STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES
744 P Street • Sacramento, CA 95814 • *www.cdss.ca.gov*

WILL LIGHTBOURNE
DIRECTOR

EDMUND G. BROWN JR.
GOVERNOR

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REASON FOR THIS TRANSMITTAL

[ ] State Law Change
[ ] Federal Law or Regulation Change
[ ] Court Order
[ ] Clarification Requested by One or More Counties
[X] Initiated by CDSS

ALL COUNTY LETTER NO. 11-64

TO: ALL COUNTY WELFARE DIRECTORS
ALL COUNTY PROBATION OFFICERS
ALL TITLE IV-E AGREEMENT TRIBES

SUBJECT: 2009 TITLE IV-E FOSTER CARE ELIGIBILITY REVIEW RESULTS AND FINDINGS

REFERENCE: ALL COUNTY LETTER (ACL) NO. 98-01, ACL NO. 01-33, ACL NO. 05-13, ACL NO. 05-20; ALL COUNTY INFORMATION NOTICE (ACIN) NO. I-27-06

In September 2009, the United States Department of Health and Human Services (DHHS) conducted California's third Title IV-E Foster Care Eligibility Review. The Period Under Review (PUR) was October 1, 2008 through March 31, 2009. More than four cases in error would be considered not in substantial compliance with federal requirements. While initially DHHS determined that California's Title IV-E foster care maintenance program was not in substantial compliance with federal requirements with six error cases, the California Department of Social Services (CDSS) appealed three of the cases initially cited in error. The DHHS has agreed that two of the three cases that were initially determined to be in error, but appealed by CDSS, were, in fact, not error cases; accordingly, CDSS is now in substantial compliance with federal requirements.

Because California was initially found to not be in substantial compliance, CDSS was required to implement a Program Improvement Plan (PIP) which included statewide training on Title IV-E compliance. That PIP is no longer required, however, the purpose of this ACL is to clarify some issues which were identified as a result of the federal review in order to strengthen compliance with federal requirements, thus improving services to children and families. In addition, attached is a series of questions and answers which arose out of development meetings for the PIP.

Furthermore, because CDSS is now in substantial compliance, a secondary review of 150 cases will not be required. The 2012 Title IV-E Review will be a Primary Review (80 cases) conducted between November 26, 2012 and November 30, 2012.

General Requirements

Reviewers determined whether appropriate documentation existed in each case to substantiate compliance with the following requirements: authority for placement; child welfare agency or probation responsibility for placement and care; Aid to Families with Dependent Children (AFDC) eligibility of the home of removal (as of July 16, 1996); placement in a licensed foster family home or child care institution; and criminal records check and other safety requirements for foster care providers. Counties are reminded to continue to ensure compliance with CDSS' Eligibility and Assistance Standards Manual sections 45-100 through 45-300 for determination of foster care eligibility.

Five of the cases (case sample numbers 5, 6, 7, 16, and 74) that were initially determined to be in error during the PUR are discussed below. The DHHS determined that the cases listed below were not eligible for AFDC-Foster Care (FC) during the PUR and were, therefore, cited as errors.

Specific Cases Cited by DHHS

Case Sample #5

In the month of removal, the county welfare department based deprivation on an absent parent, the biological father. The biological father's whereabouts were unknown for a number of years and neither the county nor the mother had contact with him at the time of the AFDC-FC eligibility determination.

Based on testimony from the child's mother and boyfriend, a judge declared the mother's live-in companion to be the child's presumed natural father. In the AFDC budget computations for determining financial need, the eligibility staff included the income of the presumed father; however, deprivation was based on the absence of the biological father.

The DHHS initially found that because the court declared the father a presumed father, that deprivation could not be found because the mother's boyfriend was living in the home at the time of removal and did not meet any of the deprivation factors. The DHHS believed that this child would have been ineligible for AFDC-FC because the county welfare department should have based both financial need and deprivation (two separate eligibility criteria) on the presumed father. In DHSS' letter informing CDSS that it had dropped case sample #5 as an error case, it indicated the reason they did so was that the court's determination that the mother's live-in boyfriend was the presumed father was made after initial removal.

At the time of removal, i.e., in the petition month, when an eligibility determination must be made, there was not yet a presumed father. Accordingly, this case is no longer an error case. Counties are reminded that courts frequently use the status of presumed fatherhood in order to provide services to reunify the family, and that this has no bearing on eligibility, at least in cases in which the status was established after removal.

Case Sample #6

In case #6, DHHS cited an error due to a failure of the county to ensure that reasonable efforts to finalize the child's permanency plan court finding was made by the court in a timely manner. The finding should have been made in January of 2009 during the PUR. However, the court finding was not made until April 12, 2009, thus rendering this case in error. This case remains an error case.

Case Sample #7

In case sample #7, the child was removed from the home and placed into foster care in March of 2006. The county welfare department's initial eligibility determination completed in September of 2006, determined the child to be ineligible due to the step-father's income. In June of 2007, the child was returned to the home of the step-father while remaining under the care of the county welfare department. Subsequently, the child was removed from the home when a Welfare and Institutions Code (W&IC) section 387 petition was filed. It is DHHS' position that the county welfare department incorrectly considered the filing of a W&IC section 387 petition as a new foster care episode as the father had not legally been reunified with the child. Therefore, the eligibility determination made based on the June 2007 petition was invalid and the case was ineligible during the PUR. This case remains an error case.

Case Sample #16

The county failed to reassess the non-relative extended family member's (NREFM) home in a timely manner. A reassessment was due on May 1, 2008, but the home was not reassessed prior to the child's emancipation from the foster care system on February 24, 2009. The Title IV-E payments continued to be made on behalf of the child until he emancipated even though the home was not reassessed in accordance with ACL No. 05-13.

Counties should note that there has been a change to state law regarding Relative/NREFM home approval requirements. For additional information on changes to the Relative/NREFM approval process please refer to Assembly Bill 1905 (Chapter 562, Statutes of 2010) and any ACLs issued after its passage.

Case Sample #74

For case sample #74, the "living with and removed from a specified relative" requirements at Title 42 United States Code section 672(a) and 45 Code of Federal Regulations section 1356.21(k) were not met by the same specified relative.

The child's initial removal and entry into foster care occurred in September of 2000. The child had been living with a legal guardian, the grandmother, since July of 2002. In September of 2005, a W&IC section 388 petition was filed and the child was physically removed from the legal guardian and legally removed from the parents. The court order reinstated the original dependency order thus intending to continue the previous out-of-home episode. The DHHS' position is that because the child had not lived with the parents during the last
six months, linkage to the home of the parents could not be established. Therefore, it was necessary to establish linkage to the new home of removal (legal guardian). According to DHHS, the county should have legally removed the child from the home of the legal guardian and thus linkage should have been based on the home of the legal guardian.

Overpayments/Underpayments

Out of the 80 cases reviewed, there were a total of 15 cases with overpayments and five cases with underpayments. Individual letters have been issued to counties regarding the recoupment of ineligible maintenance payments and related administrative costs associated with these cases during the review.

If you have any questions about this ACL or the questions and answers which follow, please contact your county Foster Care Funding and Eligibility Consultant, at (916) 651-2752.

Sincerely,

Original Document Signed By:

GREGORY E. ROSE
Deputy Director
Children and Family Services Division

Attachment

Attachment

FOSTER CARE ELIGIBILITY QUESTIONS AND ANSWERS

If a federally-eligible foster child is placed back with his/her parents, then removed again, a determination must be made as to whether the second removal from the parent(s) is part of a continuous episode or a new removal. Federal foster care eligibility may be continued based on the original eligibility determination if it is a continuous episode. The following factors will be helpful in making this determination.

- **Did the court retain dependency or delinquency jurisdiction when the child was returned home or has the court's jurisdiction been dismissed?**
- **Has the court set another review hearing within six months?**
- **Is the child welfare or probation department obligated to continue supervision for the foster care case?**
- **Is the child at home but still in the placement and care of the county welfare or probation department?**
- **Has the child been authorized to visit the parent?**
- **If the child has been with the parent longer than six months, does the current court order authorize a longer stay longer than six months?**
- **Did the county file a Welfare and Institutions Code (W&IC) section 387 petition or a W&IC section 300 petition?**

Determining Foster Care Episodes

1. **Question:** How is the filing of a W&IC section 387 and or W&IC section 388 petition for children who are dependents of the court relevant to the eligibility determination?

   Answer: The W&IC section 387 petition is filed by the county to request that a child be moved to a more restrictive placement. Typically the request is to remove a child from the home of a parent or relative and place him/her into a foster home or group home. Filing a W&IC section 387 petition is one of the factors that could support the conclusion, in conjunction with the other factors listed above, that there is a new foster care episode. If a new foster care episode has occurred, then a new foster care eligibility determination is required. A W&IC section 388 petition may be filed by any person to request a change in any court order. For example, a W&IC section 388 petition can be used to resume dependency jurisdiction under W&IC section 366.3(b) when a legal guardianship disrupts. It must be noted that the Department of Health and Human Services (DHHS) has declared that this does not re-establish federal foster care eligibility based on eligibility conditions that existed at the time of the original dependency. Therefore, a new eligibility determination is required if the child re-enters foster care.

   NOTE: Federal statute and regulations do not dictate which type of petition is required for eligibility. Counties must look at the circumstances of each petition, regardless of the type of petition, in order to decide whether it is a new removal.

2. **Question:** What kind of petition is needed when a child has been returned to a parent and the case is in family maintenance (FM) status, with dependency intact?

   Answer: If the case is in FM status and the child is placed (reunified) with the parent, a W&IC 387 petition is required to remove the child from his/her parent(s) and a new foster care eligibility determination is required.

3. **Question:** What month do you use to determine eligibility when there are two court orders?

   Example: The first court order removed the child from the mother via a W&IC section 300 petition and the minute order had all of the required Title IV-E findings. However, after the minor was removed from the mother, the minor was immediately placed with the father. The child was then removed from the father, but the subsequent court order did not have the required Title IV-E findings.

   Answer: Based on the information provided above it is assumed that, at the time of removal from the father this child was not in foster care and was not in the placement and care of the county welfare or probation department. In this situation, the county should base its eligibility determination upon the month in which the second court order was issued (order removing from the father). Based on the example above, the child would be ineligible for federal Aid to Families with Dependent Children-Foster Care (AFDC-FC) for the entire foster care episode due to the lack of requisite Title IV-E

findings. For additional guidance, please refer to the Child Welfare Policy Manual (CWPM) section 8.3A.3, question 2.

Question: If the child was sent home on a trial home visit with the parents and then subsequently removed again (in less than six months), would this be considered the same episode?

Answer: The term "trial home visit" is used in federal guidance to describe circumstances under which a child may be returned home to the parents on an extended visit without disrupting federal eligibility. These circumstances require that the county retain placement and care of the child when the visit is less than six months unless the court orders a longer visit. In this circumstance the removal during the trial home visit would be considered the same episode. On the other hand, if the court grants the parent placement and care, then a subsequent removal from the parent via a W&IC section 387 petition would not be considered part of the original foster care episode and new eligibility determination would be required.

4. **Question:** What if dependency has been dismissed and the child is subsequently removed again from the parent within six months of the dismissal?

   Answer: If the dependency is dismissed and the child has been sent home on a non-temporary basis, the county would have to file a new W&IC section 300 petition and a new eligibility determination would be required.

   NOTE: Federal statute and regulations do not dictate which type of petition is required for eligibility.

5. **Question:** If a child is returned home under court ordered reunification services and subsequently removed, is a new eligibility determination required?

   Answer: Yes, when a court orders a child to be returned to the parent with reunification services, the county no longer has placement and care of the child. Under this scenario, a removal via a W&IC section 387 petition would signify a new eligibility determination is required.

6. **Question:** If dependency is dismissed and the child is living with a relative and then removed by the court from that relative, does a new eligibility determination need to be made or can the prior eligibility determination from the dismissed dependency case be used?

   Answer: If the dependency is dismissed, a new removal and court order as well as a new eligibility determination are required.

7. **Question:** If a child is removed from a legal guardian (dependency was dismissed), then the child is subsequently placed in foster care, can AFDC-FC be paid for the time the child is in foster care if the original dependency is reinstated?

Answer: An example of this situation was deemed an error by DHHS in the 2009 Title IV-E audit and was appealed by the California Department of Social Services (CDSS.) The DHHS determined that once dependency is dismissed and the case is closed, the child is no longer eligible for AFDC-FC payments based on the original dependency. A new removal and eligibility determination is required.

Judicial Determinations

8. **Question:** Can the courts be encouraged to specify on the minute orders the findings recommended by the county in the social worker's report? Sometimes the court either neglects to specify the findings or refuses to specify the findings.

   For example:

   The social worker's detention hearing report recommended the court make findings of:

   - Reasonable efforts have been made;
   - Remaining in the home is contrary to the child's welfare; and
   - Placement and care is vested in county social services.

   The minute order specifies only that the court made the findings of contrary to welfare and placement and care. A long, drawn-out process is initiated by foster care eligibility staff to review the court transcript to see if the reasonable efforts finding was actually made. If the transcript shows the finding was not made and the 60-day timeframe has passed, then Title IV-E eligibility is lost.

   Answer: The court must exercise its judicial discretion in determining whether or not the agency indeed made reasonable efforts to prevent removal. If the court finds that the agency did not make reasonable efforts to prevent removal, that child is not eligible for federal funding. However, it is important to note that the CDSS does contract with the Judicial Council to provide training to judges and court clerks on required Title IV-E findings. If counties wish to contact the Judicial Council regarding this project, please call (415) 865-7557.

13. **Question:** Does the reasonable efforts to finalize a permanency plan (PP) language continue from dependency to delinquency when there is a break in foster care placement?

    Answer: While the child is in a detention facility such as juvenile hall, he or she is not in foster care as defined by 45 Code of Federal Regulations (CFR) section 1355.20. Therefore, during the break in foster care placement, no reasonable efforts finding is required. See below for an example.

    Example: The court order containing the PP language was issued on July 7, 2007. Subsequently, on March 10, 2008, the child was transferred from child welfare services to probation under a W&IC section 602 and placed in juvenile hall for six months. On

August 8, 2008, the youth was placed in a group home. Is the PP language still valid for four months as the clock stopped ticking while the youth was in juvenile hall?

Yes, the language is still valid. The PP finding was made in July 2007. The next PP finding was due in July 2008. In March of 2008, the child was placed in juvenile hall, thus the twelve month clock was stopped until the child returns to foster care, whereupon the clock started again with four months remaining until the next PP finding was due. Since the child returned to foster care in August 2008, with four months remaining, the next PP finding was due in December 2008.

14. **Question:** How soon must the reasonable efforts to finalize the PP finding be made? Can a Title IV-E payment be made pending this finding?

    Answer: Consistent with the regulation at 45 CFR section 1356.21(b)(2)(ii), a permanency planning hearing is required 12 months from the date the child has been considered to have entered foster care. If a judicial determination regarding reasonable efforts to finalize a permanency plan is not made in accordance with the prescribed schedule, the child becomes ineligible for a Title IV-E payment at the end of the 12th month. Payment may continue through the 12th month, but may not be continued after that until the permanency planning finding has been made.

Aid to Families with Dependent Children (AFDC) Eligibility

15. **Question:** Is parent's income required to be re-evaluated at re-determination?

    Answer: No, redeterminations are no longer required pursuant to CWPM section 8.4A, question #24. Therefore, subsequent changes to the parents' income do not affect a child's foster care eligibility.

16. **Question:** When an initial determination of unemployed parents is made (the primary wage earner [PWE] has enough work quarters), the county is required to make a good faith effort for the foster care eligibility renewal each year. Can the case change from federal to state (deprivation change; PWE started working over 100 hours)? Also, can the case revert back to federal at the next renewal if the PWE becomes unemployed again?

    Answer: Yes, a case can change from Title IV-E funding to state funding; however, in this case, a subsequent increase or decrease in income does not change the initial Title IV-E eligibility determination. Pursuant to Administration on Children, Youth, and Families-Children's Bureau Program Instruction (PI)-10-11 and CWPM section 8.4A, question #24, redeterminations of eligibility are no longer required for federal foster care purposes. Subsequent changes to parental employment would not affect federal foster care eligibility; thus, there is no need to switch the case between federal and state. Note however, that state law still requires an annual eligibility redetermination pursuant to W&IC section 11401.5. All County Letter (ACL) No. 11-10 was recently released with more details on this subject.

17. **Question:** Can AFDC-FC be paid for days of placement prior to the detention date?

    Answer: No, the AFDC-FC payment can't be made prior to the date of the detention hearing. Pursuant to Eligibility and Assistance Standards (EAS) 45-302.31, all eligibility conditions are required to have been met before the AFDC-FC payment can begin, this includes the requisite court findings which cannot be made prior to the detention hearing.

18. **Question:** If a child is determined to be federally eligible in the month of petition, but subsequently in the following month the child starts receiving income, e.g., Retirement, Survivor, or Disability Insurance (RSDI), how would this income be evaluated for federal AFDC purposes?

    Answer: Pursuant to ACL No. 07-10, Best Practice Guidelines for Screening and Providing for Foster Children with Disabilities, youth in the dependency system may be eligible for several different benefits programs at the same time, e.g., RSDI. It is important for counties to consider which benefits are in the best interest of the child and in accordance with the child's case plan. Foster children can receive RSDI but the county must treat it as income and adjust the payment accordingly. We are aware that most counties become the representative payee for the child's RSDI, pay the foster care provider, and reimburse themselves using the RSDI. This is also permitted.

19. **Question:** Should counties only be using the home of legal removal to determine deprivation? If so, will the EAS manual be revised to state this?

    Answer: In most cases, legal removal would be from the home of the biological parent(s) or relative. Counties may use a constructive (i.e., nonphysical, paper, or legal) removal to determine deprivation if the child had been living with the parent or relative from whom removed within any of the six months prior to the month in which the petition was filed with the juvenile court which led to the child's placement into foster care pursuant to a detention or dispositional order. No new regulations are required as EAS 45-202.331 adequately covers both scenarios.

    Below are a summary of examples to clarify when a child would be eligible for Title IV-E foster care pursuant to a constructive removal. These examples presume that the child is eligible for AFDC in the home of the parent or other specified relative.

    Example: The child is in a three generation household in which the mother leaves the home. The grandmother contacts the county agency four months later and the agency petitions the court within six months of the date the child lived with the mother in the home. The county completes a relative approval of the grandmother's home and the child continues to reside in the home in foster care. The child is eligible for Title IV-E foster care since she/he lived with the parent within six months of the county's petition to the court and was constructively removed from the parent's custody.

Example: The child lived with a **non-related** interim caretaker for seven months before the caretaker asks the county to remove the child from his/her home and place the child in foster care. The child is ineligible for Title IV-E foster care because she/he had not lived with a parent or specified relative within six months of the petition.

20. **Question:** Who is included in the Assistance Unit (AU) when determining AFDC-Family Group/Unemployed parent eligibility, i.e. AFDC eligibility of the home of removal as part of linkage determination?

    Answer: Pursuant to EAS 82-820.3 (dated July 16, 1996), the following persons must be included in the AU: applicant child; siblings and half-siblings of the applicant child; parents of any of the aforementioned children. Please see all of EAS 82-820 on the CDSS web page for complete instructions.

21. **Question:** How are step-parents handled in the linkage determination when there are mutual children, separate children, or when there is a combination of both?

    Answer: If the parent and stepparent have children in common, then the step-parent is included in the AU pursuant to EAS 82-824. If the step-parent and parent do not have children in common, then the step-parent regulations at EAS 44-133 (dated July 16, 1996) apply. Please see those regulations on the CDSS website for more information.

22. **Question:** School verification states that the child will not graduate by his/her 19th birthday, but will be getting his general equivalency diploma (GED) or certificate of completion prior to his/her 19th birthday, does foster care eligibility continue after the child reaches age 18?

    Answer: Yes, foster care eligibility may continue after the child reaches age 18. Previous CDSS policy required that in order for AFDC-FC eligibility to continue beyond age 18, a youth must participate in a full-time GED Program and be reasonably expected to complete the program and pass the examination prior to his/her 19th birthday. However, Assembly Bill 1633 (Chapter 641, Statutes of 2005) amended W&IC section 11403 and removed the requirement that the child participate in the GED Program full-time as long as they are pursuing an equivalency certificate. In addition, it removed the requirement that the youth be expected to pass the GED exam prior to his/her 19th birthday as long as the youth is expected to receive their GED certificate by his/her 19th birthday.

    For additional information, refer to ACLs No. 89-42 and No. 07-09 and EAS 45-201.1. The county welfare departments should note the high school/vocational training completion rules for youth 18 years of age and older are subject to change effective January 1, 2012.

23. **Question:** When a newborn is placed on a hospital hold, when is the removal date, the date of birth or date of detention hearing?

    Answer: The W&IC section 305(b) gives a peace officer authority to take into temporary custody a minor who is in a hospital and release of the minor to a parent poses an immediate danger to the child's health or safety. The date of the court's order finding that continuation in the home of the parent is contrary to the child's welfare. This is usually the date of the detention hearing.

AFDC Eligibility Redeterminations

24. Question: If a federal case is based originally on the absent parent, and at the next renewal we find out that the absent parent returned home, would we have to make another determination of Title IV-E?

Answer: No, an agency is not required to re-determine a child's federal AFDC eligibility. The CWPM section 8.4A, question #24 states: "Given the statutory changes over the years, the federal government has eliminated the former requirement to re-determine a child's AFDC eligibility." However, please see question number #15 above regarding new state redetermination requirements.