

Child Welfare Policy Manual

Questions & Answers

8.1D Candidates for title IV-E foster care

1. Question: May we claim Federal financial participation (FFP) for the administrative costs associated with foster care candidates even for children who never enter foster care?

Answer: Yes. Federal financial participation for administrative costs listed at 45 CFR 1356.60(c) may be claimed regardless of whether the child is actually placed in foster care and becomes a recipient of title IV-E foster care benefits. However, reimbursement is limited to those individuals the title IV-E agency reasonably views as candidates for title IV-E foster care maintenance payments consistent with section 472(i)(2) of the Social Security Act.

The three acceptable methods of documentation indicating that a child is a candidate for title IV-E foster care benefits are: (1) A defined case plan which clearly indicates that, absent effective preventive services, foster care is the planned arrangement for the child, (2) an eligibility determination form which has been completed to establish the child's eligibility under title IV-E, or (3) evidence of court proceedings in relation to the removal of the child from the home, in the form of a petition to the court, a court order or a transcript of the court's proceedings.

Should the title IV-E agency determine that the child is no longer a candidate for foster care at any point prior to the removal of the child from his home, subsequent activities will not be allowable for reimbursement of costs under title IV-E.

- **Source/Date:** ACYF-CB-PA-87-05 (10/22/87); 7/7/2006; (12/17/2019)
- **Legal and Related References:** Social Security Act - sections 471(a)(15), 472(i)(2), and 479B; DHHS Grant Appeals Board Decision No. 844; ACYF-CB-IM-06-02

2. Question: At what point may a child be considered a candidate for foster care?

Answer: A candidate for foster care is a child who is at serious risk of removal from home as evidenced by the title IV-E agency either pursuing his/her removal from the home or making reasonable efforts to prevent such removal. The basis for determining when a child may be considered a candidate for foster care can be found in statute, Departmental policy, and Departmental Appeals Board (DAB) decisions:

STATUTE: Section 471(a)(15)(B)(i) of the Act provides the frame of reference for determining the point at which a child becomes a candidate for foster care by requiring a title IV-E agency to make reasonable efforts to prevent a child's removal from home. A child may not be considered a candidate for foster care solely because the title IV-E agency is involved with the child and his/her family. In order for the child to be considered a candidate for foster care, the title IV-E agency's involvement with the child and family must be for the specific purpose of either removing the child from the home or satisfying the reasonable efforts requirement with regard to preventing removal.

DEPARTMENTAL POLICY: Stipulates the three acceptable methods for documenting a child's candidacy for title IV-E foster maintenance payments. The existence of these forms of documentation indicates that a child legitimately may be considered a candidate for foster care:

1) A defined case plan which clearly indicates that, absent effective preventive services, foster care is the planned arrangement for the child.

The decision to remove a child from home is a significant legal and practice issue that is not entered into lightly. Therefore, a case plan that sets foster care as the goal for the child absent effective preventive services is an indication that the child is at serious risk of removal from his/her home because the title IV-E agency believes that a plan of action is needed to prevent that removal.

2) An eligibility determination form which has been completed to establish the child's eligibility for title IV-E foster care maintenance payments.

Completing the documentation to establish a child's title IV-E eligibility is an indication that the title IV-E agency is anticipating the child's entry into foster care and that s/he is at serious risk of removal from home. Eligibility forms used to document a child's candidacy for foster care should include evidence that the child is at serious risk of removal from home. Evidence of AFDC eligibility in and of itself is insufficient to establish a child's candidacy for foster care.

3) Evidence of court proceedings in relation to the removal of the child from the home, in the form of a petition to the court, a court order or a transcript of the court proceedings.

Clearly, if the title IV-E agency has initiated court proceedings to effect the child's removal from home, s/he is at serious risk of removal from the home.

DAB DECISIONS: DAB Decision No. 1428 offers the following guidance for identifying the point at which a child may be considered a candidate:

"...The methods of documenting candidacy [identified in the Department's policy guidance] involve activities which occur at a point when the state has initiated efforts to actually remove a child from his or her home or at the point the state has made a decision that the child

should be placed in foster care unless preventive services are effective..."

The DAB also ruled in Decision No. 1428 that a report of child abuse or neglect is insufficient for establishing a child's candidacy for foster care:

"...The fact that a child is the subject of [a child abuse/neglect report] falls far short of establishing that the child is at serious risk of placement in foster care and thus of becoming eligible for IV-E assistance..."

A candidate, in the opinion of the DAB, is a child who is at serious risk of removal from his/her home because the title IV-E agency is either pursuing that removal or attempting to prevent it. A child cannot be considered a candidate for foster care when the title IV-E agency has no formal involvement with the child or simply because s/he has been described as "at risk" due to circumstances such as social/interpersonal problems or a dysfunctional home environment.

- **Source/Date:** ACYF-CB-PA-01-02 (7/3/01); (12/17/2019)
- **Legal and Related References:** Social Security Act - sections 471(a)(15), 472(i), and 479B; Departmental Appeals Board Decision No. 1428

3. Question: Can children on trial home visits be considered candidates for title IV-E foster care?

Answer: Yes. A title IV-E agency often will provide supportive services to a child and family during the course of a trial home visit to facilitate the success of such visit. We believe that the services and supports provided to a child on a trial home visit can be considered reasonable efforts to prevent the child's removal from the home and return to foster care in accordance with section 471(a)(15) of the Social Security Act (the Act). If the title IV-E agency determines that the child on a trial home visit meets the other criteria in section 472(i)(2) of the Act, the title IV-E agency, may claim Federal reimbursement for the allowable title IV-E administrative costs associated therewith. However, a child may not be simultaneously both in foster care and a candidate for foster care. In addition, the title IV-E agency must document the child's candidacy for foster care pursuant to one of the approved methods. For example, the title IV-E agency may document in the child's case plan its intent for the child to return to foster care if the services provided during the course of the trial home visit prove unsuccessful.

- **Source/Date:** ACYF-CB-PA-01-02 (7/3/01); 7/7/2006; (12/17/2019)
- **Legal and Related References:** The Social Security Act - sections 471(a)(15), 472(i)(2) and 479B; 45 CFR 1356.21(e) and 1356.60; ACYF-CB-IM-06-02

4. Question: Can children in aftercare be considered candidates for title IV-E foster care?

Answer: Yes. During aftercare, the services or supports provided to the newly reunited family can be considered the title IV-E agency's reasonable efforts to prevent the child's removal from the home and re-entry into foster care in accordance with section 471(a)(15) of the Social Security Act (the Act). If the title IV-E agency determines that the child in aftercare meets the other criteria in section 472(i)(2) of the Act, the title IV-E agency may claim Federal reimbursement for the allowable title IV-E administrative costs associated therewith. However, in order to consider a child who is newly reunited with his/her family a candidate for foster care, the title IV-E must document the child's candidacy pursuant to one of the approved methods. The title IV-E agency may, for example, develop a case plan that demonstrates its intent to remove the child from home and return him/her to foster care if the aftercare services prove unsuccessful.

- **Source/Date:** ACYF-CB-PA-01-02 (7/3/01); 7/7/2006; (12/17/2019)
- **Legal and Related References:** The Social Security Act - sections 471(a)(15), 472(i)(2), and 479B; Departmental Appeals Board Decision No. 844; ACYF-CB-IM-06-02

5. Question: What is the maximum length of time a child may be held in candidate status?

Answer: Pursuant to Departmental Appeals Board Decision No. 844, the Department has instructed title IV-E agencies to cease claiming Federal reimbursement when the title IV-E agency determines, at any point prior to the removal of a child from home, that such child is no longer a candidate. By definition, a candidate is a child for whom the title IV-E agency is either pursuing or making reasonable efforts to prevent a removal, suggesting a child may be considered a candidate only for a finite period of time. We do not prescribe the maximum length of time a child may be considered a candidate; however, a title IV-E agency must document its justification for retaining a child in candidate status for longer than six months.

- **Source/Date:** ACYF-CB-PA-01-02 (7/3/01); (12/17/2019)
- **Legal and Related References:** Departmental Appeals Board Decision No. 844; Social Security Act - sections 472(i) and 479B

6. Question: Who must make the determination with respect to foster care candidacy?

Answer: The title IV-E agency (or another public agency that has entered into an agreement with the title IV-E agency pursuant to section 472(a)(2) of the Social Security Act (the Act)) must determine whether a child is a candidate. The basis for this clarification is set forth in regulation and Departmental policy:

REGULATION: A determination with respect to candidacy is a type of eligibility determination because title IV-E funds are expended as the result of a determination with respect to a child's status. The regulations at 45 CFR 205.100 require that officials of the title IV-E agency perform administrative functions that require the exercise of discretion. Under long-standing Departmental policy that originates with the 1939 amendments to the Social Security Act, the

determination of an individual's eligibility for a Federal entitlement is considered a function that requires the exercise of discretion. Accordingly, determinations with respect to foster care candidacy must be made by employees of the title IV-E agency, or of another public agency that has entered into an agreement with the title IV-E agency pursuant to section 472(a)(2) of the Act. We are aware that some States and Tribes with an approved title IV-E plan contract with consultants to assist in identifying children in the foster care caseload who may be eligible for title IV-E. These contractors are not employees of the title IV-E agency and may not make determinations with respect to title IV-E eligibility or foster care candidacy. The same holds true for the contractors of public agencies that enter into title IV-E agreements pursuant to section 472(a)(2) of the Act. Only employees of the public agency are authorized to make the determination of title IV-E eligibility and/or foster care candidacy.

DEPARTMENTAL POLICY: The three acceptable forms of documentation that establish a child's candidacy for title IV-E foster care maintenance payments that the title IV-E agency must make the determination with respect to candidacy:

1) A defined case plan which clearly indicates that, absent effective preventative services, foster care is the planned arrangement for the child.

The DAB, in Decision No. 844, ruled that the development of a case plan is a title IV-E administrative function that may be performed on behalf of candidates in accordance with section 471(a)(16) of the Act. The case plan identified above is thus the title IV-E agency's case plan developed in compliance with section 471(a)(16) of the Act.

2) An eligibility determination form which has been completed to establish the child's eligibility under title IV-E.

As stated earlier, only employees of the title IV-E agency can make the determination with respect to candidacy because it is a type of eligibility determination. The form referenced above is thus the title IV-E agency's documentation of the child's eligibility for title IV-E foster care maintenance payments.

3) Evidence of court proceedings in relation to the removal of the child from the home, in the form of a petition to the court, a court order or a transcript of the court proceedings.

A candidate is a child for whom the title IV-E agency is either seeking a removal or fulfilling the statutory requirement to attempt to prevent removal from the home. Among other things, the title IV-E agency is required to obtain a judicial determination sanctioning or approving such an attempt to prevent removal with respect to reasonable efforts to qualify the child for title IV-E foster care maintenance payments. The judicial proceedings referenced above are those proceedings the title IV-E agency initiates to obtain the judicial determinations related to the removal of a child from home.

- **Source/Date:** ACYF-CB-PA-01-02 (7/3/01); (12/17/2019)

- **Legal and Related References:** Social Security Act - sections 471(a)(16) 472(a) and (i) and 479B; 45 CFR 205.100; Departmental Appeals Board Decision No. 844

7. Question: Are children placed in facilities that are outside the scope of what is considered title IV-E foster care candidates for the purpose of claiming title IV-E administrative costs?

Answer: No. A child who has been removed from his/her home is not a candidate for foster care. Moreover, title IV-E agencies should note that, in accordance with long-standing Departmental policy, title IV-E administrative costs cannot be claimed on behalf of a child who is placed in a facility that is not a foster care facility, even if the title IV-E agency intends to place such child in foster care at a later date. Facilities that are outside the scope of foster care include, but are not limited to: detention facilities; psychiatric hospitals; forestry camps; or facilities that are primarily for the detention of children who are adjudicated delinquent.

- **Source/Date:** ACYF-CB-PIQ-85-06 (4/12/85); ACYF-CB-PA-01-02 (7/3/01); (12/17/2019)
- **Legal and Related References:** Social Security Act - sections 472(c)(2) and (i), and 479B

8. Question: What constitutes a case plan for the purposes of documenting a child's candidacy for foster care?

Answer: The development of a case plan in compliance with sections 471(a)(16) of the Social Security Act (the Act) is an allowable title IV-E function performed on behalf of candidates for foster care. The requirements for case plans developed pursuant to section 471(a)(16) of the Act are set forth in regulation at 45 CFR 1356.21(g). The provisions at 45 CFR 1356.21(g) are, therefore, to the extent that they are applicable to pre-placement, controlling with respect to case plans used to document candidacy for foster care. Specifically, the provisions at 45 CFR 1356.21(g)(1) and (4) apply. The case plan used to document a child's candidacy for foster care must be a written document that is developed jointly with the parent(s) or guardian of the child and include a description of the services offered and provided to prevent removal of the child from the home. In addition, the title IV-E agency must document, in said plan, that the goal for the child is foster care if the services described in the plan are not effective.

Adherences to the regulatory case plan provisions increase the likelihood that the plan will be effective, either in preventing or pursuing the removal of the child from the home. Nonetheless, title IV-E claims for administrative costs on behalf of candidates for foster care are not based on the completeness of the case plan. While we expect the case plan requirements that apply to a candidate to be met, the title IV-E agency may claim

administrative costs in the month that it determines and documents a child is a candidate for title IV-E foster care consistent with section 472(i)(2) of the Act (see Section 8.1C QA #5 of the Child Welfare Policy Manual).

- **Source/Date:** 8/16/02; 7/7/2006; (12/17/2019)
- **Legal and Related References:** Social Security Act - sections 471(a)(16), 472(i), 475(1), and 479B; 45 CFR 1356.21(g); Departmental Appeals Board Decision No. 844 ; Child Welfare Policy Manual Section 8.1C QA #5; ACYF-CB-IM-06-02

9. Question: The title IV-E agency is permitted to claim administrative costs for a candidate for foster care if a potentially title IV-E eligible child is at imminent risk of removal from the home and the title IV-E agency is either pursuing the removal of the child from the home or providing reasonable efforts to prevent the removal in accordance with section 471(a)(15) of the Social Security Act (the Act). Section 472(i)(2) of the Act requires the title IV-E agency to redetermine that a candidate for foster care remains at imminent risk of removal at least every six months. What happens if the title IV-E agency does not complete this redetermination timely?

Answer: The statute is very specific that the title IV-E agency may claim administrative costs for a candidate for foster care only if the title IV-E agency is providing reasonable efforts in accordance with section 471(a)(15) of the Act or pursuing the removal of the child from the home and redetermines at least every six months that the child remains at imminent risk of removal from the home. Therefore, if the title IV-E agency does not make this determination at the six-month point, the title IV-E agency must cease claiming administrative costs on behalf of the child.

- **Source/Date:** 8/7/2006; (12/17/2019)
- **Legal and Related References:** Social Security Act - sections 471(a)(15), 472(i)(2), and 479B

10. Question: Section 472(i)(2) of the Social Security Act (the Act) describes a candidate for foster care as a child at "imminent" risk of removal. Does the title IV-E agency have to use the term "imminent risk" in the case plan to document a child's candidacy? Or, is it permissible for the title IV-E agency to document that the child is at "serious risk of removal" from the home to satisfy this requirement?

Answer: We consider the term "serious risk of removal" to be synonymous with "imminent risk of removal." As such, the title IV-E agency may use this term in the case plan to document a child's candidacy. The title IV-E agency also may use alternate descriptions that are equivalent to "imminent" or "serious risk of removal." In addition, the title IV-E agency must ensure that the child meets all other criteria in section 472(i)(2) of the Act and the Child Welfare Policy Manual at Section 8.1, to be a candidate for foster care.

- **Source/Date:** 1/29/2007; (12/17/2019)

- **Legal and Related References:** Social Security Act - sections 472(i)(2) and 479B

11. Question: In order for a child to be considered a foster care candidate for purposes of section 472(i)(2) of the Social Security Act (the Act), among other things, the title IV-E agency must have documented that the child is at imminent risk of removal from the home. Does the out of home placement for the child have to be a foster care setting?

Answer: Yes. Section 472(i)(2) of the Act explicitly states that, among other requirements, to be a candidate for foster care, a child has to be potentially eligible for title IV-E foster care benefits. Therefore, this means that the title IV-E agency has made a decision that the out of home placement for the child will be a foster care setting. A child is not a candidate for foster care when the planned out of home placement for the child is an arrangement outside of foster care, such as a detention facility.

- **Source/Date:** 12/31/07; (12/17/2019)
- **Legal and Related References:** Social Security Act - sections 472(i)(2) and 479B