

Child Welfare Policy Manual

Questions & Answers

8.3A.9b TITLE IV-E, Foster Care Maintenance Payments Program, Reasonable efforts, to prevent a removal

1. Question: Does the initial "reasonable efforts to prevent removal" determination affect the child's initial eligibility for title IV-E foster care payments, or does this determination constitute FFP criteria for claiming foster care maintenance payments?

Answer: Pursuant to the regulations at section 1356.21(b) (1) (ii), judicial determinations regarding reasonable efforts to prevent removal must be made in accordance with the criteria and time frames specified therein, or the child is not eligible under the title IV-E foster care maintenance payments program for the duration of that stay in foster care.

- **Source/Date:** Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)
- **Legal and Related References:** Social Security Act - section 472 (a)(2)(A)(ii); 45 CFR 1356.21 (b)

2. Question: When must the "reasonable efforts to prevent removal" criteria be met; in the initial court order that removes the child or 60 days from the date the child is removed?

Answer: Pursuant to 45 CFR 1356.21(b)(1)(i), the title IV-E agency must obtain a judicial determination that it either made or was not required to make reasonable efforts to prevent a child's removal from the home no later than 60 days from the date the child was removed from the home. However, the title IV-E agency may obtain such a determination earlier than 60 days from the date of removal.

- **Source/Date:** Questions and Answers on the Final Rule (65 FR 4020) (1/25/00); (3/2/20)
- **Legal and Related References:** Social Security Act - section 471(a)(15) and 479B; 45 CFR 1356.21(b)

3. Question: Title IV-E eligibility for an entire foster care episode is prohibited if the reasonable efforts to prevent removal requirements are not satisfied. Please explain the rationale for this policy.

Answer: The requirement for the title IV-E agency to make reasonable efforts to prevent removals is a fundamental protection under the Social Security Act and one of several criteria used in establishing title IV-E eligibility. From both a practice and an eligibility

perspective, it is impossible for the title IV-E agency to provide efforts to prevent the removal of a child from home after the fact.

From a practice perspective, the removal of a child from the home, even temporarily, makes a profound impact on a family that cannot be undone. If the child is returned after services have been delivered, or even immediately, the title IV-E agency has reunified the family, not prevented a removal.

The statute requires that title IV-E eligibility be established at the time of a removal. If the title IV-E agency does not make reasonable efforts to prevent a removal or fails to obtain a judicial determination with respect to such efforts, the child can never become eligible for title IV-E funding for that entire foster care episode because there is no opportunity to establish eligibility at a later date.

- **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) and 479B; 45 CFR 1356.21(b)(1)

4. Question: For title IV-E eligibility purposes, will the Administration for Children and Families accept a judicial determination that efforts to prevent removal or reunify the family were not necessary for a reason other than those described in 45 CFR 1356.21(b)(3)?

Answer: Yes. We addressed this issue in the 1998 preamble to the Proposed Rule on *Title IV-E Foster Care Eligibility Reviews and Child and Family Services State Plan Reviews* (63 FR 50057, 50073). It states that "[w]hile we recognize that concern for the child's safety may preclude efforts to prevent removal, the court must make a reasonable efforts determination. Even when children are removed in emergency situations, the court must consider whether appropriate services were or should have been provided. When the court determines that it was reasonable for the agency to make no effort to provide services to prevent removal [or to return the child home] in light of exigent circumstances discovered through assessment of the family, such as the safety or protection of the child, there must be a judicial determination to that effect." Thus, if there is a judicial determination to the effect that efforts to prevent removal or reunify the family have not been made due to the immediate danger to the child, or that the lack of efforts is appropriate due to the particular circumstances of the case, the reasonable efforts requirements in 45 CFR 1356.21(b)(1) and (2) will be satisfied.

- **Source/Date:** 12/31/07
- **Legal and Related References:** 45 CFR §1356.21(b); Title IV-E Foster Care Eligibility Reviews and Child and Family Services State Plan Reviews (63 FR 50057, 50073; 65 FR 4020, 4053)