



*State of Delaware*

*The Department of Services for  
Children, Youth and Their Families*

## **ADOPTION ASSISTANCE**

### **ELIGIBILITY DETERMINATION POLICY MANUAL**

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## **TITLE IV-E ADOPTION ASSISTANCE ELIGIBILITY**

### **Overview**

The purpose of the adoption assistance provision of Title IV-E is to make financial and medical assistance available to adoptive parents to ensure that children whose parental rights have been terminated and with special needs who are difficult to place in adoptive homes will remain not in foster care for financial reasons alone. The Adoption Assistance and Child Welfare Act of 1980, as modified by the Adoption and Safe Families Act of 1997, provides federal financial participation for adoptions subsidies paid by the State. Federal reimbursement is available for special needs children who are eligible for AFDC (using the criteria in effect on July 16, 1996), Title IV-E maintenance, or the Supplemental Security Income (SSI) program or special needs children that can be determined to be an applicable child as defined in Public Law 110-350. The State will provide health insurance coverage (through one or more State medical assistance programs), with the same type and kind of benefits as those which would be provided for children by the State under Title XIX, or a comparable State medical plan, for any child who has been determined to be a child with special needs, for whom there is in effect an adoption assistance agreement between the State and an adoptive parent or parents, and who the State has determined cannot be placed with an adoptive parent or parents without medical assistance due to special needs for medical, mental health or rehabilitative care. In the event that the State provides such coverage through a State medical assistance program other than the program under Title XIX, and the State exceeds its funding for services under such other program, any such child is deemed to be receiving aid or assistance under the State plan under this part for purposes of section 1902(a)(10)(a)(i)(1); and in determining cost-sharing requirements, the State will take into consideration the circumstances of the adopting parent or parents and the needs of the child being adopted to the extent coverage is provided through a State medical assistance program, consistent with the rules under such program.

### **Applicable Child (Fostering Connections to Success and Increasing Adoptions Act of 2008)**

**Applicable Child** – The State must apply the “applicable child” eligibility requirements to anyone who is an “applicable child” based on his or her age, if the child has attained the age (as outlined in the chart below) at any time before the end of the Federal fiscal year during which the adoption assistance agreement is entered into or meets one of the other criteria listed in Appendix A.. The child must meet the following special needs criteria, to meet the definition of an “applicable child”.

- The child cannot or should not be returned to the home of his parents in accordance with criteria that DE DSCYF has established;
- That there is a specific factor or condition (such as ethnic background, age or membership in a minority or sibling group, or the presence of factors such as medical conditions or physical, mental or emotional handicaps) because of which it is reasonable to conclude that the child cannot be placed with adoptive parents without providing adoption assistance under title IV-E and medical assistance under title XIX, - OR –

- The child meets all of the medical or disability requirements for Supplemental Security Income (SSI). If a child meets all the medical or disability requirements for SSI the criteria for the factor or condition element of the special needs determination will be met; and
- That a reasonable, but unsuccessful effort has been made to place the child with adoptive parents without providing adoption assistance under title IV-E or medical assistance under title XIX. The only exception to this requirement is where it would be against the best interests of the child because of such factors as the existence of significant emotional ties with prospective adoptive parents while in the care of the parents as a foster child.

**Applicable Child Age Chart**

<b>In the case of fiscal year:</b>	<b>The applicable age is:</b>
2010	16
2011	14
2012	12
2013	10
2014	8
2015	6
2016	4
2017	2
2018 or thereafter	any age

**Eligibility Criteria for Non-Applicable Children**

The following represent the eligibility criteria that must be present in order for a child to be considered eligible for Title IV-E Adoption Assistance. All of these are addressed in detail below:

- The child cannot or should not be returned to the home of his parents in accordance with the criteria that DSCYF has established.

**1. Legal Custody**

The child must be in the legal custody of the Department or another public or private agency approved by the Department.

**2. “Special Needs” Condition or Characteristic**

The child must have “Special Needs” which are conditions or child characteristics that make it difficult to place a child for adoption without providing adoption assistance or Medical Assistance to prospective adoptive parents. There must be documentation that a child has at least one of the following, physical, mental, or emotional or handicapping characteristics:

- a) Eight(8) years of age or over
- b) Member of a minority race or ethnic culture
- c) Member of a sibling group to be adopted by the same family
- d) A diagnosed physical handicap or chronic disease requiring medical attention
- e) A mental or emotional condition requiring treatment

### **3. Adoption Assistance Agreement**

There must be a valid adoption assistance agreement between the Department and the adoptive parent (s). The Adoption Assistance Agreement is a written agreement between the Department and the prospective adoptive parents (and other relevant agencies, if any). The agreement must be signed and in effect at the time, or prior to the time, the court issues the final adoption decree. A signed copy of the agreement must be given to each party to the agreement. The agreement must specify the following:

1. Duration of the agreement, which cannot have a blanket limitation to a date earlier than the child’s 18<sup>th</sup> birthday. In individual cases it may end before the 18<sup>th</sup> birthday. In certain situations the duration of the agreement can be extended to age 21, if the Department determines that the child has a mental or physical handicap which warrants the continuation of assistance to age twenty-one.
2. The nature and amount of the assistance payments and other services to be provided, if any, where the payment amount may not exceed the maximum foster care maintenance payment the child received or would have received if the child had been in a foster home, and the payment schedule and commencement date;
3. The circumstances that would cause a reduction in the amount paid or termination of the agreement;
4. Information concerning additional services that may be available to the child;
5. That the child is eligible for Medical Assistance and Title XX services;
6. That the agreement will remain in effect regardless of the state in which the child resides;
7. Contains provisions for the protection of the interests of the child in case the adoptive parents and child should move to another State while the agreement is in effect;
8. That the adoptive parents are responsible for notifying the Department of changes in circumstances; and
9. The specific services that will be provided by a private non-profit agency that is a party to the agreement (if applicable).

### **4. Reasonable, But Unsuccessful, Efforts to Place Without Assistance**

The Department must have made reasonable efforts to place the child without adoption assistance. Evidence of this effort must be documented in the child's record.

This requirement is met if there is a specific recruited adoptive family's declaration that they cannot adopt a specific child without assistance, after the agency has determined that the family is the most suitable for the child.

This requirement is also met if it can be shown that such a placement effort would not be in the best interests of the child because of the existence of significant emotional ties with foster parents who want to adopt the child and the emotional ties occurred while the child was in placement with these foster parents.

### **5. Needy Child**

The child must have a financial need at the time that adoption proceedings were initiated (this refers to the month in which the adoption petition was filed). This means that the child must be receiving or eligible to receive SSI, or Title IV-E Placement Maintenance, or meet the AFDC eligibility criteria in effect on July 16, 1996.

If a child does not meet any of these criteria in the month in which the adoption petition was filed, then it must be shown that the child had "relatedness: to the AFDC Program in the month of the child's initial removal from the home into foster care. (AFDC relatedness is determined by making a hypothetical determination, just as it is in Title IV-E maintenance eligibility determinations).

The following are six ways in which a child can meet the categorical eligibility requirement for Title IV-E Adoption Assistance:

1. SSI Eligible - In the month in which the adoption petition was filed the child was eligible to receive SSI benefits.
2. Title IV-E Foster Care Eligible - In the month in which the adoption petition was filed the child was eligible for Title IV-E Maintenance.
3. Child of a Minor Parent Receiving Title IV-E Foster Care Payments – In the month in which the adoption petition was filed the child was in placement with his or her minor parent and the minor parent was receiving Title IV-E Maintenance.
4. Disrupted Title IV-E Adoption Assistance Case – A Title IV-E adoption assistance eligible child whose adoption is subsequently dissolved and the parental rights of the adoptive parents have been terminated or the adoptive parents have died, will continue to be Title IV-E adoption assistance eligible when adopted again.

*Note: This applies only to children adopted on or after October 1, 1997.*

5. The Child was living With a Specified Relative – In the month in which the adoption petition was filed the child was living with a specified relative and the child would have met the AFDC eligibility criteria in place on July 16, 1996.
6. The Child "would have been eligible" for AFDC when first removed from their home into foster care – If "1" through "5" above do not apply, then in the month of the child's initial removal from their home, the child would have met the AFDC eligibility criteria

in place on July 16, 1996. Also, the child had been living with a relative specified in section 406(a) of the Act within six months before the month in which a voluntary placement agreement was entered into or court proceedings leading to the judicial determination referred to in section 473(a)(2)(A)(i), were initiated and would have received AFDC in that relative's home under the State plan approved under section 402 of the Act for that month, if in that month the child had been living with such relative and application had been made. Lastly, the child is determined eligible for adoption assistance payments under 473 of the Act with respect to a prior adoption and/or fails to meet the requirements of section 473(a)(2)(A)(i) but will meet such requirements if the child is treated as if the child is in the same financial and other circumstances the child was in the last time the child was determined eligible for adoption assistance payments under section 473 of the Act and the prior adoption is treated as never having occurred. Please note DSCYF does not remove children through Voluntary Placement Agreements (VPAs).

## **6. Age**

The child must be under the age of eighteen (18) to be eligible for Title IV-E adoption assistance or under age twenty-one (21), if the Department determines that the child has a mental or physical handicap which warrants the continuation of assistance to age twenty-one.

## **7. Citizenship**

The child must be a citizen of the United States by birth or naturalization or meet the definition of a "qualified alien" under federal law to apply for or receive Title IV-E adoption assistance.

*Note: There is no citizenship requirement for Federal adoption assistance agreements signed before August 22, 1996.*

A child who is a qualified alien that entered the United States on or after August 22, 1996, is subject to a five year-year residency requirement before becoming eligible for Title IV-E benefits, except under two conditions:

1. The child is placed with an adoptive parent who is a citizen or qualified alien, or
2. The child is one of the following excepted groups: refugees, asylees, aliens whose deportation is withheld, Cuban/Haitian entrants or Ameri-Asians from Vietnam.

The citizen or immigrant status of a child applying for Title IV-E benefits must be verified:

1. For children born in the United States citizenship status is verified by the child's birth certificate.
2. If the child was born in another country and later became a naturalized U.S. citizen, citizenship papers will serve as verification.
3. For non-citizens, "qualified alien" status can be verified by other Immigration and Naturalization Service documents, such as those granting permanent residency (I-94, Alien Registration Card) or refugee status. The local Department of Justice, Immigration and Naturalization Services can be contacted in the event of questions or difficulties.

It is also necessary to verify the citizenship or alien status of the potential adoptive parent when placing a qualified alien child who entered the United States on or after August 22, 1996, and

has been in the U.S. less than five years. As noted above, if the adoptive parent is not a citizen or “qualified alien”, the child is not exempt from the five-year residency requirement and would not be eligible for Title IV-E benefits.

#### **IV-E Adoption Assistance Eligibility Criteria for the Applicable Child**

Beginning in FFY 2010, DSCYF must enter into an adoption assistance agreement with the prospective adoptive parents of any child who meets the criteria for an "applicable child" as defined in Appendix A (page 11), as well as the revised eligibility criteria outlined below. The DSCYF must provide adoption assistance to every child it determines is eligible, unless the prospective adoptive parents decline such assistance. Further, the DSCYF is prohibited from imposing additional eligibility requirements not contained in Federal law.

As part of determining eligibility for an "applicable child," DSCYF must determine that the child meets the following special needs criteria:

- 1) that the child cannot or should not be returned to the home of his parents, in accordance with criteria that the title IV-E agency has established;
  - that there is a specific factor or condition (see page 4, #2 for the list of conditions, such as ethnic background, age, or membership in a minority or sibling group, or the presence of factors such as medical conditions or physical, mental, or emotional handicaps) because of which it is reasonable to conclude that the child cannot be placed with adoptive parents without providing adoption assistance under title IV-E and medical assistance under title XIX, OR that the child meets all of the medical or disability requirements for Supplemental Security Income (SSI). If a child meets all the medical or disability requirements for SSI, the criteria for the factor or condition element of the special needs determination will be met; and
  - that a reasonable, but unsuccessful, effort has been made to place the child with adoptive parents without providing adoption assistance under title IV-E or medical assistance under title XIX. The only exception to this requirement is where it would be against the best interests of the child because of such factors as the existence of significant emotional ties with prospective adoptive parents while in the care of the parents as a foster child.

The DSCYF must also determine an "applicable child" with special needs meets one of the four following eligibility requirements:

1. **Child meets specific requirements at the initiation of adoption proceedings:** the child, at the time of the initiation of adoption proceedings, was in the care of a public or licensed private child placement agency pursuant to:



- an involuntary removal in accordance with a judicial determination to the effect that it was contrary to the child's welfare to remain in the home; OR
  - a voluntary placement agreement or voluntary relinquishment. Thus, for an "applicable child," there does not have to be a title IV-E payment made under a voluntary placement agreement.
2. **Child meets all medical and disability requirements of SSI:** the child meets all medical and disability requirements of title XVI with respect to eligibility for SSI benefits. An "applicable child" does not have to meet the needs-based requirements for SSI.
  3. **Child of a minor parent:** the child was residing in a foster family home or child care institution with his/her minor parent and the minor parent was removed from home pursuant to either: (1) an involuntary removal in accordance with a judicial determination to the effect that it was contrary to the child's welfare to remain in the home; or (2) a voluntary placement agreement or voluntary relinquishment.
  4. **Child was eligible in prior adoption:** the child was adopted and was determined eligible for title IV-E adoption assistance in a prior adoption (or would have been found eligible had the Adoption and Safe Families Act of 1997 been in effect at the time of the previous adoption), and is available for adoption because the prior adoption has been dissolved or the child's adoptive parents have died. In such an instance, the child may retain eligibility for adoption assistance payments in a subsequent adoption. The title IV-E agency only needs to determine that the child is still a child with special needs for the child to be eligible for adoption assistance.

All other requirements in section 473(a) through (c) of the Act, the background check requirements in section 471(a)(20)(A) and (B) of the Act and 45 CFR 1356.30(b) and (c), the adoption assistance agreement requirements as defined in section 475(3) of the Act and regulations in 45 CFR 1356.40 and 1356.41 (to the extent that they are not superseded by the law) apply equally to both an applicable child and a non-applicable child. (see item #3, page 5; and items #6 & #7 on page 7.

### **Payment Amounts and Conditions**

1. Payments will be made for non-recurring adoption expenses incurred by or on behalf of the adoptive parents in connection with the adoption of a child with special needs, directly through the State/Tribal agency or through another public or nonprofit private agency, in amounts determined through an agreement with the adoptive parents; and
2. In any case where the child meets the requirements of section 473(a)(2) of the Act, the State/Tribe may make adoption assistance payments to adoptive parents, directly through the State/Tribal agency or through another public or nonprofit private agency, in amounts so determined through an adoption assistance agreement (See section 3, item c below).

3. The amount of such payment:
  - a. Will take into consideration the circumstances of the adopting parents and the needs of the child being adopted;
  - b. May be adjusted periodically with the concurrence of the adoptive parents to reflect changing circumstances; and
  - c. May not exceed the foster care maintenance payment which would have been paid during the period if the child with respect to whom the adoption assistance payment is made had been in a foster family home.
4. In determining eligibility for adoption assistance payments, there is no income eligibility requirement (means test) for the adoptive parents.
5. Payments are terminated when the State determines that:
  - a. The child has attained the age of 18 (or, where the State determines that the child has a mental or physical disability which warrants the continuation of assistance, the age of 21); or
  - b. The parents are no longer legally responsible for the support of the child; or
  - c. The child is no longer receiving support from the adoptive parents.
6. The adoptive parents are required to inform the State/Tribal agency of circumstances that would make them ineligible for adoption assistance payments or eligible for adoption assistance payments in a different amount.
7. No payment may be made to parents with respect to any applicable child for a fiscal year that:
  - a. Would be considered a child with special needs under 473(c)(2);
  - b. Is not a citizen or resident of the United States; and
  - c. Was adopted outside of the United States or was brought into the United States for the purpose of being adopted.
8. A child that is not a citizen or resident of the US and was adopted outside of the US or brought into the US for the purpose of being adopted may be eligible for adoption assistance payments if the initial adoption of the child by parents is a failure and the child is subsequently placed into foster care.

## **APPENDIX A: GLOSSARY OF TERMS**

**AFDC** – Aid to Families with Dependent Children; the income maintenance program provided under Title IV-A of the Social Security Act. AFDC is a federally funded, categorical, “welfare” needs based program designed to assist dependent children by meeting the needs of their caretaker relatives. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) replaced AFDC with block grants for states to provide time-limited cash assistance for needy families or TANF (Temporary Assistance for Needy Families). A child’s linkage to AFDC, using the July 16, 1996 need standard, is a criteria of Title IV-E eligibility.

**Affidavit** – A written declaration made under oath before a notary public or other authorized official. For Title IV-E purposes, this documentation provided by the caseworker or investigator, is a statement to the court of the events in the home leading up to the request for custody of a particular child/sibling group and subsequent removal from the home.

**Applicable Child** – Beginning in fiscal year 2010, an applicable child is; a child for whom an adoption assistance agreement is entered into under section 473(e)(1)(B) if the child attained the applicable age for that fiscal year before the end of that fiscal year (as outlined in the chart below); or a child of any age on the date on which an adoption assistance agreement is entered into on behalf of the child under section 473 if the child has been in foster care under the responsibility of the State agency for at least 60 consecutive months and meets the requirements of paragraph 473(a)(2)(A)(ii); or a child of any age on the date on which an adoption assistance agreement is entered into on behalf of the child under this section without regard to whether the child is described in 473(e)(2)(A) if the child – is a sibling of a child who is an applicable child for the fiscal year under paragraphs 473(e)(1) or (2); and is to be placed in the same adoption placement as their sibling who is an applicable child for the fiscal year; and meets the requirements of 473 (a)(2)(A)(ii).

### **Applicable Child Age Chart – (See page 4)**

**Child Care Institution** – A private child care institution, or a public child care institution which accommodates no more than 25 children, and is licensed by the State in which it is situated or has been approved by the agency of such State or tribal licensing authority (with respect to child care institutions on or near Indian reservations) responsible for licensing or approval of institutions of this type as meeting the standards established for such licensing. This definition must not include detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent.

**Compulsory School Attendance** – enrolled (or in the process of enrolling) in an institution which provides elementary or secondary education, as determined under the law of the State in which the institution is located; or instructed in elementary or secondary education at home in accordance with a home school law of the State or other jurisdiction in which the home is

located; or is in an independent study elementary or secondary education program in accordance with the law of the State or other jurisdiction in which the program is located, which is administered by the local school or school district; or incapable of attending school on a full-time basis due to the medical condition of the child, which incapability is supported by regularly updated information in the case plan of the child.

**Contrary To Welfare** – A judicial determination that continued placement in the home is contrary to the welfare (or best interests) of the child. This language must be incorporated into a the first court order granting custody of a child to the state agency in order for the child to be considered for Title IV-E eligibility.

**Constructive Removal** – The child lived with either a related or non-related interim caretaker for less than six months prior to the State's petition to the court for removal of the child. The State licenses the home as a foster family home and the child continues to reside in that home in foster care. The child is eligible for title IV-E foster care since s/he lived with the parent or relative guardian within six months of the State's petition to the court, and was constructively removed from the parent/guardian (i.e., there was a paper removal of custody).

**Custody** – DSCYF does not maintain custody of a child and the right to place a child in a protective setting through a Voluntary Placement Agreement (VP) DSCYF uses only court ordered custody. A child cannot be Title IV-E eligible if s/he is placed in substitute care without a court order.

A Voluntary Placement Agreement is a binding agreement between a state and the child's parent(s)/guardian(s) for temporary placement. For Title IV-E purposes, VP cases can only be claimed for the first 180 days of placement, but this is not relative to current practices within DSCYF.

Court ordered custody is obtained through various court proceedings. A court order granting DSCYF temporary custody or "discretion to place" does not necessarily meet Title IV-E requirements. Title IV-E regulations state that the court must verify that DSCYF has made "reasonable efforts to maintain the child in his/her home" and that continued maintenance in the home is "contrary to the welfare" of the child. Court ordered custody can only be dismissed through a court of law.

**Deprivation (Financial)** - Deprivation of financial support must be determined by reviewing all raw financial data and applying it to the eligibility standards and criteria of AFDC as they existed on July 15, 1996.

**Deprivation (Parental)** – Children are deprived of parental care and support if one parent is deceased, mentally or physically incapacitated, continually absent from the home, or if the parent who is the principal wage earner is unemployed. Deprivation is determined only in relation to a child's birth or adoptive parent(s). A discussion of each deprivation factor follows:

- **Death** – The death of a parent constitutes deprivation. The death must be verified and the possibility of Social Security benefits for the child and surviving parent must be investigated.

- **Physical or Mental Incapacity** – Deprivation based on the incapacity of a parent exists when one parent has a mental or physical impairment that substantially reduces or eliminates the parent’s ability to support or care for the child. The impairment must be expected to last at least thirty (30) days from its onset and must be verified by a statement from a physician or other competent medical professional.
  - In making the determination of the parent’s ability to support the child, DSCYF will take into account limited employment opportunities of handicapped individuals (e.g. persons accepted for service by the Division of Vocational Rehabilitation).
  - A parent who is a recipient of SSA or SSI payments based on blindness or disability qualifies as an incapacitated parent.
  - When eligibility for AFDC is based on parental incapacity and the incapacity ends, the case will remain eligible for a period not to exceed 90 days unless the parent returns to employment or assumes usual child care and housekeeping responsibilities.
- **Continued Absence** – Deprivation based on continued absence exists when a parent is out of the home and does not provide for the child’s support or care. Absence may occur for any reason, but is usually a result of divorce, separation, desertion or incarceration.
  - *Divorce* – the legal severance of marital ties.
  - *Desertion* – the abandonment of all responsibility for care and support of the child.
  - *Separation* – exists when a parent is out of the home but maintains some parental responsibilities.
  - *Incarceration* – confinement by court action in a prison or jail. A parent who is a convicted offender, but lives at home while serving a court imposed sentence by performing community service or public work is considered absent. For a period not to exceed 90 days, an AFDC case may remain eligible based on the incarceration of a parent when the parent is released and returns to the home, unless the parent returns to work. The returning parent may receive assistance if he/she completes an application form and is otherwise eligible for a category of assistance.
  - The parent’s continued absence from the home and the nature of the absence must be verified at application and at each subsequent redetermination.
  - A parent who is absent only because of requirements of active duty in the uniformed services of the U.S., or is absent because he/she is seeking work elsewhere is not considered absent for purposes of establishing AFDC eligibility.
- **Unemployed Parent** – Deprivation based on the unemployment of a parent exists when the parent who is the principal wage earner is unemployed or underemployed and meets the conditions listed below. The principal wage earner is the parent in a home where both parents reside that has earned the greater amount of money in the two (2) year period that immediately precedes the month that the application for AFDC is filed. A parent is underemployed if he/she is usually employed less than 100 hours in a given month. The fact that a parent works more than 100 hours in a given month does not exclude him/her from consideration for AFDC if the excess is of a temporary nature as

evidenced by the fact that the parent was under the 100 hour standard for the prior two (2) months and expects to be under the standard during the next month. To qualify as an unemployed parent the principal wage earner must :

- Be unemployed or underemployed for at least 30 days
- Not have refused a bona fide offer of employment
- Not be disqualified for Unemployment Compensation
- AND
  - Have worked in at least six (6) quarters of any 13 calendar quarter period that ends within one year of the application filing data
  - OR have received or was qualified to receive Unemployment Compensation in the year preceding the application of filing date

**Earned Income** – Income derived directly from work related activity (e.g., wages).

**(Title IV-E) Eligibility** – Refers to the criteria for determining initial eligibility for Title IV-E funding when a child enters out-of-home care.

**Eligibility Month** – The month in which court action was initiated (i.e., a petition was filed) that led to the court ordered removal of the child from his or her home, or the month in which the Voluntary Placement Agreement was signed.

**FFP** – Federal Financial Participation; the matching rate paid by the federal government for specified program activities, as provided in federal regulation.

**FMAP** – Federal Medical Assistance Percentage; the FFP rate paid by the federal government for maintenance costs under Title IV-E and direct service costs under Title XIX. The rate is based on the average wage per person in each state and ranges from 50% to 83%, and is calculated annually for each federal fiscal year.

**Foster Care** – An alternative living arrangement from those of the legal parents or guardian of the child. A foster parent must be approved by the Department as meeting certain standards and may be a relative or may be unrelated to the child.

**Foster Care Maintenance Payments** – May cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to the child, and reasonable travel to the child's home for visitation with family, or other caretakers. Local travel associated with providing the items listed above is also an allowable expense. In the case of child care institutions, such term must include the reasonable costs of administration and operation of such institutions as are necessarily required to provide the items described in the preceding sentences.

**Foster Family Home** – The home of an individual or family licensed or approved as meeting the standards established by the State licensing or approval authority(ies) (or with respect to foster family homes on or near Indian reservations, by the tribal licensing or approval

authority(ies), that provides 24-hour out-of-home care for children. The term may include group homes, agency-operated boarding homes or other facilities licensed or approved for the purpose of providing foster care by the State agency responsible for approval or licensing of such facilities. Foster family homes that are approved must be held to the same standards as foster family homes that are licensed. Anything less than full licensure or approval is insufficient for meeting Title IV-E eligibility requirements.

**Medicaid and Social Services** – For the purposes of Titles XIX and XX, any eligible child for whom there is an adoption assistance agreement in effect under section 473(a)(2) (whether or not adoption assistance payments are being made) is deemed to be a dependent child as defined in 406 of the Act and is deemed to be a recipient of AFDC under part A of Title IV of the Act (as in effect 7/16/96) in the State in which such child resides. Any child of such eligible child will be eligible for such services.

**Non-Removal** – In order for a case to be deemed Title IV-E eligible, removal from the home must occur, and the child must be placed into an approved substitute care setting. Non-removal occurs when the child is in the custody of DSCYF, yet remains in the care of the parent/guardian from whom s/he has been removed. Non-removal cases cannot be determined for Title IV-E funding.

**Permanency Hearing** – Court proceeding at which “reasonable efforts to finalize a permanency plan” are made. The goal of a permanency plan can be reunification or some other care arrangement (independent living, long-term foster care, adoption).

**Petition** – Formal written application to a court requesting judicial action on a certain matter; initiates legal proceedings. Must plainly state such facts as would bring the child within the jurisdiction of the court and what action is requested from the court.

**Placement Maintenance** – Funds for children in foster care/substitute care who meet the requirements of federal Title IV-E.

**Prior Living** – The person with whom the child was residing prior to removal and placement. In order for the case to be considered Title IV-E eligible, prior living must have been with a specified relative at some point within six (6) months of placement.

**Qualified Alien** – An individual residing in the U.S. who does not have citizenship but meets the “qualified alien” definition under federal law; includes, but is not limited to, an alien lawfully admitted for permanent residency, granted asylum or refugee status; a Cuban or Haitian entrant; an alien who is paroled into the United States under section 212(d)(5) of such Act for a period of at least 1 year; an alien whose deportation is being withheld under section 243(h) of such Act; an alien who is granted conditional entry pursuant to section 203(a)(7) of such Act as in effect prior to April 1, 1980; or an alien who (or whose child or parent) has been battered or subjected to extreme cruelty in the U.S.. Undocumented aliens and aliens legally

admitted to the U.S. on a temporary basis for work, study or pleasure are not qualified aliens. Only qualified aliens can apply for or receive Federal public benefits, including Title IV-E.

**Reasonable Efforts** – A judicial determination that efforts were made to maintain the child in the home prior to placement and that efforts continue to be made toward the finalization of a Permanency Plan.

**Removal Home** – The home from which the child is physically or constructively removed. It is the home where the daily supervision and care of the child is maintained or was intended to be maintained. In a constructive removal where there is not a physical removal of the child, the “removal home” is the person from whom the legal custody of the child was removed. Identification of the removal home is important in ascertaining whether family financial information, or only the child’s is used in the AFDC relatedness test for Title IV-E eligibility, and it is the circumstances in this home that are considered when the deprivation factor is reviewed.

**Resources** – Personal property or items of value, such as checking or savings accounts, automobiles, land, buildings, life insurance, etc., used in determining financial eligibility for AFDC.

**Specified Relative** – The following individuals are considered specified relatives under the AFDC definition:

- Parent(s), which means birth or adoptive father or mother
- A stepfather or stepmother, grandfather, grandmother, brother, sister, stepbrother, stepsister, uncle, aunt, first cousin, first cousin once removed, nephew or niece
- Relationships include those of half-blood and may be persons of preceding generations denoted by prefixes of grand, great-grand, or great-great-grand, and include spouses of any persons named above even though the marriage has been terminated.
- A legal guardian of a child that does not meet one of the AFDC definitions listed above would not qualify as a specified relative.

**SSI** – Supplemental Security Income; Children with special needs or a disability are often recipients of SSI benefits. A child receiving SSI benefits may be considered eligible for Title IV-E; however, the cost of care may not be claimed under both federal programs. Parents often receive SSI benefits due to incapacity/disability. Other forms of SSA payments (such as RSDI) are counted as income when determining AFDC eligibility.

**TANF** – Temporary Assistance to Needy Families; the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) replaced AFDC with block grants for states to provide time-limited cash assistance for needy families.

**Title IV-E** – Child welfare services entitlement program established in 1980 by the federal government under the Social Security Act. This program assists states in the funding of certain



services rendered in the protection of children. The federal government will reimburse states for payments incurred in the process of placing at-risk children into protective settings.

**Title XIX** – Medical Assistance, MA, also known as Medicaid; the federal-state program that provides health care for low income and disabled individuals. Children receiving Title IV-E benefits or SSI are automatically eligible for Title XIX benefits.

**Voluntary Placement Agreement** – (*Not recognized in Delaware*) An agreement entered into by the parent/guardian of a minor child and a State Agency for the temporary placement of the minor. This agreement is binding for a 12 month period. The agreement may be revoked through a written consent of the parent/guardian. DSCYF does not remove children through a VPA.

For Title IV-E purposes, Voluntary Placement cases can only be claimed for 180 days of placement unless a judicial determination is made, prior to the 181<sup>st</sup> day, which states that continuation in foster care is in the child's best interest. The court may issue a court ordered voluntary which is considered to be legal custody.

## **APPENDIX B: REGULATORY REFERENCES**

### **APPROVALS**

#### **CFR TITLE 45 Sec. 1356.30**

(b) The State may not approve or license any prospective foster or adoptive parent, nor may the State claim FFP for any foster care maintenance or adoption assistance payment made on behalf of a child placed in a foster home operated under the auspices of a child placing agency or on behalf of a child placed in an adoptive home through a private adoption agency, if the State finds that, based on a criminal records check conducted in accordance with paragraph (a) of this section, a court of competent jurisdiction has determined that the prospective foster or adoptive parent has been convicted of a felony involving:

- (1) Child abuse or neglect;
- (2) Spousal abuse;
- (3) A crime against a child or children (including child pornography); or,
- (4) A crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery.

#### **SSA TITLE IV PART E SEC. 471. [42 U.S.C. 671]**

(a) In order for a State to be eligible for payments under this part, it shall have a plan approved by the Secretary which—

(20)(A) unless an election provided for in subparagraph (B) is made with respect to the State, provides procedures for criminal records checks for any prospective foster or adoptive parent before the foster or adoptive parent may be finally approved for placement of a child on whose behalf foster care maintenance payments or adoption assistance payments are to be made under the State plan under this part, including procedures requiring that—

- (i) in any case in which a record check reveals a felony conviction for child abuse or neglect, for spousal abuse, for a crime against children (including child pornography), or for a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery, if a State finds that a court of competent jurisdiction has determined that the felony was committed at any time, such final approval shall not be granted; and
- (ii) in any case in which a record check reveals a felony conviction for physical assault, battery, or a drug-related offense, if a State finds that a court of competent jurisdiction has determined that the felony was committed within the past 5 years, such final approval shall not be granted; and

### **ADOPTION ASSISTANCE**

#### **CFR TITLE 45 Sec. 233.10**

(b) Federal financial participation.

(1) The provisions which govern Federal financial participation in assistance payments are set forth in the Social Security Act, throughout this chapter, and in other policy issuances of the Secretary. Where indicated, State plan provisions are prerequisite to Federal financial participation with respect to the applicable group and payments. State plan provisions on need, the amount of assistance, and eligibility determine the limits of Federal financial participation.

Federal financial participation is excluded from assistance payments in which the State refuses to participate because of the failure of a local authority to apply such State plan provisions.

(2) The following is a summary statement regarding the groups for whom Federal financial participation is available. (More detailed information is given elsewhere.)

(i) OAA—for needy individuals under the plan who are 65 years of age or older. (ii) AFDC—for:

(a) Needy children under the plan who are:

(1) Under the age of 18, or age 18 if a full-time student in a secondary school, or in the equivalent level of vocational or technical training, and reasonably expected to complete the program before reaching age 19;

***SSA TITLE IV PART E SEC. 473. [42 U.S.C. 673]***

(a)(2)(C) has been determined by the State, pursuant to subsection (c) of this section, to be a child with special needs.

***SSA TITLE IV PART E SEC. 473. [42 U.S.C. 673]***

(c) For purposes of this section, a child shall not be considered a child with special needs unless—

(1) the State has determined that the child cannot or should not be returned to the home of his parents; and

(2) the State had first determined

(A) that there exists with respect to the child a specific factor or condition (such as his ethnic background, age, or membership in a minority or sibling group, or the presence of factors such as medical conditions or physical, mental, or emotional handicaps) because of which it is reasonable to conclude that such child cannot be placed with adoptive parents without providing adoption assistance under this section or medical assistance under title XIX, and

(B) that, except where it would be against the best interests of the child because of such factors as the existence of significant emotional ties with prospective adoptive parents while in the care of such parents as a foster child, a reasonable, but unsuccessful, effort has been made to place the child with appropriate adoptive parents without providing adoption assistance under this section or medical assistance under title XIX.

***SSA TITLE IV PART E SEC. 472. [42 U.S.C. 672]***

(a) IN GENERAL.—

(3) AFDC ELIGIBILITY REQUIREMENT.—

(A) IN GENERAL.—A child in the home referred to in paragraph (1) would have met the AFDC eligibility requirement of this paragraph if the child—

(i) would have received aid under the State plan approved under section 402 (as in effect on July 16, 1996) in the home, in or for the month in which the agreement was entered into or court proceedings leading to the determination referred to in paragraph (2)(A)(ii) of this subsection were initiated; or

(ii) (I) would have received the aid in the home, in or for the month referred to in clause (i), if application had been made therefor; or

(II) had been living in the home within 6 months before the month in which the agreement was entered into or the proceedings were initiated, and would have received the aid in or for such month, if, in such month, the child had been living in the home with the relative referred to in paragraph (1) and application for the aid had been made.

(B) **RESOURCES DETERMINATION.**—For purposes of subparagraph (A), in determining whether a child would have received aid under a State plan approved under section 402 (as in effect on July 16, 1996), a child whose resources (determined pursuant to section 402(a)(7)(B), as so in effect) have a combined value of not more than \$10,000 shall be considered a child whose resources have a combined value of not more than \$1,000 (or such lower amount as the State may determine for purposes of section 402(a)(7)(B)).

(4) **ELIGIBILITY OF CERTAIN ALIEN CHILDREN.**—Subject to title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, if the child is an alien disqualified under section 245A(h) or 210(f) of the Immigration and Nationality Act from receiving aid under the State plan approved under section 402 in or for the month in which the agreement described in paragraph (2)(A)(i) was entered into or court proceedings leading to the determination described in paragraph (2)(A)(ii) were initiated, the child shall be considered to satisfy the requirements of paragraph (3), with respect to the month, if the child would have satisfied the requirements but for the disqualification.

***SSA TITLE IV PART E SEC. 473. [42 U.S.C. 673]***

(a)(2)(B)

(i) would have received aid under the State plan approved under section 402 (as in effect on July 16, 1996) in or for the month in which such agreement was entered into or court proceedings leading to the removal of such child from the home were initiated, or

(ii)(I) would have received such aid in or for such month if application had been made therefore, or

(II) had been living with a relative specified in section 406(a) (as in effect on July 16, 1996) within six months prior to the month in which such agreement was entered into or such proceedings were initiated, and would have received such aid in or for such month if in such month he had been living with such a relative and application therefore had been made, or

(iii) is a child described in subparagraph (A)(ii) or (A)(iii), and

***CFR TITLE 45 Sec. 1356.21***

(c) Contrary to the welfare determination. Under section 472(a)(1) of the Act, a child's removal from the home must have been the result of a judicial determination (unless the child was removed pursuant to a voluntary placement agreement) to the effect that continuation of residence in the home would be contrary to the welfare, or that placement would be in the best interest, of the child. The contrary to the welfare determination must be made in the first court ruling that sanctions (even temporarily) the removal of a child from home. If the determination regarding contrary to the welfare is not made in the first court ruling pertaining to removal from the home, the child is not eligible for title IV-E foster care maintenance payments for the duration of that stay in foster care.

***CFR TITLE 45 Sec. 1356.21***

(k) Removal from the home of a specified relative.

(1) For the purposes of meeting the requirements of section 472(a)(1) of the Act, a removal from the home must occur pursuant to:

(i) A voluntary placement agreement entered into by a parent or relative which leads to a physical or constructive removal (i.e., a non-physical or paper removal of custody) of the child from the home; or

(ii) A judicial order for a physical or constructive removal of the child from a parent or specified relative.

**SSA TITLE IV PART E SEC. 472. [42 U.S.C. 672]**

(f) For the purposes of this part and part B of this title,

- (1) the term “voluntary placement” means an out-of-home placement of a minor, by or with participation of a State agency, after the parents or guardians of the minor have requested the assistance of the agency and signed a voluntary placement agreement; and
- (2) the term “voluntary placement agreement” means a written agreement, binding on the parties to the agreement, between the State 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.

**SSA TITLE IV PART E SEC. 473. [42 U.S.C. 673]**

(a)(2)(A)[155] For purposes of paragraph (1)(B)(ii), a child meets the requirements of this paragraph if the child—

- (i)(I)(aa) was removed from the home of a relative specified in section 406(a) (as in effect on July 16, 1996) and placed in foster care in accordance with a voluntary placement agreement with respect to which Federal payments are provided under section 474 (or section 403, as such section was in effect on July 16, 1996), or in accordance with a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child; and
    - (bb) met the requirements of section 472(a)(3) with respect to the home referred to in item (aa) of this subclause
  - (II) meets all of the requirements of title XVI with respect to eligibility for supplemental security income benefits; or
  - (III) is a child whose costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made with respect to the minor parent of the child as provided in section 475(4)(B); and
- (ii) has been determined by the State, pursuant to subsection (c) of this section, to be a child with special needs.

**SSA TITLE IV PART E SEC. 473. [42 U.S.C. 673]**

(a)(2)(A)[155] For purposes of paragraph (1)(B)(ii), a child meets the requirements of this paragraph if the child—

- (i)(I)(aa) was removed from the home of a relative specified in section 406(a) (as in effect on July 16, 1996) and placed in foster care in accordance with a voluntary placement agreement with respect to which Federal payments are provided under section 474 (or section 403, as such section was in effect on July 16, 1996), or in accordance with a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child; and
    - (bb) met the requirements of section 472(a)(3) with respect to the home referred to in item (aa) of this subclause
  - (II) meets all of the requirements of title XVI with respect to eligibility for supplemental security income benefits; or
  - (III) is a child whose costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made with respect to the minor parent of the child as provided in section 475(4)(B); and
- (ii) has been determined by the State, pursuant to subsection (c) of this section, to be a child with special needs.

## APPENDIX C: CHILD WELFARE POLICY MANUAL (CWPM) CITATIONS

### DEMOGRAPHIC INFORMATION

#### 8.3A.2 TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Age

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**Question:** For what classes of title IV-E eligible children does title IV-E allow continuation of foster care maintenance payments after age 18 and reimbursements for those payments? May a State, for example, claim Federal financial participation (FFP) for children in foster care who have mental or physical handicaps who remain in care until age 21?

**Answer:** Under section 406 (a) of the Social Security Act (the Act) (as in effect on July 16, 1996) a dependent child is defined as one under the age of 18. This age limit applies to title IV-E foster care eligibility under section 472 of the Act. The only exception under section 406 (a) is (at State option) for those children who are over 18 and under the age of 19 and who are full time students expected to complete their secondary schooling or equivalent training before reaching age 19. There is no provision under title IV-E which specifically allows payments on behalf of mentally or physically handicapped children in foster care who are age 18 or older. Therefore, no federal financial participation is available for such payment unless the requirements of 45 CFR 233.90 are met.

On the other hand, title IV-E adoption assistance (at State option) may be continued to age 21 with respect to a child with a mental or physical handicap.

- **Source/Date:** ACYF-CB-PIQ-85-05 (4/12/85)
- **Legal and Related References:** Social Security Act - sections 406 (a) (as in effect on July 16, 1996) and 472

**Question:** Can a youth who was previously title IV-E eligible who has "aged out" of foster care at age 18 retain his/her title IV-E eligibility if he/she re-enters foster care? The youth is under age 19 and expected to graduate from high school before reaching the age of 19.

**Answer:** No. The State must newly determine the child's title IV-E foster care eligibility once a child ages out of foster care at age 18 and the State no longer has placement and care responsibility. Section 8.3A.10 Q&A2 of the Child Welfare Policy Manual explains that a re-determination of title IV-E eligibility is permitted only when the child is continuously in foster care status and remains under the responsibility of the State agency for placement and care, neither of which is the case as described.

However, a youth at age 18 could retain his/her title IV-E eligibility if s/he provides written authorization for the State's *continued* placement and care responsibility prior to aging out of foster care, and is a full time student and expected to complete his/her secondary schooling or equivalent training before reaching age 19 consistent with the State's former AFDC plan.

- **Source/Date:** 12/31/07
- **Legal and Related References:** Social Security Act – section 472(a)(3); Child Welfare Policy Manual section 8.3A.10 Q&A2

## **FINANCIAL DEPRIVATION**

### **8.4A TITLE IV-E, General Title IV-E Requirements, AFDC Eligibility**

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**Question:** Section 108 (d) of the Personal Responsibility Work Opportunity Reconciliation Act (PRWORA) (as amended by the Balanced Budget Act of 1997, P.L. 105-33) links eligibility for Federal foster care and adoption assistance to the Aid to Families with Dependent Children (AFDC) program as it was in effect on July 16, 1996. Section 401(a) of PRWORA limits Federal public benefits to “qualified aliens.” The term “qualified alien” was not defined or in use on July 16, 1996. How are States to apply these two provisions?

**Answer:** Alien children must be eligible for AFDC under a State’s July 16, 1996 plan and must also meet the PRWORA definition of “qualified alien” to be eligible for Federal foster care maintenance or adoption assistance (except that children receiving adoption assistance pursuant to agreements signed before August 22, 1996 may continue to receive such assistance).

- **Source/Date:** ACYF-CB-PIQ-99-01 (1/14/99)
- **Legal and Related References:** Social Security Act – Titles IV-E; the Personal Responsibility Work Opportunity Reconciliation Act (PL 104-193); Balanced Budget Act of 1997 (PL 105-33)

**Question:** If, under a waiver pursuant to section 1115 (a) of the Social Security Act (an 1115 (a) waiver), the State denied benefits to a child who would otherwise meet the requirements of the Aid to Families with Dependent Children (AFDC) program, would that child then be ineligible for title IV-E foster care maintenance or adoption assistance payments, should that child come into State care?

**Answer:** No. A State’s 1115 (a) waiver of AFDC requirements does not affect eligibility for title IV-E foster care maintenance or adoption assistance payments. Regardless of whether the rules and provisions of a State’s section 1115 (a) waiver broaden or restrict AFDC eligibility, those waiver rules shall not be applied in making title IV-E eligibility determinations.

- **Source/Date:** ACYF-CB-PIQ-96-02 (12/12/96)
- **Legal and Related References:** Social Security Act – section 1115

## **ADOPTION ASSISTANCE**

### **8.3A.2 TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Age**

---

**Question:** For what classes of title IV-E eligible children does title IV-E allow continuation of foster care maintenance payments after age 18 and reimbursements for those payments? May a State, for example, claim Federal financial participation (FFP) for children in foster care who have mental or physical handicaps who remain in care until age 21?

**Answer:** Under section 406 (a) of the Social Security Act (the Act) (as in effect on July 16, 1996) a dependent child is defined as one under the age of 18. This age limit applies to title IV-E foster care eligibility under section 472 of the Act. The only exception under section 406 (a) is (at State option) for those children who are over 18 and under the age of 19 and who are full time students expected to complete their secondary schooling or equivalent training before reaching age 19. There is no provision under title IV-E which specifically allows payments on behalf of mentally or physically handicapped children in foster care who are age 18 or older. Therefore, no federal financial participation is available for such payment unless the requirements of 45 CFR 233.90 are met.

On the other hand, title IV-E adoption assistance (at State option) may be continued to age 21 with respect to a child with a mental or physical handicap.

- **Source/Date:** ACYF-CB-PIQ-85-05 (4/12/85)
- **Legal and Related References:** Social Security Act - sections 406 (a) (as in effect on July 16, 1996) and 472

#### **8.4A TITLE IV-E, General Title IV-E Requirements, AFDC Eligibility**

---

**Question:** Section 108 (d) of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) (as amended by the Balanced Budget Act of 1997, P.L. 105-33) links eligibility for Federal foster care and adoption assistance to the Aid to Families with Dependent Children (AFDC) program as it was in effect on July 16, 1996. Section 401(a) of PRWORA limits Federal public benefits to "qualified aliens." The term "qualified alien" was not defined or in use on July 16, 1996. How are States to apply these two provisions?

**Answer:** Alien children must be eligible for AFDC under a State's July 16, 1996 plan and must also meet the PRWORA definition of "qualified alien" to be eligible for Federal foster care maintenance or adoption assistance (except that children receiving adoption assistance pursuant to agreements signed before August 22, 1996 may continue to receive such assistance).

- **Source/Date:** ACYF-CB-PIQ-99-01 (1/14/99)
- **Legal and Related References:** Social Security Act - Title IV-E; The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PL 104-193)

#### **8.2B.11 TITLE IV-E, Adoption Assistance Program, Eligibility, Special needs**

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**Question:** Please explain the requirements for special needs determinations.

**Answer:** An integral part of establishing adoption assistance eligibility requires the State to determine that the child is a child with special needs in accordance with all three criteria defined in section 473 (c) of the Social Security Act (the Act):

1) The State must determine that the child cannot or should not be returned to the home of his or her parents (section 473 (c)(1) of the Act); and 2) The State must determine that there exists a specific factor or condition because of which it is reasonable to conclude that the child cannot be placed with adoptive parents without providing title IV-E adoption assistance or title XIX medical assistance. Such a factor or condition may include (but is not limited to) ethnic background, age or membership in a minority or sibling group, the presence of a medical condition, or physical, mental or emotional disabilities. For example, in some States ethnic background alone may inhibit the ability of a child to be adopted, while in other States a combination of factors, such as minority status and age, may be factors. It is important to note that in each case the State must conclude that, because of a specified factor or factors, the particular child cannot be placed with adoptive parents without providing assistance; and 3) Finally, the State must determine that in each case a reasonable, but unsuccessful, effort to place the child with appropriate parents without providing adoption assistance has been made. Such an effort might include the use of adoption exchanges, referral to appropriate specialized adoption agencies, or other such activities. The only exception to this requirement is when it would not be in the best interests of the child because of such factors as the existence of significant emotional ties with prospective adoptive parents while in the care of those parents as a foster child. The exception also extends to other circumstances that are not in the child's best interest, as well as adoption by a relative, in keeping with the statutory emphasis on the placement of children with relatives.



The State must document in each child's case record the specific factor(s) that make the child difficult to place and describe the efforts to place the child for adoption without providing assistance. In an effort to find an appropriate adoptive home for a child, and meet the requirement that a reasonable, but unsuccessful, effort be made to place the child without adoption assistance, it is not necessary for the agency to "shop" for a family while the child remains in foster care. Once the agency has determined that placement with a certain family is in the child's best interest, the agency should make full disclosure about the child's background, as well as known or potential problems. If the agency has determined that the child cannot or should not return home and the child meets the statutory definition of special needs with regard to specific factors or conditions, then the agency can pose the question of whether the prospective adoptive parents are willing to adopt without assistance. If they say they cannot adopt the child without adoption assistance, the requirement in section 473 (c)(2)(B) for a reasonable, but unsuccessful, effort to place the child without providing adoption assistance will be met.

- **Source/Date:** ACYF-CB-PA-01-01 (1/23/01)
- **Legal and Related References:** Social Security Act - sections 471(a)(19) and 473 (c)

#### **8.2B.4 TITLE IV-E, Adoption Assistance Program, Eligibility, Deceased adoptive parents/dissolved adoptions**

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**Question:** Please explain the requirements regarding a child's eligibility for title IV-E adoption assistance when the adoptive parents die or the adoption is dissolved.

**Answer:** In the situation where a child is adopted and receives title IV-E adoption assistance, but the adoption later dissolves or the adoptive parents die, a child may continue to be eligible for title IV-E adoption assistance in a subsequent adoption. The only determination that must be made by the State prior to the finalization of the subsequent adoption is whether the child is a child with special needs, consistent with the requirements in section 473 (c) of the Act. Need and eligibility factors in sections 473 (a)(2)(A) and (B) of the Act must not be re-determined when such a child is subsequently adopted because the child is to be treated as though his or her circumstances are the same as those prior to his or her previous adoption. Since title IV-E adoption assistance eligibility need not be re-established in such subsequent adoptions, the manner of a child's removal from the adoptive home, including whether the child is voluntarily relinquished to an individual or private agency, is irrelevant.

- **Source/Date:** ACYF-CB-PA-01-01 (1/23/01)
- **Legal and Related References:** Social Security Act - section 473(a)(2) and 473(c)

#### **8.2B.3 TITLE IV-E, Adoption Assistance Program, Eligibility, Child of a minor parent**

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**Question:** Is the child of a minor parent eligible for title IV-E adoption assistance?

**Answer:** Section 473 (a)(2) of the Social Security Act provides that the child whose costs in a foster family home or child-care institution are covered by the title IV-E foster care payment made with respect to the parent is eligible for adoption assistance under title IV-E, if determined by the State to be a child with special needs under section 473 (c).

- **Source/Date:** ACYF-CB-PA-88-01 (7/6/88); Questions and Answers on the Final Rule (65 FR 4020 (1/25/00))
- **Legal and Related References:** Social Security Act - section 473

#### **8.2B.12 TITLE IV-E, Adoption Assistance Program, Eligibility, SSI**

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**Question:** Is there a prohibition under title IV-E against claiming Federal financial participation (FFP) for adoption assistance for a child who receives Supplemental Security Income (SSI)?

**Answer:** There is no prohibition under title IV-E against claiming FFP for adoption assistance for a child who receives benefits from SSI. Section 473 of title IV-E created an adoption assistance program which permits Federal matching funds for the costs of adoption assistance for the purpose of encouraging the placement of eligible children in adoptive homes. Under title IV-E adoption assistance (section 473), the scope of eligibility specifically includes children with special needs who are eligible to receive SSI (473 (a)(2)(A)(ii)) as well as those eligible for AFDC (473 (a)(2)(A)(i)) and title IV-E foster care (473 (a)(2)(A)(iii)).

Title XVI (SSI) is a needs based program and, as such, requires a test of income and resources of the adoptive parents in determining the amount of the SSI benefit to which a child with a disability(ies) may be entitled. If (or when) the parental resources and income exceed a maximum level determined by the SSI program, the child is no longer eligible for SSI payments.

If the adoptive parents decide to decline adoption assistance and choose to receive only SSI for the child, and if they have not executed an adoption assistance agreement before the adoption is finalized, they may not later receive title IV-E adoption assistance payments, as the child would no longer meet all of the eligibility requirements as a child with special needs (section 473 (c)(2)). It may be prudent for the decision maker (parent, guardian, custodian, caretaker relative) to arrange for an adoption assistance agreement which does not provide for payment, but which does provide for title XVI and title XIX coverage, and which may at some future date, upon review, be renegotiated to provide for payment of adoption assistance funds.

The adoptive parents of a child eligible for title IV-E adoption assistance and SSI benefits may make application for both programs and the child, if eligible, may benefit from both programs simultaneously. In cases where the child is eligible for both SSI and title IV-E and there is concurrent receipt of payments from both programs, "the child's SSI payment will be reduced dollar for dollar without application of any exclusion", thus decreasing the SSI benefit by the amount of the title IV-E payment (SSI Program Operations Manual). To reiterate, concurrent receipt is subject to the SSI rule that the SSI payment will be reduced by the amount of the foster care payment.

- **Source/Date:** ACYF-CB-PA-94-02 (2/4/94)
- **Legal and Related References:** Social Security Act - section 473; 20 CFR 416.1100ff; Program Operations Manual System, Part 5, Supplemental Security Income Chapter 008 - Income, Subchapter 30 - Unearned Income

#### **8.4A TITLE IV-E, General Title IV-E Requirements, AFDC Eligibility**

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**Question:** How does the State agency determine need and deprivation to establish a child's eligibility for title IV-E adoption assistance?

**Answer:** If a child's eligibility for title IV-E adoption assistance is based upon his or her eligibility for Aid to Families with Dependent Children (AFDC) as a dependent child, the State must determine that the child would have been AFDC-eligible in the home from which s/he was removed. To meet the AFDC criteria, the child must be both a needy child and a child who is deprived of parental support or whose principal wage earner parent is unemployed. Need exists in the child's home if the resources available to the family are below \$10,000. Deprivation exists in the home in situations where there is death of a parent, an absent parent, or a parent with a mental or physical incapacity to the extent that the parent cannot support or care for the child. At the point of the removal of a child from his or her home, a termination of parental rights (TPR) alone is not proof that deprivation exists. The factors noted here

must be established based on the circumstances in that home. In addition, the child must meet the need and deprivation requirements at the time of the adoption petition. Once a child is in foster care, need is based upon the resources available to the child. Hence, the resources available to the child must be below the \$10,000 limit at the time of the adoption petition. After a child has been determined deprived in the home from which s/he is removed, a TPR can serve as proof of deprivation at the time of the petition.

- **Source/Date:** ACYF-CB-PA-01-01 (1/23/01)
- **Legal and Related References:** Social Security Act - sections 472 (a) and 473 (a)(2)

### **8.2B.7 TITLE IV-E, Adoption Assistance Program, Eligibility, Judicial determinations**

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**Question:** We believe that the lack of a "reasonable efforts" determination in accordance with section 472 (a)(1) of the Social Security Act (the Act) cannot result in ineligibility for title IV-E adoption assistance. Is this correct?

**Answer:** Yes. The judicial determination of "reasonable efforts" to prevent placement and reunify the child with his family is an eligibility requirement for the title IV-E foster care maintenance payments program (section 472 (a)(1) of the Act), but such a determination is not an eligibility requirement for adoption assistance in section 473 of the Act.

- **Source/Date:** ACYF-CB-PIQ-85-06 (6/5/85)
- **Legal and Related References:** Social Security Act - sections 472 and 473

**Question:** Do the "contrary to the welfare" requirements at 45 CFR 1356.21(c) and (d) apply to the adoption assistance program?

**Answer:** Yes. To fulfill the eligibility criteria in section 473 (a)(2)(A)(i) of the Social Security Act when a child's removal from the home is the result of court action, there must be a judicial determination to the effect that to remain in the home would be contrary to the child's welfare. Since a child's removal from the home must occur as a result of such a judicial determination, the determination must be made in the first court ruling that sanctions (even temporarily) the removal of a child from the home. If the determination is not made in the first court ruling pertaining to removal from the home, the child is not eligible for title IV-E adoption assistance. The contrary to the welfare finding must be explicit and made on a case-by-case basis. Items such as nunc pro tunc orders, affidavits, and bench notes are not acceptable substitutes for a court order. Only an official transcript is sufficient evidence of the judicial determination. A judicial determination regarding reasonable efforts to prevent removal or reunify the family, although required for title IV-E foster care, is not a requirement for title IV-E adoption assistance eligibility.

- **Source/Date:** ACYF-CB-PA-01-01 (1/23/01)
- **Legal and Related References:** Social Security Act - section 473 (a)(2); 45 CFR 1356.21(c) and (d)