

Child Welfare Policy Manual

Questions & Answers

8.3A.9a TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Reasonable Efforts to Finalize a Permanency Plan

1. Question: We understand that the timing for obtaining the initial judicial determination related to making reasonable efforts to finalize/achieve a permanency plan is based on the date the child is considered to have entered foster care. Are subsequent judicial determinations to be obtained based on the date the child is considered to have entered foster care or within 12 months of the date the judicial determination actually was obtained?

Answer: The statute requires that the judicial determination of reasonable efforts to finalize/achieve a permanency plan be obtained no later than 12 months from the date the child is considered to have entered foster care and at least once every 12 months thereafter while the child is in foster care. Accordingly, title IV-E agencies must use the date of the last judicial determination for a child to determine the date the next one is due. In no circumstance may the interval between these judicial determinations exceed 12 months. If a judicial determination regarding reasonable efforts to finalize a permanency plan is not made within the time frame prescribed above, the child becomes ineligible under title IV-E at the end of the month in which the judicial determination was required to have been made and remains ineligible until such a determination is made.

Although the permanency hearing may serve as the mechanism for obtaining the judicial determination of reasonable efforts to finalize/achieve a permanency plan, there is no requirement that the judicial determination be made at a permanency hearing. The court may make such a judicial determination, based upon evidence presented to it by the title IV-E agency, without a formal hearing.

- **Source/Date:** 06/09/04; (3/2/20)
- **Legal and Related References:** Social Security Act - section 471(a)(15)(B) and 479B; 45 CFR 1355.20 and 1356.21(b)(2).

2. Question: Regarding the reasonable efforts to finalize judicial determination: Is the title IV-E agency required to look at the permanency plan in effect at the time the judicial determination is due to see if the court order addresses that specific plan in its reasonable efforts judicial determination?

Answer: No. The title IV-E agency is not required to reconcile the permanency plan in effect at the time the judicial determination is due with the reasonable efforts determination itself. In order to sustain a child's ongoing title IV-E foster care eligibility, the court must make a judicial determination of reasonable efforts to finalize a permanency plan within 12 months from the date the child is considered to have entered foster care and at least once every 12 months thereafter while the child remains in foster care. We have indicated that we will not instruct courts on the criteria they are to use to make the judicial determination. At the same time, however, we recognize the significance of the provision as it relates to moving a child toward permanency. The courts, therefore, may rule on the plan that is in effect at the time of the finding, a plan that has been in effect for a brief period of time, or the activities related to achieving permanency that took place over the prior 12 months, even if the plan had been abandoned during that 12-month period. In any event, the judicial determination should reflect the court's judgment as to whether the agency activities that were performed during the previous 12 months were meaningful in bringing about permanency for the child.

- **Source/Date:** 7/6/05; (3/2/20)
- **Legal and Related References:** Social Security Act - Section 471(a)(15) and 479B; 45 CFR 1356.21(b)(2), 1356.71(d)(1)(i)

3. Question: Is the title IV-E agency required to obtain a judicial determination regarding reasonable efforts to finalize a permanency plan in accordance with 45 CFR 1356.21(b)(2) for a child placed in foster care as a result of a voluntary placement agreement?

Answer: No. A judicial determination regarding reasonable efforts to finalize a permanency plan is required only for children removed from their homes via court action (section 472(a)(2)(A)(ii) of the Social Security Act (the Act)). Although a judicial determination regarding reasonable efforts to finalize a permanency plan is not required, the title IV-E agency must comply with the title IV-E plan requirements to provide reasonable efforts for all children as described in section 471(a)(15) of the Act, including those children who are voluntarily placed.

- **Source/Date:** April 6, 2006; (3/2/20)
- **Legal and Related References:** Social Security Act - sections 472(a)(2)(A)(ii), 471(a)(15), and 479B; 45 CFR 1356.21(b) and 1356.22

4. Question: What are the criteria for determining whether a child is ineligible for a title IV-E foster care maintenance payment with respect to the requirement that a judicial determination regarding reasonable efforts to finalize a permanency plan be made within 12 months of the date the child is considered to have entered foster care and every 12 months thereafter? For example, is a child ineligible from the date the determination is due until such time as the date the determination is made?

Answer: Consistent with the regulation at 45 CFR 1356.21(b)(2)(ii), if a judicial determination regarding reasonable efforts to finalize a permanency plan is not made in accordance with the prescribed schedule, the child becomes ineligible for title IV-E at the end of 12th month following the date the child is considered to have entered foster care or the end of the 12th month from the most recently obtained judicial determination regarding reasonable efforts to finalize a permanency plan. If the reasonable efforts to finalize a permanency plan determination subsequently is made later for the otherwise eligible child, the title IV-E agency can claim Federal financial participation (FFP) under title IV-E foster care from the beginning of the month in which the judicial determination was made. See section 8.3A.15 of the Child Welfare Policy Manual, Q/A#1.

We offer the following example to clarify the policy:

If the judicial determination regarding reasonable efforts to finalize a permanency plan is due September 10, 2004, but not held until October 18, 2004, the title IV-E agency may claim FFP on behalf of an otherwise eligible child without interruption. Consistent with the regulation cited above, the child is eligible until the end of the 12th month in which the determination is due. Therefore, in this example, the child is eligible through September 2004, which is the month in which the determination was due. Further, in accordance with long-standing Departmental policy, once all eligibility criteria are met for a child, a title IV-E agency may claim Federal financial participation for a child from the first day of placement in the month in which all title IV-E eligibility criteria are met. Therefore, the child would continue to be eligible for title IV-E benefits from October 1, 2004, since the determination was made in October 2004.

It should be noted that for a child who entered foster care prior to March 27, 2000 (the effective date of the Final Rule which established the reasonable efforts to finalize a permanency plan requirement at 45 CFR 1356.21(b)(2)), the concept of "the date the child is considered to have entered foster care" is nonexistent. For those children, the initial reasonable efforts to finalize a permanency plan judicial determination was due no later than March 27, 2001.

- **Source/Date:** 8/7/2006; (3/2/20)
- **Legal and Related References:** Social Security Act - section 471(a)(15)(B)(ii) and 479B; 45 CFR 1356.21(b)(2)(ii); 65 FR 4052; Child Welfare Policy Manual Section 8.3A.15 Q/A#1

5. Question: When a child in foster care is placed in another State and the sending State transfers the child's placement and care responsibility to the receiving State's title IV-B/IV-E agency, does the "clock" re-start for determining when the case review requirements or reasonable efforts to finalize a permanency plan are due?

Answer: No. The "clock" for the case review requirements and reasonable efforts to finalize a permanency plan judicial determination begins on the date the child is considered to have entered foster care (section 475(5)(F) of the Social Security Act, 45 CFR 1355.20 and 1356.21(b)(2)). The date the child is considered to have entered foster care is the earlier of the date of the first judicial finding that the child has been subjected to child abuse or neglect, or the date that is 60 days after the child's removal from the home. The child's transfer from one State to another does not alter either date. Moreover, we believe that not extending the timeframes for carrying out the protections in such circumstances is consistent with a child's sense of time and the statute's emphasis on timely permanency for children.

- **Source/Date:** 09/05/07
- **Legal and Related References:** Social Security Act - section 475(5)(F); 45 CFR 1355.20 and 1356.21(b)(2)