

# Child Welfare Policy Manual

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## Questions & Answers

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### 8.3A.11 TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Removal from the home/living with

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**1. Question: We are confused by the term "constructive removal"? Please explain the term and its implications for the title IV-E program.**

**Answer:** To be eligible for title IV-E funding, a child must, among other things, be removed from the home of a relative as the result of a voluntary placement agreement or a judicial determination that continuation in the home would be contrary to the child's welfare. The statute allows a six-month period of time during which the child can live with an interim caretaker, relative or non-relative, and still be eligible for title IV-E. Under prior policy, we interpreted the term "removal" to mean a physical removal. As a result, if the interim caretaker was a relative, and the title IV-E agency intended to remove custody from the parent but let the child remain with that interim caretaker relative, the child could not be eligible for title IV-E funding because the child was not physically removed from the home of a relative. This policy created a disincentive for relative placements. To remove this inequity between relative and non-relative caregivers, we now permit the removal of the child from the home, in this circumstance, to be a "constructive" (i.e., nonphysical, paper, or legal) removal.

We offer 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 Aid to Families with Dependent Children (AFDC) in the home of the parent or other specified relative:

The child lived with either a related or non-related interim caretaker for less than six months prior to the title IV-E agency's petition to the court for removal of the child. The State/Tribe licenses the home as a foster family home and the child continues to reside in that home in foster care. The child is eligible for title IV-E foster care since s/he lived with the parent within six months of the title IV-E agency's petition to the court, and was constructively removed from the parent (i.e., there was a paper removal of custody).

The child lived with either a related or non-related interim caretaker for more than six months prior to the title IV-E agency's petition to the court. The State/Tribe licenses the home as a foster family home and the child remains in that home in foster care. The child is ineligible for title IV-E foster care since s/he had not lived with the parent within six months of the title IV-E

agency's petition to the court, and was not removed from the home of a relative. (Although constructively removed, the child is ineligible for title IV-E because it had been more than six months since the child lived with the parent.)

The child lives with a related interim caretaker for seven months before the caretaker contacts the title IV-E agency to remove the child from his/her home. The agency petitions the court and the court removes the custody from the parents and physically removes the child from the home of the interim related caretaker. The child would not be eligible for title IV-E foster care since s/he had not lived with the parent or other specified relative from whom there was a constructive removal within six months of the initiation of court proceedings. (Although the child was physically removed from the home of the related interim caretaker, that removal cannot be used to determine title IV-E eligibility since the removal was not the result of a voluntary placement agreement or judicial determination, as required in section 472(a)(2)(A) of the Act. Moreover, the child is ineligible for title IV-E because it had been more than six months since the child lived with the parent from whom s/he was removed.)

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

The child is in a three-generation household in which the mother leaves the home. The grandmother contacts the title IV-E 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 State/Tribe licenses the grandmother's home as a foster family home and the child continues to reside in the home in foster care. The child is eligible for title IV-E foster care since s/he lived with the parent within six months of the State's or Tribe's petition to the court, and was constructively removed from the parent's custody.

- **Source/Date:** Preamble to the Final Rule (65 FR 4020) (1/25/00); (3/2/20)
- **Legal and Related References:** Social Security Act - section 472(a)(2)(A) and 479B; 45 CFR 1356.21(k) and (l)

## **2. Question: Can a child be considered "constructively" removed from a legal guardian who is not a specified relative?**

**Answer:** No. The statute at section 472 (a)(3)(A) of the Social Security Act requires, among other things, that a child be living with and removed from the home of a specified relative at the time of the voluntary placement agreement or initiation of court proceedings. The provisions for "constructive" removal do not alter the requirement that the removal be from the home of a parent or specified relative.

- **Source/Date:** Preamble to the Final Rule (65 FR 4020) (1/25/00)

- **Legal and Related References:** Social Security Act - sections 406 (a) and 407 (as in effect on July 16, 1996) and 472(a)(3)(A); 45 CFR 1356.21 (k)

**3. Question: May a child born to a woman while she is a prison inmate or patient in a state hospital be considered eligible for foster care payments if all other title IV-E foster care requirements are met? It has been our interpretation that since the child could not return home with the mother and live with her because of her prisoner or patient status, the child would not be eligible to receive AFDC. Hence, such a child could not meet title IV-E foster care eligibility requirements.**

**Answer:** An otherwise eligible child born to a woman who is a prison inmate or a patient in a hospital, and deprived of the support of an absent father, would be eligible for the title IV-E foster care program if removed from the "home of a relative" and placed in foster care in accordance with section 472 of the Social Security Act (the Act). This is true when the child is placed in foster care awaiting the mother's release or when parental rights are terminated directly after birth. The inability of the child to return to the mother during her prisoner or patient status (or for any other reason) has no bearing on the child's eligibility for title IV-E foster care.

Eligibility for the title IV-E foster care maintenance payments program as defined in section 472(a) of the Act states that a title IV-E agency shall make foster care maintenance payment on behalf of each child who has been removed from the home of a relative specified in section 406(a) (as in effect on July 16, 1996) if, among other things, the child was AFDC eligible in the home of the specified relative from whom the child was legally removed.

The child born to a mother who was a hospital patient or a prison inmate would be considered to be living with the mother at the time of birth, and if placed in foster care would be removed from the home of the relative (the mother) in accordance with section 472 (a). The definition of "home" at 45 CFR 233.90(c)(1)(v)(B) is applicable to the hospital or prison setting.

- **Source/Date:** ACYF-CB-PIQ-86-03 (5/9/86); 7/17/2006; (3/2/20)
- **Legal and Related References:** Social Security Act - sections 406(a) and 407 (as in effect on July 16, 1996), 472(a), and 479B; 45 CFR 233.90(c)(1)(v)(B) and 1356.21(k)

**4. Question: For the purpose of determining a child's eligibility for Aid to Families with Dependent Children (AFDC) at the time of the child's removal from his or her home, the child must have been living with and removed from the home of a specified relative. Who is considered a "specified relative" for this purpose?**

**Answer:** A specified relative is defined as any relation by blood, marriage or adoption who is within the fifth degree of kinship to the dependent child. This includes great-great-great grandparents and first cousins once removed (children of first cousins). Accordingly, for the

purpose of determining title IV-E eligibility, any otherwise eligible child who is removed from the home of a relative who is within the fifth degree of kinship to the child will be eligible for assistance under title IV-E.

- **Source/Date:** ACYF-CB-IM-92-04 (2/24/92)
- **Legal and Related References:** 45 CFR 233.90 (c)(1)(v)

**5. Question: Once a court order is issued with a judicial determination that remaining in the home is contrary to the child's welfare, does the title IV-E agency have to actually remove the child at that time and place the child in foster care?**

**Answer:** Yes. Section 472(a)(2) of the Social Security Act predicates a child's receipt of title IV-E funds on the child's removal from home as the result of either a voluntary placement agreement or a judicial determination that to remain at home is contrary to the child's welfare.

The judicial determination that results in the child's removal must coincide with (i.e., occur at the same time as) the agency's action to physically or constructively remove the child, unless the court order specifies an alternative timeframe for removal, as allowed for in the Departmental Appeals Board (DAB) decision # 2017.

If a court makes a judicial determination that it is contrary to the child's welfare to remain at home (without specifying an alternative timeframe) and the child does, in fact, remain at home and no removal occurs, the requirement for removal is not met and the child is ineligible for title IV-E. If the child's safety is not at risk and a title IV-E agency chooses to offer support services to the family in-home to prevent having to remove the child, it should do so. Title IV-E agencies cannot issue "blanket" removal orders, however, in an attempt to guarantee title IV-E eligibility in the event that the child has to be removed from home at some point in the future.

- **Source/Date:** 1/29/2007; (3/2/20)
- **Legal and Related References:** Social Security Act - section 472(a)(2) and 479B; Departmental Appeals Board Decision No. 2017

**6. Question: A child is placed in a residential treatment facility by his parents without title IV-E agency involvement and the child remains there for more than six months while his parents maintain responsibility for the child. If the child is later judicially or voluntarily removed from the home and placed in the title IV-E agency's placement and care, could the child meet the Aid to Families with Dependent Children (AFDC) ¿living with¿ a specified relative requirement in section 472(a)(3)(A) of the Social Security Act (the Act)?**

**Answer:** Yes. The title IV-E foster care maintenance payment program includes a requirement that the child would have received AFDC in the home of the specified relative from which the child was removed in or for the month of removal if the child has "lived with" the specified relative within 6 months of the child's removal (see section 472(a)(3)(A) of the Act). In addition, 45 CFR 233.90(c)(v)(4)(B) provides that under the AFDC program, the "living with" standard has been met "so long as the relative exercises responsibility for the care and control of the child."

In this situation, the parents exercise responsibility for the care and control of the child as they have made a private placement for their child and can decide when their child can leave. Therefore, so long as the parents maintained care and control of the child while he or she was in the residential facility, the child could meet the AFDC "living with" requirement if the child is later judicially or voluntarily removed from the home and placed in the title IV-E agency's placement and care responsibility.

- **Source/Date:** 2/24/2011
- **Legal and Related References:** Social Security Act § Section 472(a)(3)(A), 45 CFR 233.90(c)(v)(4)(B), 45 CFR 1356.21(I)

**7. Question: May a youth over age 18 under the option per section 475(8)(B) of the Social Security Act be his or her own specified relative for the purposes of satisfying the "living with" and "removed from" specified relative requirements described at section 472(a) of the Social Security Act?**

**Answer:** Yes.

- **Source/Date:** 2/24/2011
- **Legal and Related References:** Social Security Act § Sections 472(a)(3)(A)(ii)(II) and 475(8)(B)

**8. Question: What is the definition of "relative" for the title IV-E program?**

**Answer:** Except where the title IV-E statute directly references the definition of relative under the former Aid to Families with Dependent Children (AFDC) program, title IV-E agencies have the discretion to define the term "relative" for the purposes of title IV-E.

Specifically, title IV-E agencies must use the definition of "specified relatives" as described in section 406(a) of the Social Security Act (the Act) as in effect on July 16, 1996, and implemented in 45 CFR 233.90(c)(1)(v) for the following title IV-E foster care provision:

- Title IV-E foster care maintenance payment eligibility in part depends on whether a child would have received AFDC in the home of a "specified relative" from which the child was removed in or for the month of removal if the child has lived with the "specified relative"

within 6 months of the child's removal (see section 472(a)(3)(A) of the Act and Child Welfare Policy Manual 8.3A.11, Q/A #4).

Title IV-E agencies have the discretion to define "relative" when it is not otherwise defined by the statute, including under the following provisions:

- A title IV-E agency may define "relative" for purposes of claiming administrative costs for a limited period of time while the relative's application for licensure or approval as a foster family home is pending, in accordance with 472(i)(1)(A) of the Act. (The child must have been removed from the home of a "specified relative" in order to be eligible for this administrative cost claiming.)
- A title IV-E agency may define "relative" for purposes of waiving non-safety licensing standards for relatives permitted under section 471(a)(10)(D) of the Act.
- A title IV-E agency has discretion to define the term "relative" for the purposes of the Title IV-E Kinship Guardianship Assistance Program. This means that the Children's Bureau will accept a title IV-E plan or amendment that contains a reasonable interpretation of a relative, including a plan that limits the term to include biological and legal familial ties or a plan that more broadly includes Tribal kin, extended family and friends, or other "fictive kin" (see section 471(a)(28), section 473(d) and ACYF-CB-PI-10-11).
- Under the relative notification requirements of section 471(a)(29) of the Act, the title IV-E agency has discretion to determine the scope of the terminology "all other adult relatives." However, to the extent that it is practical, the Children's Bureau suggests that the agency use the same definition of "relative" for the relative notification provision and the title IV-E kinship guardianship assistance program option (if the agency elects the guardianship option) (see ACYF-CB-PI-10-11).
- A title IV-E agency that elects to develop different licensing or approval standards for relative or kinship foster family homes and non-relative/non-kinship foster family homes under 45 CFR 1355.20 may define "relative" and "kin" when determining to whom they will apply the relative licensing and approval standards. The Children's Bureau encourages agencies to define relative and kin in a way that is inclusive of tribal custom and adopt a broad definition of relative and kin for purposes of licensing and approval standards.
- A title IV-E agency that elects to claim federal financial participation for allowable administrative costs of independent legal representation provided to the relative caregiver of a child who is eligible for title IV-E foster care under 45 CFR 1356.60(c)(4)(ii), has discretion to define the term "relative." For example, a title IV-E agency may define relative to include kin and "fictive-kin." In exercising this discretion, the Children's Bureau encourages title IV-E agencies to implement a definition of "relative" that includes a wide range of kinship relationships to support early identification of relatives and kin and to help remove barriers to kinship placements.

- **Source/Date:** 8/8/2024
- **Legal and Related References:** Social Security Act sections 471(a)(10), (28) and (29), 472(a)(3)(A) and (i)(1)(A); 473(d); 45 CFR 233.90(c)(1)(v), 1355.20, and 1356.60(c)(4)(ii); Child Welfare Policy Manual 8.3A.11, Q/A #4 and 8.1B, Q/A #11; ACYF-CB-PI-10-11