Wisconsin Title IV-E Foster Care

Secondary Eligibility Review

FINAL REPORT

Period Under Review: April 1, 2004 – September 30, 2004

Introduction

During the week of May 2-6, 2005, Administration for Children and Families' (ACF) staff from the Central and Regional offices and representatives from the Wisconsin Department of Health and Family Services (DHFS) conducted a secondary eligibility review in Madison, Wisconsin of the State's title IV-E foster care program. The purpose of the secondary eligibility review was two-fold: 1) to determine if the State of Wisconsin was in compliance with the child and provider eligibility requirements as outlined in 45 CFR 1356.71 of the Code of Federal Regulations and Section 472 of the Social Security 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 and to eligible foster care providers.

The secondary review was conducted as the result of the findings of the initial primary title IV-E review, held the week of March 4, 2002, in which Wisconsin was found not to be in substantial compliance with title IV-E requirements. As a result of the initial primary review, Wisconsin submitted to ACF a title IV-E Program Improvement Plan (PIP) that was approved on August 8, 2002. Specific eligibility requirements related to title IV-E errors identified in the initial primary review that needed to be and were addressed in the PIP included the following:

- Reasonable efforts to finalize the permanency plan
- Contrary to the welfare finding
- Foster parent licensing issues
- Voluntary placements beyond180 days
- Placement and care responsibility
- AFDC relatedness requirements

One of the significant changes that occurred during the PIP implementation period and months preceding the period under review (PUR) for the secondary review was the passage of the 2001 Wisconsin Act 109, which became effective on July 30, 2002. This legislation included a number of provisions related to title IV-E requirements such as judicial determinations regarding contrary to the welfare, reasonable efforts to prevent removal, and reasonable efforts to finalize a child's permanency plan. Wisconsin also made substantial steps toward centralizing their title IV-E eligibility determination process which includes a quality assurance process. The Wisconsin Title IV-E Policy Handbook was

substantially updated and several enhancements to the Wisconsin Statewide Automated Child Welfare Information System (WiSACWIS) were created and implemented. ACF's approval of Wisconsin's successful completion of its PIP was based on the submission of four quarterly reports by the State outlining the improvements and accomplishments made in relation to the PIP goals necessary for Wisconsin's compliance with title IV-E policy.

Scope and Results of the Secondary Review

The Wisconsin secondary title IV-E foster care eligibility review encompassed a sample of the title IV-E foster care cases that received a foster care maintenance payment during the six-month PUR, April 1, 2004 – September 30, 2004. A computerized statistical sample of 180 cases (150 cases plus 30 oversample cases) was drawn from the Adoption and Foster Care Analysis and Reporting System (AFCARS) data transmitted to ACF by DHFS. One hundred fifty cases were reviewed during the secondary review process, including 137 cases from the original sample plus 13 oversample cases. Thirteen of the cases were substituted either because no title IV-E maintenance payment was made during the PUR or because the payment made was refunded prior to the sample being drawn.

The 150 cases were reviewed to ensure that the child met both initial and on-going title IV-E eligibility requirements and the foster care provider was title IV-E eligible during the entire PUR when title IV-E payments were claimed. Prior to the review, State staff prepared eligibility files containing the documentation necessary for completing the review instrument and supplied these folders to the review team together with the child's complete case file. Wisconsin staff also provided the payment histories associated with each file, and were available to answer any payment-related questions posed by the review team.

The State was successful throughout the review in locating additional case information requested by review team members in order to ensure that all title IV-E eligibility requirements were fulfilled for cases in question. In addition, subsequent to the review, ACF afforded DHFS the opportunity to submit additional documentation demonstrating compliance with eligibility requirements for cases originally found to be in error or to have ineligible payments identified during the review, including a legal opinion from the Wisconsin Attorney General's office regarding Wisconsin law and the title IV-E requirement for placement and care responsibility. Consequently, appropriate adjustments were made to the findings of relevant cases.

For a secondary review, substantial compliance is achieved when either the case error rate or dollar error rate does not exceed 10 percent. States are found not to be in substantial compliance with Federal title IV-E program requirements when both the case error rate and the dollar error rate exceed 10 percent, and a

disallowance is calculated based on the extrapolation from the sample to the universe of claims paid for the duration of the AFCARS reporting PUR.

Based on the review of 150 cases, one case was found to be in error for part of the review period, resulting in a case error rate of 0.006 percent. The error case did not meet the reasonable efforts to make and finalize a permanency plan requirement (REPP) during the PUR. The judicial determination was scheduled to take place in September 2004, the last month of the PUR, but did not occur until November 2004. As the actual disallowance only affects a month outside the PUR, there are no dollars disallowed during the PUR, resulting in a dollar error rate of zero percent. The disallowance related to the error case is $1393.02, of which $359.83 represents maintenance costs and $1033.19 represents administrative costs.

Of the 149 cases determined to be error-free during the PUR, 4 cases were found to have ineligible payments outside the PUR. Three of these cases had ineligible payments related to the reasonable efforts to prevent removal requirement, one of which also included an error related to the contrary to the welfare requirement. The fourth case contained an overpayment claimed after the child left care. The total dollar amount of ineligible payments claimed outside the PUR for these non-error cases is $8055.59, including both maintenance and administrative costs.

As neither the case error rate nor the dollar error rate exceed 10 percent, Wisconsin is found to be in substantial compliance with Federal title IV-E program requirements as outlined in 45 CFR 1356.71 and Section 472 of the Social Security Act,. Based on the one error case and 4 non-error cases with ineligible payments, Wisconsin is subject to a total disallowance of $9448.61.

Further information about the individual case disallowances, including the reason for the error determination and the time periods of ineligible claiming, can be found in the Case Record Summary listed below.

Case Record Summary - Tables

Error Case

Sample Number	Reason(s) for Error	Social Security Act (SSA) & Code of Federal Regulations (CFR) Citation	Dates of Ineligible Payments
32	Reasonable efforts to make and finalize a permanency plan	SSA: Section 472(a)(1), and Section 471(a)(15)(B)(ii) and (C) CFR: 45 CFR 1356.21(b)(2)	10/1/04-10/31/04

Non-error Cases with Ineligible Payments

Sample Number	Reason(s) for Error	Social Security Act (SSA) & Code of Federal Regulations (CFR) Citation	Dates of Ineligibility
21	Payment claiming continued after placement ended		10/06/10/11/04
111	Reasonable efforts to prevent removal	SSA: Section 472(a)(1), Section 471(a)(15)(B)(i), and Section 471(a)(15)(D); CFR: 45 CFR 1356.21(b) & (d), & 45 CFR 1356.71(d)(1)(i)	4/22/94-7/31/94
117	Reasonable efforts to prevent removal	SSA: Section 472(a)(1), Section 471(a)(15)(B)(i), and Section 471(a)(15)(D); CFR: 45 CFR 1356.21(b) & (d), & 45 CFR 1356.71(d)(1)(i)	7/1/98-7/31/98
OS5	Contrary to the welfare Reasonable efforts to prevent removal	SSA: Section 472(a)(1) CFR: 45 CFR 1356.21(c) & (d) SSA: Section 472(a)(1), Section 471(a)(15)(B)(i), and Section 471(a)(15)(D); CFR: 45 CFR 1356.21(b) & (d), & 45 CFR 1356.71(d)(1)(i)	9/25/99-11/30/99

Notable Strengths of the Review

The tremendous effort Wisconsin put forth since the initial primary review was evident in the many visible improvements relative to the State's compliance with title IV-E policy. Ultimately, there was only one error case determined, despite myriad concerns presented in the initial primary review. Also, the effort put forth by Wisconsin State staff to prepare for the review was unsurpassed. Overall, Wisconsin and its 72 counties demonstrate strong compliance with title IV-E program requirements, and the notable strengths of the title IV-E secondary review were illustrated in the following areas.

AFDC Eligibility Determination Process

In order for a child to be IV-E eligible, each State must document that the child was removed from a specified relative, and that the child was financially needy and deprived of parental support in the month (s)he came into care. According to 45 CFR 1356.71(d)(1)(v), this determination must be accomplished by utilizing the criteria in the State's title IV-A State Plan that was in effect on July 16, 1996. When the child is in care longer than one year, the State must document annually that the child continues to be financially needy and deprived of parental support or care.

In the months preceding the secondary review, there was concern about the Aid to Families with Dependent Children (AFDC) eligibility determination and redetermination process in Wisconsin relative to State staff sign-off of the determination recommendations. However, these concerns did not result in errors or ineligible payments determinations discovered during the course of the review.

On the contrary, the strengths of the WiSACWIS system were evident, and State staff was able to locate missing and/or recreate any AFDC redeterminations deemed necessary. A few suggestions were made by review team members regarding potential WiSACWIS improvements in this area; for example, the possibility of demonstrating all AFDC redeterminations in the system, even if no change took place. Overall, this element of the review is rated as a strength.

Reasonable Efforts to Finalize the Permanency Plan

A judicial determination that reasonable efforts were made to finalize a permanency plan (REPP) must be made no later than 12 months from the date on which the child is considered to have entered foster care and at least once every 12 months thereafter while the child remains in foster care in order for a child to remain title IV-E eligible. [45 CFR 1356.21(b)(2)]

In the initial primary review, 13 cases were determined to be out of compliance with this requirement because the judicial determination regarding reasonable efforts to finalize the permanency plan was either not made or not made within the required time frames. This was the largest issue to surface during the initial primary review. During the secondary review, however, only one case was determined to be in error for this reason, indicating that Wisconsin has made considerable progress in this area. There was a marked increase in the specificity of the language contained in the REPP court orders and this improvement speaks to the positive collaboration taking place between the court systems and State and county agencies. The degree to which the counties have embraced this requirement and recognized its importance is reflected in the uniformity with which this requirement was met across the State.

Voluntary Placement Agreements

Title IV-E payments may be made on behalf of a child who is in foster care pursuant to a voluntary placement agreement for the first 180 days of the foster care placement, unless there is a judicial determination that it is in the child's best interests to continue the voluntary placement beyond the 180 days. [45 CFR 1356.22(b)]

In Wisconsin's initial primary review, 2 cases were ineligible due to this requirement, with one of the cases carrying the largest financial disallowance for the State. Although there was only one voluntary placement case in the sample

for the secondary review, it was determined to be error-free and without any ineligible payments. Wisconsin has made great strides in improving their practice around voluntary placement agreements, and the review team was able to learn more about these improvements during the review process.

Placement in Licensed Home or Facility

In order for the State to receive Federal financial reimbursement for foster care payments made on behalf of a child in care, the child must be placed with a foster care provider that is licensed and meets all of the State (or Tribal) agency standards for full licensure. Eligible facilities include foster family homes, group homes, private child care institutions, or public child care institutions which accommodate 25 or fewer children. For each case in the sample, State agencies must provide a licensing file containing the licensing history, including a copy of the license or approval or the letter of approval, for each of the child's foster care providers during the PUR. [45 CFR 1356.21(m)(2)]

During the initial primary review, Wisconsin had 3 errors attributed to licensing issues. The secondary review yielded no errors or ineligible payments due to licensing, and State staff was able to provide any information or paperwork related to licensing requested by the review team. Wisconsin provided helpful documentation and explanation of their licensing procedures prior to the review, and this element did not affect any of the 150 cases reviewed.

Area in Need of Improvement

Placement and Care Responsibility

The title IV-E agency must have responsibility for placement and care of a child, and Federal regulation at 45 CFR 1356.71(d)(1)(iii) indicates that this responsibility is to be vested with the State agency. The greatest concern throughout this secondary review was whether or not Wisconsin statute fulfilled this requirement.

The language alone contained in many Wisconsin court orders was insufficient to conclude that the responsibility for placement and care of the child involved was vested with the State or county agency that removed the child. However, ACF accepted the legal opinion submitted by Wisconsin Attorney General Peggy Lautenschlager illustrating that language in Wisconsin statute fulfilled this requirement. Consequently, cases previously deemed to contain ineligible payments relative to this requirement were cleared.

Regardless, the issue of placement and care responsibility is of fundamental importance when preserving the safety and well-being of the children and families serviced by the child welfare system. In every case, there should be no question regarding whether or not the State agency administering the plan

approved under section 471 of the Act, or any other public agency with whom the State agency administering or supervising the administration of the State plan approved under section 471 has made an agreement which is in effect, maintains this responsibility when serving children through the title IV-E program. Wisconsin is encouraged to produce a clear way of indicating that this requirement is being fulfilled. This could be accomplished either through revising the State court order forms or by including a more direct provision in the Children's Code, in order to prevent this issue from arising again in the future.

Summary of Disallowances

Although Wisconsin is found to be in substantial compliance with Federal title IV-E policy during this secondary review, ACF has determined that a total disallowance of $9,448.61 in Federal financial participation (FFP) is warranted. Of this total, $2,444.58 pertains to ineligible title IV-E foster care maintenance payments and $7,004.03 pertains to ineligible title IV-E foster care administrative costs.

The State of Wisconsin must make any appropriate prospective decreasing adjustments on its Title IV-E-1 Quarterly Foster Care and Adoption Assistance Financial Report on behalf of any of the sample cases that were determined ineligible for FFP during the title IV-E secondary review to the present. Moreover, the State must cease claiming title IV-E costs associated with these cases until they are determined to be eligible.

Conclusion

Overall, the results of Wisconsin's secondary title IV-E foster care eligibility review demonstrate that the State has made considerable advances since its initial primary review in 2002. Several model practices were distinguished throughout the course of the secondary review, and the time and effort that DHFS staff, county staff, and the courts have invested in improving the State foster care system is notable.

As Wisconsin is found to be in substantial compliance with Federal title IV-E requirements, the State can anticipate the next primary title IV-E foster care eligibility review to take place in approximately 3 years.