

# **Child Welfare Policy Manual**

## **Section 8.3A.6: TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Contrary to the welfare**

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### **8.3A.6. TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Contrary to the welfare**

**Question 1. Do you consider an emergency order (sometimes referred to as a "pick-up order" or "ex-parte order") as the first court ruling for the purpose of meeting the contrary to the welfare requirements?**

#### **Answer**

We have made no distinction about the type of order in which the contrary to the welfare determination is required. Such a determination must be made in the very first court order pertaining to the child's removal from home. If the emergency order is the first order pertaining to a child's removal from home, then the contrary to the welfare determination must be made in that order to establish title IV-E eligibility.

#### **Source/Date**

Preamble to the Final Rule (65 FR 4020) (1/25/00)

#### **Legal and Related References**

45 CFR 1356.21 (c)

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**Question 3. A child is ineligible for an entire foster care episode for failure to satisfy the contrary to the welfare requirements. Please explain the rationale for this position.**

#### **Answer**

The contrary to the welfare determination is a critical statutory protection and a criterion for establishing title IV-E eligibility. Once a child is removed from home, the title IV-E agency cannot go back and "fix" an inappropriate removal. If a child's removal from home is not based on a judicial determination that it was contrary to the child's welfare to remain in the home, the child is ineligible for title IV-E funding for the entire foster care episode subsequent to that removal because there is no opportunity to satisfy this eligibility criterion at a later date. The same does not hold true for all other eligibility criteria. For example, judicial determinations regarding reasonable efforts to finalize a permanency plan, placement in a licensed foster family home or child care institution, and title IV-E agency responsibility for placement and care are all title IV-E eligibility criteria that can be reestablished if lost or established at a later time if missing at the beginning of a foster care episode. This is not the case with the contrary to the welfare determination.

### **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 (c)

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**Question 4. Court orders that sentence a child to a juvenile detention facility often include language which differs from that in a dependency order resulting in a foster care placement. Does language in a detention order indicating that the child is a "threat to himself or the community" meet the requirement in section 472(a)(2)(A)(ii) regarding "contrary to the welfare?"**

### **Answer**

A court order indicating that the child is a threat to himself satisfies the requirement of a determination that remaining in the home would be contrary to the child's welfare. However, if the court order indicates only that the child is a threat to the community, such language would

not satisfy the requirement for a determination that continuation in the home would be contrary to the child's welfare.

**Source/Date**

ACYF-CB-PIQ-91-03 (4/3/91)

**Legal and Related References**

Social Security Act - section 472 (a)(2)(A)(ii)

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**Question 5. If a temporary detention order states that the child is to be detained until sentencing because there is reason to believe he would run away, would this satisfy the requirement for a determination regarding "contrary to the welfare?"**

**Answer**

No. This language could not be construed to mean that to continue in the home would be "contrary to the (child's) welfare." It is important to remember that the judicial determinations required for title IV-E eligibility were intended to ensure that children were not removed from their homes unnecessarily. In juvenile justice procedures, where children are removed for correctional purposes, the courts must determine that continuation in the home would be contrary to the child's welfare if title IV-E eligibility is to be established.

**Source/Date**

ACYF-CB-PIQ-91-03 (4/3/91)

**Legal and Related References**

Social Security Act - section 472 (a)(2)(A)(ii)

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**Question 6. Our State presently petitions the court for protective supervision of a child (not legal custody) with the right to place the child. The petition is based on the child's being within the jurisdiction of the court on the basis that the child is abused, neglected, or is beyond the control of the parents. If the State is**

**given protective supervision with the right to place, it is based on that petition. If placement becomes necessary, placement is made without the State needing to return to court for an amended order. In some situations, the child is already in placement under an immediate physical custody order of the court. Is the granting of a State's petition for protective supervision with the right to place and the subsequent placement of the child sufficient to make an otherwise eligible child qualify for foster care payments under title IV-E?**

### **Answer**

No. The Social Security Act, at section 472 (a)(2)(A), requires that the removal of a child from the home be the result of a voluntary placement agreement or a judicial determination to the effect that continuation therein would be contrary to the welfare of the child.

If the court grants protective supervision responsibility to the title IV-E agency and leaves to that agency the option to remove the child from the home at a later time, the requirement in section 472 (a)(2)(A)(ii) for a judicial determination has not been met. Although there are no Federal requirements as to the exact language of court orders, the Act requires a judicial determination to the effect that continuation in the child's home would be contrary to his welfare. The granting of a petition for protective supervision with the right to place the child is not sufficient to meet this requirement.

At the time of removal, if a judicial determination is made that amends the earlier order granting protective supervision that sanctions the removal and satisfies the requirements in section 472 (a)(2)(A)(ii), the otherwise eligible child would then become eligible for title IV-E.

### **Source/Date**

ACYF-CB-PIQ-84-05 (7/5/84); ACYF-CB-PIQ-85-07 (6/25/85); 10/23/19

### **Legal and Related References**

Social Security Act - section 472(a)(2)(A) and 479B

**Question 7. After a dependency petition is filed, the court finds reasonable grounds to believe a child is dependent and would be endangered in his or her home and enters a temporary shelter order causing the child to be taken in to custody. The child is then placed in foster care by the title IV-E agency. Does this temporary shelter order constitute a "judicial determination" as required for a title IV-E agency to receive Federal financial participation (FFP) in the costs of the child's foster care maintenance under the title IV-E program? May FFP begin from the date of the shelter order, if the order is not rescinded or otherwise revised so that it no longer supports the removal of the child from the home?**

**Answer**

A temporary shelter care order that meets the requirements of a "judicial determination" would permit the authorization of FFP as of the date of the shelter care order, provided all other eligibility requirements are met. As to the requirements of a "judicial determination," the essential element is that the court order (temporary or dispositional) for removal of the child from the home is based on a determination that continuation therein would be contrary to the welfare of the child.

It is correct that FFP would have to be discontinued if at a subsequent hearing the court order was rescinded or revised so that it no longer supported the removal of the child from the home. It is also correct that the date the judicial proceedings are initiated is not the date the judicial determination is made, if the initiated action is only a petition or summons, unless the judicial determination is made on the same date.

A title IV-E agency may claim Federal matching for costs of children placed involuntarily in foster care only after judicial determinations are made (1) that continuation in the home would be contrary to the welfare of the child and (2) that reasonable efforts had been made to prevent the removal of the child from the home. Once the court order is issued (either a temporary or dispositional order), FFP may be claimed only from the first day the child is in the foster home; provided all other title IV-E eligibility criteria are satisfied.

## **Source/Date**

ACYF-CB-PIQ-82-03 (1/29/82); 10/23/19

## **Legal and Related References**

Social Security Act - section 472 and 479B

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**Question 8. Once a court order is issued with a judicial determination that remaining in the home is contrary to the child's welfare, does the State/Tribe 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. States/Tribes 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; 10/23/19

## **Legal and Related References**

Social Security Act - section 472(a)(2) and 479B

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