

**Memorandum**

APR 16 1992

Date

From

  
Richard P. Kusserow  
Inspector General

Subject

Review of Foster Care Maintenance Payments Made by the Allegheny County Department of Children and Youth Services (A-03-91-00553)

To

Jo Anne B. Barnhart  
Assistant Secretary for  
Children and Families

The purpose of this memorandum is to alert you to the issuance on April 17, 1992 of our final audit report. A copy is attached.

For Fiscal Year (FY) 1989, Pennsylvania's Department of Public Welfare (State agency) claimed \$10.7 million (Federal financial participation (FFP) \$6.2 million) under the Title IV-E Foster Care program for costs incurred by the Allegheny County Department of Children and Youth Services (CYS). Our statistical sample of the 10,639 monthly maintenance payments made by CYS during FY 1989 showed that the State agency was not entitled to about \$2.3 million of the FFP because 59 percent of the claims reviewed were in violation of 1 or more program requirements. Specifically, we found:

- o Forty-one percent of claims sampled involved claims for children who lacked the required judicial determinations.
- o Thirteen percent of claims sampled involved claims for children residing in foster homes that were not documented as being evaluated and approved annually, or were not recommended for licensure. Annual evaluations and approvals were required by State agency regulations.
- o Ten percent of claims sampled involved claims for children who were voluntarily placed in foster care. The State plan did not include a provision for voluntary placements.

We are making procedural recommendations in this report aimed at improving the State agency's administration of

Page 2 - Jo Anne B. Barnhart

the Title IV-E Foster Care program. We are also recommending that the State agency make a financial adjustment of about \$2.3 million for the ineligible claims identified in this report.

The State agency generally disagreed with our findings and recommendations. Operating division officials concurred with our findings and recommendations.

If you have any questions, please call me or have your staff contact John A. Ferris, Assistant Inspector General for Human, Family and Departmental Services Audits, at (202) 619-1175.

Attachment

Department of Health and Human Services

OFFICE OF  
INSPECTOR GENERAL

REVIEW OF FOSTER CARE  
MAINTENANCE PAYMENTS MADE BY  
THE ALLEGHENY COUNTY  
DEPARTMENT OF CHILDREN AND  
YOUTH SERVICES



Richard P. Kusserow  
INSPECTOR GENERAL

CIN: A-03-91-00553



DEPARTMENT OF HEALTH & HUMAN SERVICES

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Our Reference: Common Identification Number A-03-91-00553

Ms. Karen F. Snider  
Acting Secretary  
Pennsylvania Department of Public Welfare  
333 Health and Welfare Building  
Harrisburg, Pennsylvania 17120

Dear Ms. Snider:

Enclosed for your information and use are two copies of an HHS/OIG Office of Audit Services final audit report titled REVIEW OF FOSTER CARE MAINTENANCE PAYMENTS MADE BY THE ALLEGHENY COUNTY DEPARTMENT OF CHILDREN AND YOUTH SERVICES AND CLAIMED FOR FEDERAL FINANCIAL PARTICIPATION BY THE PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE. Your attention is invited to the audit findings and recommendations contained in the report. The official named below will be communicating with you in the near future regarding implementation of these items.

In accordance with the principles of the Freedom of Information Act (Public Law 90-23), HHS/OIG Office of Audit Services reports issued to the Department's grantees and contractors are made available, if requested, to members of the press and general public to the extent information contained therein is not subject to exemptions in the Act, which the Department chooses to exercise. (See Section 5.71 of the Department's Public Information Regulation, dated August 1974, as revised).

To facilitate identification, please refer to the referenced common identification number in all correspondence relating to this report.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "C. A. Rajalko".

C. A. Rajalko  
Regional Inspector General  
for Audit Services

Enclosure

HHS Contact:

Director, Office of Fiscal Operations  
Administration for Children and Families, Region III  
P. O. Box 13716, Mail Stop #12  
Philadelphia, Pennsylvania 19101

## SUMMARY

For Fiscal Year (FY) 1989 (October 1, 1988 to September 30, 1989), the Allegheny County Department of Children and Youth Services (CYS) invoiced 10,639 Title IV-E Foster Care maintenance claims totaling about \$10.7 million and requested reimbursement in this amount from the Pennsylvania Department of Public Welfare (State agency). The State agency claimed these costs under the Title IV-E Foster Care program, and was reimbursed about \$6.2 million in Federal financial participation (FFP).

Our review of the foster care maintenance claims invoiced by CYC for FY 1989 showed that the State agency was not entitled to about \$2.3 million<sup>1</sup>, or about 37 percent of the FFP reimbursed for these claims. This high rate of error was caused by widespread violations of Federal and State regulations by CYC which went either undetected or uncorrected by the State agency.

Most of the violations--41 percent of the claims that we reviewed--related to claiming FFP on behalf of children who lacked the required judicial determinations

Through statistical sampling techniques, we estimated that 59 percent of the claims invoiced by CYC during FY 1989 and claimed by the State agency for FFP were ineligible for Federal reimbursement.

specified by Federal guidelines. The CYC claimed these costs and the State agency claimed FFP in these costs.

There were several other violations dealing with the eligibility of foster care children and the foster homes to which the children were assigned. Perhaps the most troubling of the violations dealt with foster homes that continued receiving payments even though they had not been reevaluated for suitability or, worse yet, evaluated and not recommended for licensure. This violation affects more than just FFP. It has a potential serious affect on the safety of children placed in these homes.

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<sup>1</sup>The FFP amounts attributed to the specific types of regulatory violations exceed the total of \$2.3 million because some of the claims reviewed involved more than 1 violation.

We are making procedural recommendations in this report aimed at improving the State agency's administration of the Title IV-E Foster Care program. We are also recommending that the State agency make a financial adjustment of \$2,299,984 for the ineligible claims identified in this report.

By letter dated November 5, 1991, the State agency responded to a draft of this report. The State agency disagreed with our sampling methodology and the findings. The State agency provided additional information on certain cases that we questioned because of lack of judicial determinations or foster home ineligibility.

We have reviewed the State agency's response. The major issues raised by the State agency are summarized at the end of this report along with our comments. The State agency's letter is included as Appendix B to this report. Portions of the letter were deleted to protect the confidentiality of the foster children. We have not included the attachments to the State agency's letter because of their bulk.

## CONTENTS

	<u>Page</u>
SUMMARY	i
INTRODUCTION	1
BACKGROUND	1
SCOPE OF AUDIT	2
FINDINGS AND RECOMMENDATIONS	3
INELIGIBLE MAINTENANCE COSTS CLAIMED FOR FFP	3
Judicial Determinations	4
Foster Home Eligibility	6
Voluntary Placements	8
Other Errors	9
AFDC Eligibility of Foster Care Children	9
Over Age Foster Children	10
CONCLUSIONS AND RECOMMENDATIONS	10
STATE AGENCY RESPONSE AND OIG COMMENTS	11
APPENDIX A - SAMPLING METHODOLOGY AND RESULTS	
APPENDIX B - STATE AGENCY RESPONSE TO DRAFT REPORT DATED NOVEMBER 5, 1991	

### Abbreviations

AFDC	Aid to Families With Dependent Children
FFP	Federal financial participation
OIG	Office of Inspector General

## INTRODUCTION

### BACKGROUND

The Adoption Assistance and Child Welfare Act of 1980, Public Law 96-272, was enacted on June 17, 1980. This Act established the Title IV-E program--Federal Payments for Foster Care and Adoption Assistance. The foster care component of the Aid to Families With Dependent Children (AFDC) program, which had been an integral part of the AFDC program under Title IV-A, of the Social Security Act (Act), was replaced by Title IV-E, effective October 1, 1980.

Title IV-E was intended as a means of reforming the nation's approach to foster care and adoption. The foster care system, at the time that Title IV-E was enacted, was perceived to be a holding system for children living away from their parents with little hope of either being united or achieving a permanent home. Title IV-E provided for Federal sharing in payments for maintenance costs associated with the care of foster children if certain conditions were met. The conditions were aimed at preventing unnecessary separation of the child from the parents; improving quality of care and services to children and their families; and ensuring permanency through reunification with parents or other alternative permanency planning.

The Title IV-E Foster Care program is administered at the Federal level by the Administration for Children and Families (ACF), formerly the Administration for Children, Youth and Families, Office of Human Development Services, Department of Health and Human Services (HHS). In the Commonwealth of Pennsylvania, the Department of Public Welfare (State agency) is responsible for administering the Foster Care program at the State level. The State agency, in turn, delegated, under the provisions of State law, the authority to the CYs to administer the Foster Care program within Allegheny County, Pennsylvania.

The CYs through the County Controller submits to the State agency each quarter a Summary Invoice (CY64-PM) that claims Title IV-E maintenance costs, administrative costs and training costs that were incurred. Attached to the Summary Invoice is a Pennsylvania Foster Home and Institutional Care Payment Report or an Invoice (CY-63) that claims maintenance Title IV-E costs by individual foster care child and shows the dates of care that each child remained in the program during that month. The State agency reimburses CYs on the basis of these Summary Invoices and claims Federal financial participation (FFP)

on the State Quarterly Report of Expenditures and Estimates, Form IV-E-12 (formerly the quarterly Title IV-E Statement of Expenditures (Form IV-E-2)) submitted to ACF.

The CYS' Summary Invoices covering the period October 1, 1988 through September 30, 1989 (FY 1989) included claimed costs of \$10,777,020 which were comprised of 10,639 foster care placement maintenance claims for costs incurred under the Title IV-E Foster Care program during FY 1989. The State agency subsequently claimed these costs and was reimbursed \$6,171,016 in FFP.

#### SCOPE OF AUDIT

Our audit was performed in accordance with generally accepted Government auditing standards. The objective of our audit was to determine if the foster care maintenance costs claimed by CYS on the FY 1989 Summary Invoices and subsequently claimed for FFP by the State agency met the provisions of title IV-E of the Social Security Act and the implementing Federal regulations.

We reconciled the costs claimed by CYS on the Summary Invoices which covered FY 1989 to the Quarterly Statement of Expenditures (Form No. IV-E-2) reports prepared by the State agency and submitted to ACF. We determined that CYS claimed maintenance costs of \$10,777,020 for that period, and that the State agency claimed these costs for FFP. We also determined that the State agency was reimbursed \$6,171,016 in FFP for these claims.

To determine whether the claims for FFP were proper, we compared the provisions of Title IV-E and Federal regulations to the State agency's and CYS' written regulations and policies to ensure compliance with Federal regulations. To test compliance with these regulations and with Federal regulations, we selected on a scientific random basis 100 of the 10,639 individual foster care maintenance claims listed on CYS' FY 1989 payment reports or invoices attached to the Summary Invoices (See Appendix A for the sample methodology used in this audit). As previously mentioned, these 10,639 claims totaled \$10,777,020.

We reviewed the case files associated with the 100 claims and compared the data in the case files to the FFP eligibility requirements established by Title IV-E. We identified the number and amount of claims in our sample that did not meet the FFP eligibility requirements and used a standard scientific estimation process to identify the probable number and amount of claims in the total

population (10,639 maintenance payment claims made by  
CYS) that were ineligible for FFP. We also reviewed the  
case files with CYs personnel for those claims that we  
determined were not in accordance with Title IV-E  
requirements to obtain their views and additional  
information that was available from other sources in the  
county.

Other than the issues discussed in the **FINDINGS AND  
RECOMMENDATIONS** section of this report, we found no  
instances of non-compliance with applicable laws and  
regulations. With respect to those items not tested  
(that is, not subject to our statistical sample), nothing  
came to our attention to cause us to believe that the  
untested items were not in compliance with applicable  
laws and regulations.

Our audit was conducted at State agency offices in  
Harrisburg, Pennsylvania and at the Allegheny County  
offices of CYs in Pittsburgh, Pennsylvania. Our audit  
was performed during the period June and July 1991.

#### FINDINGS AND RECOMMENDATIONS

##### INELIGIBLE MAINTENANCE COSTS CLAIMED FOR FFP

Our review at CYs disclosed widespread violations of  
Federal regulations and provisions of the State plan. We  
estimate that 6,277 (59 percent) of the 10,639 foster  
care maintenance claims invoiced by CYs for FY 1989 and  
claimed for FFP by the State agency were ineligible for  
Federal reimbursement under the Title IV-E Foster Care  
program. As indicated by the percentages below, some  
claims had more than one error associated with them.

- o Forty-one percent of the claims were made on behalf of children who lacked the required judicial determination.

The Office of Inspector General estimates that widespread violations of Federal regulations by CYs resulted in the State agency being reimbursed at least \$2,299,984 in excess FFP under the Title IV-E Foster Care program.

- o Thirteen percent of the claims were made to foster homes who were not eligible for program participation.

- o Ten percent of the claims were made on behalf of children who were voluntarily placed in foster care. The State agency's approved State plan did not include a provision for voluntary placements.
- o Four percent of the claims involved children who were either ineligible for AFDC or over age.

We identified these widespread violations of Federal regulations through a statistical sample of the 10,639 foster care maintenance claims totaling \$10,777,020 that were made by CYS on behalf of children participating in the Title IV-E Foster Care program during FY 1989. These claims were listed on the payment reports or invoices which were attached to the Summary Invoices for FY 1989.

We randomly selected 100 of these claims invoiced by CYS during FY 1989 and determined that 59 of the 100 claims were ineligible for FFP. We estimate that 6,277 claims were ineligible for FFP. Using a standard scientific estimation process, we concluded that there was a 95 percent probability that the State agency claimed FFP for claims totaling at least \$4,016,676 that were not eligible for FFP under the Title IV-E Foster Care program. The State agency was reimbursed FFP of at least \$2,299,984 for these ineligible claims.

Our projection is based on the results of our sample which showed that 59 of the 100 maintenance claims reviewed were not in compliance with Title IV-E requirements. The projection is an unduplicated error projection and, therefore, does not take into account the fact that 6 of the 100 claims were not in compliance with more than one Title IV-E requirement.

To show the relative significance of each type of violation and its impact on the State agency's claims for FFP, we have made separate projections by type of violation. Taken separately, these projections can be used to reasonably estimate the relative seriousness of the specific violation. However, since these separate projections are based on the number of violations noted in the claims sampled rather than on the number of claims with violations, the separate projections cannot be added to arrive at our projection for the ineligible FFP reimbursed the State agency under the Title IV-E Foster Care program.

#### Judicial Determinations

Based on the results of our statistical sample, we estimate that 4,362 claims, or 41 percent of the foster

care maintenance payments claims invoiced by CY5 for FY 1989 and claimed for FFP by the State agency, were ineligible for FFP because the children on whose behalf the claims were made lacked a proper judicial determination required by Title IV-E. The State agency was reimbursed FFP of \$2,083,231 for these ineligible claims.

Section 472(a)(1) of the Act requires that removal of a child from the home must be either by a judicial determination or by a voluntary placement agreement. In order to claim FFP for payments made on behalf of children removed from the home by a judicial determination, the judicial determination must be a court order signed by a judge that contains a statement that continuation of residence at home is contrary to the welfare of the child. For monthly maintenance payments made on behalf of a child removed from the home on or after October 1, 1983, the court order must also state that reasonable efforts were made to prevent the child's removal from the home. If the judicial determination is subsequent to the removal of the child, the court order should also state that reasonable efforts were made to reunite the child with the family.

In our sample of 100 claims, 90 were associated with children removed from the home as a result of a judicial determination. However, the court orders relative to the removal of 41 of these children from their homes were not in compliance with Title IV-E requirements in that:

- o Court orders for 31 claims made on behalf of children removed from their homes after October 1, 1983, made no mention of any efforts being made to prevent the child's removal from the home and to reunite the child with his or her family or that the removal was contrary to the welfare of the child.
- o Court orders for 10 claims made on behalf of children removed prior to October 1, 1983, made no mention that living at home would be contrary to the welfare of the children.

The CY5 officials reviewed the court orders and agreed that the court orders did not comply with Title IV-E requirements. They stated, however, that the judge did consider all Title IV-E judicial determination requirements at the time of the judicial hearings. The CY5 officials began to obtain nunc pro tunc orders to meet the judicial determination requirements set forth in section 472(a)(1) of the Act.

These orders in themselves, however, do not meet the statutory requirements of the Act as outlined in ACYF-IM-87-28, dated October 7, 1987 and ACYF-IM-89-08, dated April 17, 1989. States may be required to submit documentation to verify that the findings were in fact omissions from the record through inadvertence or mistake. This documentation may include the transcript of the court proceedings and/or the agency's report to the court, or any other documentation that would confirm that the information was actually presented to the court at the previous hearing and that the court made the determination(s) at that time.

The 41 claims ineligible for FFP totaled \$34,196. We projected these results to the total number of claims invoiced by CYS and claimed by the State agency for FFP. We estimate that the State agency claimed \$3,638,140 (point estimate) for claims invoiced during FY 1989 on behalf of children who lacked the judicial determination necessary for Federal reimbursement under the Title IV-E Foster Care program. The State agency was reimbursed FFP of \$2,083,231 for these ineligible claims.

#### Foster Home Eligibility

Based on the results of our statistical sample, we estimate that 1,383 claims, or 13 percent of the maintenance claims invoiced by CYS for FY 1989 and claimed for FFP by the State agency, were ineligible for Federal reimbursement because the foster family homes that were paid were not eligible for program participation at the time that the payments were made and the claims were invoiced. The State agency was reimbursed FFP of \$332,769 for these ineligible claims.

The Act and implementing guidelines require that for foster care maintenance payments to be eligible for FFP, the facilities that receive the payments must be licensed or approved in accordance with State established requirements. Under the Pennsylvania Code, Title 55, Public Welfare, Chapter 20, the State agency issues a Certificate of Compliance to the legal entity permitting it to operate a specific type of facility or agency, at a given location, for a specific period of time, and according to appropriate Departmental program licensure or approval regulations. Section 20.31 of Title 55 states that a facility or agency will be evaluated at least once every 12 months.

The State agency issues certificates to residential child care facilities and private agencies that operate foster family homes. Certificates are also issued to public

agencies, i.e., governmental entities, who, in turn, are permitted to approve foster family homes. The State agency issued CYS a Certificate of Compliance for a public agency, thereby enabling CYS to approve foster family homes for participation in the foster care program.

According to CYS policy and State regulations, reevaluations of all foster family homes must be conducted every year to assure that homes continue to meet State and CYS requirements. The results of the evaluation are reported on an annual Caretaker/Foster Home Reevaluation report (Form RPR 509). Through this evaluation process, the foster home is either approved, provisionally approved, or disapproved. Some factors which are considered in the evaluation process are: the physical adequacy of the home, the financial status of the foster parents, the quality of care provided by the foster parents, the ability of the foster parents to supervise and discipline children, and several safety requirements.

Of the 100 claims that we reviewed, 67 pertained to foster family homes, 9 pertained to group homes and 24 pertained to institutions. All of the group homes and institutions that were associated with the 33 claims had a valid Certificate of Compliance issued by the State agency for the period of our review. Of the 67 claims pertaining to family homes, 13, or 19.4 percent, involved homes where approval to participate in the Foster Care program was not documented or the homes were not approved.

- o Seven claims involved homes that were not reevaluated within 1 year as required by State agency regulations.
- o Four claims involved homes that, according to the evaluation reports, were not in compliance with State agency regulations. None of these homes were recommended for provisional licensing. Therefore, they should have been terminated from the program.
- o One claim involved a home for which CYS could not locate an annual foster home evaluation report to substantiate that the home had been evaluated and approved.
- o One claim involved a home that was evaluated but the report was missing a summary section in which the decision to approve or disapprove program

participation is included. Therefore, CYS had no assurance that the home was approved.

The 13 ineligible claims totaled \$5,462. We projected these results to the total number of claims invoiced by CYS and claimed for FFP by the State agency. We estimate that the State agency claimed \$581,146 (point estimate) for claims invoiced during FY 1989 on behalf of children placed in foster homes that were not eligible to participate in the Title IV-E Foster Care program at the time the claims were invoiced. The State agency was reimbursed FFP of \$332,769 for these ineligible claims.

#### Voluntary Placements

Based on the results of our statistical sample, we estimate that 1,064 claims or 10 percent of the foster care maintenance claims invoiced by CYS for FY 1989 and claimed for FFP by the State agency, were ineligible for FFP. The claims were ineligible because the children on whose behalf the claims were made were voluntarily placed in foster care by their parent or guardian and the State agency's State plan did not provide for voluntary placement (the State plan for FY 1990 provides for voluntary placements). The State agency was reimbursed FFP of \$648,293 for these ineligible claims.

Federal regulations, 45 CFR Chapter XIII, section 1356.20 (a) require that:

"to be in compliance with the State plan requirements and to be eligible to receive Federal financial participation (FFP) in the costs of foster care maintenance payments...a State must have a State plan approved by the Secretary that meets the requirements of this part".

Section 1356.20 (b) adds that:

"if a State chooses to claim FFP for voluntary foster care placements, the State must meet the requirements of paragraph (a) of this section and section 102 of Public Law 96-272, the Adoption Assistance and Child Welfare Act of 1980, as it amends section 472 of the Act".

An ACF Policy Interpretation Question (PIQ) 89-03, dated July 24, 1989 also dealt with FFP for voluntary placements in the Title IV-E Foster Care program. According to this PIQ, for a State to claim FFP for children voluntarily placed in foster care, it must have such a provision in its Title IV-E State plan. The PIQ

also stated that a State which does not have a voluntary placement provision in its State plan cannot claim FFP for a child who has been voluntarily placed even if there has been a subsequent judicial determination made within 180 days of placement to the effect that the placement is in the best interests of the child. In States that accept voluntary placements but do not have a voluntary provision in its State plan, voluntary placements are ineligible for FFP during the entire stay in foster care.

The State agency did not include a provision for voluntary placements in its FY 1989 State plan for the Title IV-E Foster Care program. Therefore, claims made on behalf of children voluntarily placed in foster care were not eligible for FFP. There were 10 claims in our sample of 100 where an agreement was signed by the parent or guardian and a representative of CYS to voluntarily place the child in foster care. Subsequently, a judicial determination was made to the effect that the placement was in the best interest of the child.

Officials from CYS reviewed the case files associated with the 10 claims and confirmed that the placements were voluntary. The region III ACF had reported this finding in Pennsylvania to State agency officials each year since 1983. Each year the State agency has appealed the finding and has continued to claim FFP for such costs.

The 10 claims that were made on behalf of children voluntarily placed in the program totaled \$10,642. We projected these results to the total number of claims invoiced by CYS and claimed by the State agency for FFP. We estimate that the State agency claimed \$1,132,175 (point estimate) for claims invoiced during FY 1989 on behalf of children who were voluntarily placed in the Title IV-E Foster Care program. The State agency was reimbursed FFP of \$648,293 for these ineligible claims.

#### Other Errors

We found four other errors in our sample cases related to children who were ineligible for AFDC, or over age. Because of the low number of these errors, we did not make an individual projection.

#### AFDC Eligibility of Foster Care Children

According to section 472(a)4 of the Social Security Act, a child, to be eligible for the Title IV-E Foster Care program must have also been actually or potentially eligible for AFDC benefits at the time of his or her removal from the home with redeterminations yearly

thereafter. In Allegheny County, CYS required that all children removed from a home have an Eligibility Determination form (CY61) completed by a social worker. The form lists all the eligibility criteria used in determining a child's eligibility for the Title IV-E Foster Care program, including whether the child is eligible for AFDC.

Our review showed that in two cases the data on the CY61 form showed that the child was ineligible for AFDC. Nevertheless, the child was placed in the Title IV-E Foster Care program. The CYS claimed \$2,913 for these 2 cases.

#### Over Age Foster Children

The Social Security Act, title IV, part A, section 406(a) requires that to be eligible for foster care a child must be under the age of 18, or at the option of the State, under the age of 19 and a full-time student in a secondary school (or in the equivalent level of vocational training), if, before a child reaches 19, he or she may reasonably be expected to complete the program of such secondary school (or such training).

Our review showed that for 2 claims, the foster care children were over the age of 19 at the time CYS invoiced the sampled payment. The CYS official who reviewed this case file agreed that the individuals were over age and not eligible for Title IV-E Foster Care. The sampled claims totaled \$1,248.

#### CONCLUSIONS AND RECOMMENDATIONS

Based on the results of our statistical sample, we estimate that at least \$4 million of the \$10.7 million reported by CYS for FY 1989 foster care maintenance payments, and subsequently claimed by the State agency for FFP under Title IV-E, was ineligible for Federal reimbursement. The State agency was reimbursed FFP of at least \$2,299,984 for these ineligible claims.

We estimate that 59 percent of CYS' claims for maintenance payments under the Title IV-E Foster Care program were ineligible for FFP. The primary reason why the error rate was so high was that so many children on whose behalf the claims were made were ineligible for Title IV-E because they: lacked the required judicial determinations; were voluntarily placed in the program; were ineligible for AFDC at the time of placement into the program; or were over age. Another reason was that

13 percent of the claims were made for payments to foster family homes that were not eligible for program participation. Clearly CYS must better comply with Title IV-E Foster Care regulations.

We, therefore, recommend that the State agency:

1. Emphasize to CYS the importance of full compliance with Federal and State regulations regarding: judicial determinations of children placed in foster care, the AFDC eligibility of children placed in foster care, and the age limit for the Title IV-E Foster Care program.
2. Emphasize to CYS that all family foster homes must be evaluated annually and that the results of these evaluations must be fully documented in the files. Homes disapproved for participation in the Foster Care program should be removed from the program timely and all payments to these homes halted.
3. Periodically monitor CYS' performance in complying with Federal and State regulations regarding the Title IV-E Foster Care program.
4. Make a financial adjustment of \$2,299,984 for FFP in maintenance claims invoiced by CYS for FY 1989 that were ineligible for Federal reimbursement under the Title IV-E Foster Care program.

#### STATE AGENCY RESPONSE AND OIG COMMENTS

The State agency did not comment either on the recommendations in our draft report or the findings dealing with voluntary placements, children ineligible for AFDC and over aged children. The State agency disagreed with the size of our sample used to project the results of our review, and the findings dealing with judicial determinations and foster home eligibility. The State agency also provided additional information on 9 of the 16 foster homes questioned in our draft report.

We have reviewed the State agency's response and have concluded that the additional information provided supported the eligibility of 3 of the 16 foster homes included in our original finding. We have, therefore, revised our report accordingly. The remainder of the findings are unchanged from the draft report. As noted below, we believe that our statistical sampling methodology is correct and that our findings are valid.

### Statistical Sample

The State agency objected to the small sample size of 100 given a universe of over 10,000 claims and stated that a sample of 200 to 300 cases as required by ACF policy in financial reviews should have been used.

We used the ACF review guide as a programmatic audit tool in reviewing case files that were selected using Office of Inspector General (OIG) statistical sampling policies and procedures. We are not required to, nor would we, use the ACF guide to determine the sample size when implementation of OIG policies and procedures results in a statistically valid sample at less cost to the Federal Government.

The OIG audits are conducted in accordance with the Government Auditing Standards (1988 Revision) issued by the General Accounting Office (GAO). This document sets out "Standards for Audit of Governmental Organizations, Programs, Activities and Functions." Broadly, under these standards, an OIG audit must provide relevant, valid, reliable, factual, and convincing support for the auditor's conclusions. Our statistical sample complies with OIG policies and procedures and provides valid, reliable support for our findings. Further, a smaller sample size does not place the State at a disadvantage since it results in a wider "confidence level" and a lower "lower limit". We used the "lower limit" in our recommended financial adjustment.

### Judicial Determinations

The State agency stated its review of the 41 sampled cases that were determined to lack the required judicial determination resulted from the failure of the judges to check certain boxes on a form order. It added that ACF policy allows States to correct clerical errors such as these through the device of nunc pro tunc court orders which are acceptable if they are based upon "contemporaneous court documentation which will verify that determinations were, in fact, made but were omitted from the record through inadvertency or mistake" (ACYF-IM-89-08). The State agency subsequently produced 26 nunc pro tunc orders which it felt met the requirements of ACYF-IM-89-08.

It is worth noting that the State agency did not provide nunc pro tunc court orders for 15 of the sample cases. It is, therefore, reasonable to assume that the State

agency found nothing in its files to indicate that these 15 cases were eligible for the Title IV-E Foster Care program.

As to 26 nunc pro tunc court orders which the State did submit, we disagree that these orders would be sufficient evidence to show that the required judicial determinations were made at trial but were merely not reflected in a formal order. The orders were all executed subsequent to our audit and the majority of them were signed during a 1-week period in October 1991. Moreover, the State agency was unable to provide any court documents, such as transcripts or bench notes, showing that the trial judge actually made the required determinations. ACF policy interpreting section 472(a)(1) of the Act, as set forth in ACYF-IM-89-08, states that earlier policy has "made clear that the Federal agency may request any documentation that it determines is necessary to verify that the court actually made the determination at the removal hearing." Since the State agency was unable to produce any documentation in addition to the orders themselves, we see no basis to modify our treatment of the 26 cases in question based upon the orders.

#### Foster Home Eligibility

The State agency disagreed with this finding and provided information on 9 of the 16 foster homes included in our original finding. The information showed that:

- o Six of the nine homes for which CYS initially could not document an evaluation and approval, were in fact evaluated but not within the 12-month period. The State agency believed that the issue involving these homes was essentially late redeterminations of Title IV-E provider eligibility. The State agency mentioned that ACYF PIQ 86-6 stated that no disallowance will be taken for a late redetermination.
- o Two of the same 9 homes were evaluated within the 12-month period.
- o One of the five homes that, according to evaluation reports, were not in compliance with State agency regulations was mistakenly categorized as failing the evaluation.

Based on the additional information provided by the State agency, we have revised our finding to show acceptance of the two homes that were evaluated within the 12-month period and the one home that was mistakenly categorized as failing the inspection. We noted that the State did not offer any comments on four foster homes that were evaluated and found unacceptable. At that point the homes should have been terminated from the Title IV-E Foster Care program and the children transferred to homes meeting the established standards. This, of course, did not happen and the children remained in substandard foster homes.

Furthermore, we do not accept the State agency's contention that the six foster homes essentially involved a late redetermination for which disallowances cannot be taken. The Pennsylvania Code Title 55, section 20.31 states that a facility or agency will be evaluated at least once every 12 months. The ACYF PIQ 85-6 (the State agency referred to ACYF PIQ 86-6 but that does not exist according to ACYF) cited by the State agency is irrelevant to our finding. The document refers to the timely redetermination of a child's eligibility for the Title IV-E Foster Care program, which is far different than the timely redetermination of a foster home. There is no mention in this document that a disallowance cannot be taken for a late redetermination of a foster family home.

We are recommending a disallowance because determinations were not made once every 12 months as required. But the issue itself is far greater than just FFP. It involves the safety of the children living in the homes that were not reevaluated. The State agency appears to accept the fact that foster family homes, once approved, remain approved without any time limit for a requirement for a reevaluation. We disagree completely. We question how timely direct action can be taken against a substandard home unless regular evaluations are made to identify those homes and foster parents that do not meet the requirements established by the State agency. If the State agency does not require annual evaluations of these homes and strictly enforce the requirements, the protection afforded these foster children is greatly diminished.

#### Summary

We have revised the finding on foster homes to reflect additional information provided by the State agency. Other than a slight reduction in the total amount of the FFP recommended for recovery, we have not revised any of our recommendations.

SAMPLING METHODOLOGY AND RESULTS

On a scientific random selection basis, we examined 100 monthly maintenance payments made to foster home facilities by CYS (Allegheny County), from a population of 10,639 monthly payments invoiced to the State agency for a subsequent claim for Federal reimbursement. The payments we sampled were drawn from the payment reports and invoices that were combined into Summary Invoices for the period October 1, 1988 to September 30, 1989.

We defined an error as the amount of FFP claimed for any payment which was ineligible for any of the five reasons identified in this report - (1) judicial determination requirements lacking, (2) foster home eligibility, (3) voluntary placement, (4) children ineligible for AFDC, or (5) children were too old for the Foster Care program.

Of the 100 payments sampled, we determined that 59 payments were ineligible for FFP for one or more of the aforementioned reasons. Using a standard scientific estimation process, we concluded that there is a 95 percent probability that from October 1, 1988 through September 30, 1989, CYS invoiced the State agency which subsequently claimed Federal reimbursement for at least \$4,016,676 in ineligible payments. The FFP was \$2,299,984. The point estimate and precision upon which this finding is based are \$5,346,116 +/- \$1,329,439 with a standard error of \$75.26.

We also performed subsidiary sample analyses to show the relative significance of the specific types of errors. These analyses were made using the same criteria as above except that an error was defined as the amount claimed for any payment that was ineligible for a single type of error. The results of the individual error type have been reported at the point estimate as follows:

<u>TYPE</u>	<u>NUMBER OF PAYMENTS</u>	<u>FFP POINT ESTIMATE</u>
Judicial Determinations	41	\$2,083,231
Ineligible Provider	13	\$ 332,769
Voluntary Placement	10	\$ 648,293

NOTE: We did not individually project errors associated with Children Ineligible for AFDC and Overage Children because the number of errors in each category was too low.

Because some payments were ineligible for more than one reason, the results of the subsidiary sample analyses are not mutually exclusive of each other and should not be added together. An accurate estimate of the total number of ineligible payments can be obtained from our combined analyses.



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**Harry D. Sewell**  
Deputy Secretary for Administration

NOV 6 5 1991

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Mr. G. A. Rafalko  
Regional Inspector General  
for Audit Services  
Office of Inspector General  
Department of Health and Human Services  
P.O. Box 13716  
Mail Stop 9  
Philadelphia, Pennsylvania 19101

Re: Review of Foster Care Maintenance  
Payments Claimed Under Title IV-E  
of the Social Security Act by  
Allegheny County, Pennsylvania for  
the Period October 1, 1988 through  
September 30, 1989 - Common  
Identification Number A-03-00553

Dear Mr. Rafalko:

I am responding to your letter dated August 22, 1991 to Acting Secretary Karen F. Snider. Your letter transmitted a draft audit report regarding the above-referenced review. Our comments on that report follow. We have intentionally omitted comments which relate to your ongoing legal disputes with the Administration for Children and Families (ACF) over disallowed Title IV-E funding for foster care maintenance payments for previous fiscal years since your office is bound by ACF policy.

SAMPLE SIZE

The Department of Public Welfare objects to the small sample size used by the auditors. Given the universe of over 10,000 claims, we do not believe that a sample of only 100 cases is reliable. Federal policy requires a sample between 200 and 300 cases in financial reviews conducted by ACF (ACYF-IM-85-25). The auditors should have used a sample size of at least 200.

JUDICIAL DETERMINATIONS

The auditors found that 41 of 100 sampled cases lacked the required judicial determination. Our review of these cases shows that most of the errors resulted from the failure of the judges to check certain boxes on a form order.

Mr. G. A. Rafalko

-2-

ACF policy allows states to correct clerical errors such as these through the device of nunc pro tunc court orders. Under ACF policy, nunc pro tunc court orders are acceptable if they are based upon "contemporaneous court documentation which will verify that determinations were, in fact, made but were omitted from the record through inadvertency or mistake" (ACYF-IM-89-08). Acceptable contemporaneous documentation includes "court transcripts, bench notes, or other court documents." Id

At the exit conference on October 23, 1991, Allegheny County produced nunc pro tunc court orders which meet the requirements of ACYF-IM-89-08. Based on those orders, the following cases should be cleared on the issue of not having a judicial determination:

<u>Name of Child</u>	<u>Contemporaneous Documentation Used</u>
1.	CYS petition, transcript of hearing
2. (NAMES DELETED	CYS summary, CYS petition, transcript
3. TO PROTECT	CYS summary, CYS petition, transcript
4. CONFIDENTIALITY).	CYS summary, CYS petition, transcript
5.	CYS petition, transcript
6.	CYS summary and summary of testimony
7.	CYS summary, CYS petition, transcript
8.	CYS summary
9.	CYS summary
10.	CYS petition, bench notes
11.	CYS petition, CYS summary, transcript
12.	CYS summary, CYS petition, transcript
13.	CYS summary
14.	CYS summary, CYS petition
15.	CYS petition, transcript
16.	CYS petition
17.	CYS petition, CYS summary, transcript
18.	CYS petition, CYS summary, bench notes
19.	Transcript
20.	CYS petition, CYS summary
21.	CYS petition, transcript
22.	Transcript
23.	CYS petition, CYS summary, bench notes
24.	CYS petition, CYS summary, transcript

### FOSTER HOME ELIGIBILITY

#### I - Late Redeterminations

The auditors found that 16 cases involved foster homes which were not approved by the state. The state disagrees with this finding.

Mr. G. A. Rafalko

-3-

The Social Security Act requires that foster care payments be made to homes which are approved by the state as meeting the standards established for licensing (42 U.S.C. Section 672(c)). The auditors disallowed payment for a number of approved homes because annual redeterminations of provider eligibility were late. The state believes the auditors were in error because state regulations do not provide for the automatic revocation of foster home approval when an annual redetermination is late.

The state regulations governing foster home approval are found at 55 Pa. Code Section 3700.69 and Section 3700.70. The regulation at Section 3700.69 says only that the county shall give "notice to the foster family of its decision to approve or provisionally approve the foster family." The regulation does not give any time limit after which the approval expires. This is in sharp contrast to the regulation at Section 3700.70. That regulation specifically time limits provisional and temporary approvals to one year and 60 days, respectively.

The state's position is supported by ACYF-PIQ-86-6, Question 3. That policy clarification deals with the effect of late redeterminations of Title IV-E eligibility and states that no disallowance will be taken for a late redetermination. The state believes that the PIQ is applicable here because the issue here essentially involves late redeterminations of Title IV-E provider eligibility.

The cases in which foster homes had valid approvals but late redeterminations are as follows:

	<u>Name</u>	<u>Sample Month</u>	<u>Prior Approvals</u>
1.	(NAMES DELETED	11/88	10/14/87
2.		12/88	12/15/87
3.	TO PROTECT	1/89	11/23/87
4.	CONFIDENTIALITY).	6/89	5/02/88
5.		4/89	3/22/88
6.		4/89	3/30/87

II - Other Provider Issues

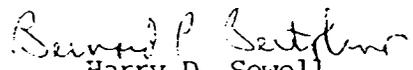
MATERIAL DELETED - NO LONGER INCLUDED IN FINAL REPORT.

Mr. G. A. Rafalko

-4-

Thank you for your consideration of these comments.

Sincerely,

  
Harry D. Sewell  
Pa