

# Child Welfare Policy Manual

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## Questions & Answers

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### 8.2B.11 TITLE IV-E, Adoption Assistance Program, Eligibility, Special needs

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**1. Question: Please explain the requirements for special needs determinations for a child who is not an "applicable" child.**

**Answer:** An integral part of establishing adoption assistance eligibility requires the title IV-E agency to determine that the child is a child with special needs in accordance with all three criteria defined in section 473(c) of the Social Security Act (the Act):

1) The title IV-E agency must determine that the child cannot or should not be returned to the home of his or her parents (section 473(c)(1) of the Act); and 2) The title IV-E agency must determine that there exists a specific factor or condition because of which it is reasonable to conclude that the child cannot be placed with adoptive parents without providing title IV-E adoption assistance or title XIX medical assistance. Such a factor or condition may include (but is not limited to) ethnic background, age or membership in a minority or sibling group, the presence of a medical condition, or physical, mental or emotional disabilities. For example, in some States ethnic background alone may inhibit the ability of a child to be adopted, while in other States a combination of factors, such as minority status and age, may be factors. It is important to note that in each case the title IV-E agency must conclude that, because of a specified factor or factors, the particular child cannot be placed with adoptive parents without providing assistance; and

3) Finally, the title IV-E agency must determine that in each case a reasonable, but unsuccessful, effort to place the child with appropriate parents without providing adoption assistance has been made. Such an effort might include the use of adoption exchanges, referral to appropriate specialized adoption agencies, or other such activities. The only exception to this requirement is when it would not be in the best interests of the child because of such factors as the existence of significant emotional ties with prospective adoptive parents while in the care of those parents as a foster child. The exception also extends to other circumstances that are not in the child's best interest, as well as adoption by a relative, in keeping with the statutory emphasis on the placement of children with relatives.

The title IV-E agency must document in each child's case record the specific factor(s) that make the child difficult to place and describe the efforts to place the child for adoption without providing assistance. In an effort to find an appropriate adoptive home for a child, and meet the requirement that a reasonable, but unsuccessful, effort be made to place the child without adoption assistance, it is not necessary for the agency to "shop" for a family while the

child remains in foster care. Once the agency has determined that placement with a certain family is in the child's best interest, the agency should make full disclosure about the child's background, as well as known or potential problems. If the agency has determined that the child cannot or should not return home and the child meets the statutory definition of special needs with regard to specific factors or conditions, then the agency can pose the question of whether the prospective adoptive parents are willing to adopt without assistance. If they say they cannot adopt the child without adoption assistance, the requirement in section 473(c)(2)(B) for a reasonable, but unsuccessful, effort to place the child without providing adoption assistance will be met.

\*Note: This Q/A was previously deleted on 10/25/2017 because at the time, the phase-in for the applicable child in section 473(e)(1)(B) of the Act was complete. P.L. 115-123 amended section 473(e)(1)(B) to extend the applicable child phase-in to FY 2025, effective 1/1/2018.

- **Source/Date:** ACYF-CB-PA-01-01 (1/23/01); (03/03/2020)
- **Legal and Related References:** Social Security Act - sections 471(a)(19), 473(c), and 479B

**2. Question: In establishing title IV-E eligibility for adoption assistance, is termination of parental rights the only mechanism for demonstrating that a child cannot or should not be returned home?**

**Answer:** One of the criteria for establishing that a child has special needs is a determination by the title IV-E agency that the child cannot or should not be returned to the home of his or her parents. Previous guidance stated that this means that the title IV-E agency must have reached that decision based on evidence by an order from a court of competent jurisdiction terminating parental rights, the existence of a petition for a termination of parental rights (TPR), or a signed relinquishment by the parents. It has been brought to our attention that there are situations in which adoptions are legal without a TPR. Specifically, in some Tribes adoption is legal without a TPR or a relinquishment from the biological parent(s), and there is at least one State that allows relatives who have cared for a related child for a period of time to adopt without first obtaining a TPR.

After consideration, we believe that our earlier policy is an unduly narrow interpretation of the statute. Consequently, if a child can be adopted in accordance with State or Tribal law without a TPR or relinquishment, the requirement of section 473 (c) of the Act will be satisfied, so long as the State or Tribe has documented the valid reason why the child cannot or should not be returned to the home of his or her parents.

- **Source/Date:** ACYF-CB-PA-01-01 (1/23/01)
- **Legal and Related References:** Social Security Act - section 473 (c)

**3. Question: In determining whether an applicable child who is a special needs child is eligible for title IV-E adoption assistance through the Supplemental Security Income (SSI) pathway, may a title IV-E agency make the determination that the child meets the medical or disability requirements for SSI benefits? (See section 473(a)(2)(A)(ii)(I)(bb) of the Social Security Act).**

**Answer:** Yes. For the purposes of determining whether an applicable child who is a special needs child is eligible for title IV-E adoption assistance through the SSI pathway, the title IV-E agency may make the determination that the child meets the medical or disability requirements for SSI benefits. The title IV-E agency is not making an SSI eligibility determination on behalf of the child, as that responsibility lies with the Social Security Administration and that includes a financial eligibility component. Rather, the title IV-E agency is responsible for title IV-E adoption assistance eligibility determinations, and therefore the agency is permitted to make the determination that the child meets the medical or disability requirements for SSI benefits for title IV-E eligibility purposes.

- **Source/Date:** 2/24/2011
- **Legal and Related References:** Social Security Act - Sections 473(a)(1)(B)(ii), 473(a)(2)(A)(ii)(I)(bb) and 473(c)(2)(B)(ii)

**4. Question: An applicable child must meet sections 473(c)(2)(A), (B) and (C) of the Social Security Act (the Act) in order to be considered a child with special needs for the adoption assistance program. Must a title IV-E agency's definition of a child with special needs include the criteria in section 473(c)(2)(B)(ii) of the Act that the applicable child meets all the medical or disability requirements of title XVI?**

**Answer:** Yes. A title IV-E agency must include both a child for whom the agency has determined there is a specific factor or condition (section 473(c)(2)(B)(i) of the Act) and a child who meets all medical or disability requirements of title XVI (section 473(c)(2)(B)(ii) of the Act) in the definition of a child with special needs for an applicable child. Therefore, the title IV-E agency must consider an applicable child who meets all the medical or disability requirements of title XVI and the requirements in sections 473(c)(2)(A) and (C) of the Act a child with special needs for the purpose of title IV-E adoption assistance eligibility.

- **Source/Date:** 05/04/11; (03/03/2020)
- **Legal and Related References:** Social Security Act - sections 473(c)(2)(A), (B) and (C)