor as having been met in cases in which the income of the parents is below the eligibility level of Medical Assistance. By definition, any family meeting the ADC income threshold or the Medical Assistance threshold is defined as meeting the unemployed/underemployed parent deprivation factor for purposes of Title IV-E.

See manual, page 1-15 (3) Unemployed/underemployed.

**Question 20: If the child is already in foster care, why do we have to determine a deprivation factor again for re-determination, especially since we do not have to use the parents' income?**

Answer 20: It is a federal Title IV-E re-determination requirement. For the child to continue to be eligible for Title IV-E, deprivation must continue to exist in the home from which the child was removed. The deprivation situation may have changed since the initial determination. The deprivation factor and the income status are two different criteria.

**Question 21: What happens in regards to documenting deprivation if the legal guardian is not the biological parent?**

Answer 21: When documenting deprivation, it is always in regard to the biological or adoptive parent.

**Question 22: Does a parent's drug/alcohol problem count as incapacity for deprivation?**

Answer 22: It depends. The parents' physical condition (absent from home / incapacity) is what is reviewed. Has the child been deprived of parent support due to parent's physical condition? Is there a long-term

3/22/2005

drug/alcohol history? Is the parent incapacitated due to this history? Remember, verification of this condition must be documented.

**Question 23: Is a case with an incarcerated biological parent considered to meet the parental deprivation criteria for Title IV-E funding?**

Answer 23: Yes

**Question 24: Does the Eligibility Checklist documentation have to be completely filled out for a county to pass an audit?**

Answer 24: It is a best practice to have this filled out completely with all referenced documentation attached. The checklist is meant to be a tool to assist local districts. However, if it is not completed and all required documentation which confirms eligibility is in the case record, a case may pass an audit.

See manual, pages 1- 28 to 1–30 “Being Prepared for Title IV-E Audit.”

**Question 25: Why is there not an eligibility factor for Title IV-E on the checklist regarding necessity of foster child being in a certified facility since this is also a factor taken into consideration when audited?**

Answer 25: The checklist assists with determining whether a child is Title IV-E eligible. The certification status of the foster home is evaluated by CONNECTIONS and if the home is not fully certified or approved the case will not be claimed as Title IV-E.

**Question 26: What if we don't have all of the documentation to make a Title IV-E eligibility determination, which funding stream(s) should be used to fund the services?**

Answer 26: Continue the eligibility determination process, which means make an eligibility determination for TANF-EAF funding and Title XX Below 200% of Poverty. Do not rule out Title IV-E funding completely if the missing documentation can be obtained later on. You can go back and make a retroactive claim once you have the missing documentation. A new code for presumptive IV-E eligibility (01) is available which should aid in tracking cases for which retroactive eligibility may be available.

See manual, page 1-4 (4<sup>th</sup> paragraph) and page 1-5 (2<sup>nd</sup> paragraph under WMS System Instructions).

**Question 27: Can we use a January 2004 food stamp budget for a child placed in March 2004 to see if s/he meets the ADC financial eligibility for Title IV-E funding?**

3/22/2005

Answer 27: No. You must use the income figures from the food stamp budget for the month the removal was initiated or the voluntary placement agreement was signed and apply that income to in the 7/96 ADC budget. The 2004 FS budget alone does not document ADC financial eligibility. Note: If the FS budget was written in January for a six-month period of January through June, then the FS budget data is applicable to March unless a more recent FS budget was written to cover March.

**Question 28: If a case loses Title IV-E eligibility during a re-determination, does that mean that that case can no longer get Title IV-E?**

Answer 28: Title IV-E funding may resume once all the Title IV-E eligibility factors can again be met. However, eligibility can only resume as of the first day of the month in which all criteria are met; no retroactive period can be funded.

See manual, page 1-25 "NOTE" for details on the parental deprivation factor.