

Child Welfare Policy Manual

Questions & Answers

8.3A.14 TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Voluntary relinquishments

1. Question: May voluntary relinquishments from biological parents be treated as voluntary placement agreements for the purpose of establishing title IV-E eligibility? What if the relinquishment is approved by a court?

Answer: A child who is voluntarily relinquished to the title IV-E agency does not meet the requirements of section 472 of the Social Security Act for the receipt of foster care maintenance payments.

Voluntary relinquishment means the voluntary relinquishing by parents of their parental rights to the department of social services, without court involvement. A voluntary relinquishment does not meet the definition of a voluntary placement under section 472 nor is it a placement resulting from a judicial determination as provided by section 472. Thus, Federal financial participation (FFP) would not be available for voluntarily relinquished children.

In order for a child to qualify for foster care maintenance payments, section 472(a)(2) provides that removal from the home must occur by either of two ways: (1) pursuant to a voluntary placement agreement entered into by the child's parent or legal guardian or (2) be the result of a judicial determination to the effect that continuation therein would be contrary to the welfare of such child and that reasonable efforts have been made (A) prior to the placement of a child in foster care to prevent or eliminate the need for removal of the child from his home, (B) to make it possible for the child to return home, and (C) to finalize an alternate permanency plan if the child cannot be returned home.

The term "voluntary placement" as provided at section 472(f)(1) means: an out-of-home placement of a minor by or with participation of a title IV-E agency, after the parents or guardians of the minor have requested the assistance of the agency and signed a voluntary placement agreement. The term "voluntary placement agreement" as provided by section 472(f)(2) means: a written agreement, binding on the parties to the agreement between the title IV-E agency, any other agency acting on its behalf, and the parents or guardians of a minor child which specifies, at a minimum, the legal status of the child and the rights and obligations of the parents or guardians, the child, and the agency while the child is in placement.

It is clear from section 472, specifically sections 472(a)(2)(A) and (f) that voluntary placement recognizes an agreement between parents (or legal guardians) and the title IV-E agency. The agreement, as provided by section 472(f) must specify the "legal status of the child and the rights and obligations of the parents or guardians, the child, and the agency while the child is in placement." Parents cannot be a party to such an agreement while abandoning their basic legal status as parents. Further, if at any time after the signing of the agreement, the parents or legal guardians no longer have the legal status as such, then the agreement is no longer effective, and the placement is no longer the voluntary placement stipulated in the agreement.

The language of section 472(g) suggests that a voluntary placement is a temporary state of affairs with parents or guardians having the capacity and right to revoke such agreement unless a court determines that return to the home would be contrary to the best interest of the child. Even in this latter situation, such a determination prevents a return of the child to its parental home but does not deprive the parents of their parental rights.

Finally, with regard to non-voluntary placement under section 472, it is clear that Federal foster care payments can be made only if the removal from the home of the parents was the result of a judicial determination (including the "reasonable efforts" determination) as required by section 472(a)(2)(A)(ii). Thus, even though a voluntary relinquishment is later accepted or approved in court, such an approval does not change the nature of the action from a voluntary relinquishment to a removal which results from a judicial determination as provided by section 472(a)(2)(A)(ii).

- **Source/Date:** ACYF-CB-PIQ-85-03 (3/19/85); (3/2/20)
- **Legal and Related References:** Social Security Act - section 472 (a)(2)(A), (f) and (g), and 479B

2. Question: How may a child who is voluntarily relinquished by his/her parents to the title IV-E agency become eligible for title IV-E foster care maintenance payments?

Answer: If the child had last been living with the parent(s) within six months of the date court proceedings were initiated leading to a judicial determination that remaining in the home would be contrary to the welfare of such child, the removal from the home will be considered a "judicial removal." In addition, the "reasonable efforts" determination must be made in relation to removal of the child from the home. Such judicial determinations will prevail as the critical factor related to removal and any prior voluntary relinquishment action will not be relevant for purposes of title IV-E eligibility (sections 472(a)(2)(A)(ii) and 472(a)(3)(A) of the Social Security Act).

However, if the court merely sanctions the relinquishment without making the findings specified in section 472(a)(2)(A)(ii), the child cannot be considered to be "judicially removed" in accordance with that section, and foster care maintenance payments may not be claimed

under title IV-E.

- **Source/Date:** ACYF-CB-PIQ-89-01 (2/9/89); (3/2/20)
- **Legal and Related References:** Social Security Act - section 472(a)(2) and (3) and 479B