



DEPARTMENT OF HEALTH & HUMAN SERVICES

ADMINISTRATION FOR CHILDREN AND FAMILIES
Administration on Children, Youth and Families
330 C Street, S.W.
Washington, D.C. 20201

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

January 3, 2019

Sheila J. Poole
Acting Commissioner
New York State
Office of Children & Family Services
52 Washington Street
Rensselaer, New York 12144

Dear Commissioner Poole:

The Children's Bureau, Administration for Children and Families (ACF), conducted a primary review of the New York title IV-E foster care program during the week of September 17, 2018. The review protocol is implemented in accordance with the federal provisions at part 45, section 1356.71 of the Code of Federal Regulations (45 CFR § 1356.71). This letter transmits our report of final findings for this subsequent primary review and provides a summary of the findings.

Key purposes of the title IV-E foster care review (IV-E Review) are (1) to determine whether New York is in compliance with eligibility requirements outlined in statute and regulations at section 472 of the Social Security Act and 45 CFR § 1356.71; and (2) to validate the basis of the state's financial claims to ensure appropriate payments are made on behalf of eligible children. A computerized statistical sample of 80 cases was reviewed by a team comprised of federal and state staff to determine New York's level of compliance in meeting federal eligibility requirements for the six-month period under review (PUR) of October 1, 2017 - March 31, 2018.

I am pleased to inform you the Children's Bureau has determined that New York's title IV-E foster care program is in substantial compliance with federal eligibility requirements for the PUR. Since New York is in substantial compliance, a secondary review of 150 cases is not required. Your next primary review will be held within three years.

The review team has determined 78 of the 80 cases in the review sample have met all eligibility requirements (i.e., are deemed non-error cases for the PUR). Two cases are determined as in error for periods for which title IV-E maintenance payments were improperly claimed during the PUR. Although two cases are in error, this finding does not exceed the error threshold of four cases to meet substantial compliance in a subsequent primary review. Seven non-error cases were also found to have periods in a child's foster care episode for which title IV-E maintenance payments were improperly claimed. Supplemental findings for non-error cases with ineligible payments are not considered in determining New York's level of compliance with federal requirements.

In addition to the above nine cases established as having eligible payments, five non-error cases have periods of eligibility for which New York has not claimed allowable title IV-E maintenance payments. Federal regulations at 45 CFR § 95.7 permit you to claim eligible underpayments by filing an increasing adjustment on your next Quarterly Report of Expenditures of the Title IV-E Programs, Form CB 496. The claim for an expenditure must fall within two (2) years of the calendar quarter that New York made the expenditure.

Federal funds that are claimed for title IV-E foster care maintenance payments and related administrative cost associated with error cases and non-error cases with ineligible payments, however, are being disallowed. Specific information about individual case findings is detailed in the enclosed report of review findings.

Disallowance Notice

This letter also constitutes our formal notice of disallowance of \$3,346 federal financial participation (FFP) (consisting \$2,093 FFP in foster care maintenance payments and \$1,253 in related administrative costs) for title IV-E funds claimed improperly for the two error cases and the seven non-error cases with ineligible payments.

Since the amount of disallowed fund was included previously in federal payments to New York, you must repay these funds by including prior periods of Foster Care decreasing adjustment on appropriate lines in Part 1 and Part 2 of the Form CB-496. In the comment box in Part 2 of the form you must include a note that identifies the adjusted amount as being associated with a “Title IV-E Review” and include the date of this disallowance notice or the specific PUR covered by the title IV-E Review. Form CB-496 must be submitted within 30 days of the date of this notice to avoid an assessment of interest. New York must cease claiming title IV-E payments associated with an improperly paid case until eligibility is substantiated for the case.

Appeal Notice

This is the final decision of the Administration for Children and Families. It shall be the final decision of the Department of Health and Human Services unless you submit a written notice of appeal to the Department of Appeals Board (DAB), in accordance with 45 CFR Part 16. Your written notice of appeal must note you intend to appeal, give the amount in dispute, and briefly say why you think the title IV-E review decision is incorrect. You must attach a copy of this decision to your notice of appeal. The DAB will notify you of further procedures.

A notice of appeal may be submitted to the DAB by mail, by facsimile (fax) if under 10 pages, or electronically using the DAB’s electronic filing system (DAB E-File). Submissions are considered made on the date they are postmarked, sent by certified or registered mail, deposited with a commercial mail delivery service, faxed (where permitted), or successfully submitted via DAB E-file.

If you mail your notice of appeal, it should be addressed to:

U. S. Department of Health and Human Services
Departmental Appeals Board, MS 6127
Appellate Division
330 Independence Avenue, SW
Cohen Building, Room G-644
Washington, DC 20201

If you fax your notice of appeal (permitted only if the appeal notice is under 10 pages), you should use the Appellate Division's fax number, (202) 565-0238.

If you should use DAB E-File to submit your notice of appeal, you or your representative must first become a registered user by (1) clicking "Register" at the bottom of the DAB E-File homepage, <https://dab.efile.hhs.gov/>; (2) entering requested information on the "Register New Account" form; and (3) clicking the "Register Account" button. Once registered, you or your representative should (1) login to DAB E-File using the e-mail address and password provided during registration; (2) click "File New Appeal" on the menu; (3) click the "Appellate" button and (4) provide and upload the requested information and documents on the "File New Appeal-Appellate Division" form. Detailed instructions can be found on the DAB E-File homepage.

When you submit your appeal to the DAB, you must send a copy to Mr. Alfonso Nicholas, Child Welfare Regional Program Manager in Region 2 of the Children's Bureau.

Interest and Penalties

If you appeal, you may repay the amount at issue pending a decision by the DAB, or you may retain the funds pending that decision. If you repay the funds, an adjustment to return the disallowed funds to avoid an interest assessment must be submitted on the Form CB-496, as described above for payment adjustments. Interest will accrue on the funds from the date of this disallowance letter to the date of repayment. The current interest rate is 10.125 percent.

I thank you and your staff for the exceptional efforts preparing for and participating with us in this title IV-E Review. We commend the state for its excellent efforts to continue to improve its title IV-E foster care program since the primary review was conducted three years ago. We particularly note that judicial determinations of reasonable efforts to prevent removal were found in the first court order along with the judicial determinations of whether remaining at home was contrary to the child's welfare. The enclosed report of findings identifies more program strengths and provides recommendations for further improvements.

My staff look forward to working with your agency to continue to improve state implementation of federal requirements and to increase state capacity to deliver quality services to children and families. You may contact Mrs. Shari Brown, Children and Families Program Specialist at shari.brown@acf.hhs.gov or (212) 264-2890 extension 125 should you have questions about this title IV-E Review.

Questions concerning the disallowance may be directed to Ms. Angel Chen, Financial Operations Specialist, at angel.chen@acf.hhs.gov or (212) 264-2890 extension 298.

Sincerely,

A handwritten signature in black ink, appearing to read "Jerry Milner". The signature is fluid and cursive, with a large initial "J" and "M".

Jerry Milner
Associate Commissioner
Children's Bureau

Enclosure

cc: Mala Boolchandani, Director of Financial Operations, NYS OCFS, Rensselaer, NY
Derek J. Holtzclaw, Associate Commissioner, Finance and Administration, NYS OCFS
Rensselaer, NY
Alfonso Nicholas, Regional Welfare Program Manager, CB Region 2, New York, NY
Gail Collins, Director, Program Implementation, CB, Washington, DC
Jennifer Butler-Hembree, Child Welfare Program Specialist, CB, Washington, DC
Clinton McGrane, Grants Officer, Office of Grant Management, Region 2, New York, NY
Angel Chen, Financial Operations Specialist, Office of Grant Management, Region 2,
New York, NY