

Child Welfare Policy Manual

Questions & Answers

8.3A.7 TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Documentation of judicial determinations

1. Question: Please explain the rationale for the policy of requiring judicial determinations to be explicit, made on a case-by-case basis, and so stated in the court order and provide guidance on how to satisfy this requirement.

Answer: The basis for this policy can be found in the legislative history of the Federal foster care program. The Senate report on the bill that became Public Law 96-272 characterized the required judicial determinations as "... important safeguard[s] against inappropriate agency action..." and made clear that such requirements were not to become "... a mere pro forma exercise in paper shuffling to obtain Federal funding..." (S. Rept. No. 336, 96th Cong., 2d Sess. 16 (1980)). We concluded, based on our review of States' documentation of judicial determinations over the past years, that, in many instances, these important safeguards had become precisely what Congress was concerned that they not become.

Title IV-E agencies have a great deal of flexibility in satisfying this requirement. For example, the court order may reference the facts of a court report, related psychiatric or psycho-social report, or sustained petition as a mechanism for demonstrating that judicial determinations are made on a case-by-case basis. If the Title IV-E agency can demonstrate that such determinations are made on a case-by-case basis through a checklist then that is acceptable also.

- **Source/Date:** Preamble to the Final Rule (65 FR 4020) (1/25/00); 10/23/19
- **Legal and Related References:** Social Security Act - section 479B; 45 CFR 1356.21 (d); S. Rept. No. 336, 96th Congress, 2nd Session 16 (1980)

2. Question: Some States do not transcribe court hearings; rather, court clerks take "bench notes" during the course of a hearing. Are these "bench notes" acceptable for purposes of meeting the documentation requirements of 45 CFR 1356.21(d)?

Answer: No. Bench notes do not constitute acceptable documentation of judicial determinations. In accordance with the regulations, the only acceptable alternative documentation of judicial determinations, absent language in a court order, is a transcript of the court proceedings. We recommend that the State agency collaborate closely with the judicial system to assure that the necessary judicial determinations are made and appropriately recorded for children who must be removed from their homes.

- **Source/Date:** Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)
- **Legal and Related References:** 45 CFR 1356.21 (d)

3. Question: Please clarify whether a judicial determination to satisfy title IV-E eligibility criteria must use the exact terminology of "contrary to the welfare," "reasonable efforts to prevent removal" or "reasonable efforts to finalize a permanency plan."

Answer: Judicial determinations do not need to contain the exact language in the statute at section 472(a)(2)(A)(ii) of the Social Security Act (the Act) or regulations at 45 CFR 1356.21(b) and (c) to satisfy the title IV-E eligibility requirements. As specified in the preamble to the final rule published on January 25, 2000 (65 FR 4056), the judicial determinations must convey that the court has determined that the requisite findings have been made. If the judicial determination is not made in a court order, a transcript of the proceedings that indicates that the judicial determination was made is the only other acceptable documentation.

- **Source/Date:** 12/6/2007
- **Legal and Related References:** Social Security Act - 472(a)(2)(A)(ii); 45 CFR 1356.21; 65 FR 4056