



Federal Child Welfare Manual Update

8.2B TITLE IV-E, Adoption Assistance Program, Eligibility

5. Question: *(new 2.25.11)*

The statute requires that to be an “applicable child” based on the child’s “duration in care,” the child must have been in foster care for 60 consecutive months (see section 473(e)(2)(A) of the Social Security Act). Please provide additional guidance on calculating the 60 consecutive month period.

Answer:

The 60 consecutive month period is any 60 consecutive months in foster care prior to the finalization of the adoption. The title IV-E agency may use any reasonable method of calculating the 60 consecutive month period, within the following parameters:

- The definition of foster care at 45 CFR 1355.20(a) applies in determining the 60 consecutive month provision and does not include detention facilities or psychiatric hospitals (see Child Welfare Policy Manual (CWPM) section 7.3 Q/A #1). Foster care is defined at 45 CFR 1355.20(a) as: 24-hour substitute care for children placed away from their parents or guardians and for whom the State agency has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and preadoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the State or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is Federal matching of any payments that are made.
- A child must be in foster care, as defined in 45 CFR 1355.20(a), for at least one day of a month.
- A runaway episode may count towards calculating the 60 consecutive month period if the title IV-E agency retains responsibility for the placement and care of the child during the runaway episode because a child in this situation is considered to be in foster care. See CWPM sections 8.3C.2 Q/A #3 and 1.2B.7, National Youth in Transition Database (NYTD) Federal Guidance Q/A #8.10, and ACYF-CB-PI-08-03.
- If a title IV-E agency considers a child who is on a trial home visit to be in foster care, then the trial home visit period may count towards calculating the 60 consecutive month period. See existing policy on trial home visits in the CWPM section 8.3C.5.

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- Source/Date: 2/24/2011
- Legal and Related References: Social Security Act – Section 473(e)(2)(A), 45 CFR 1355.20(a), Child Welfare Policy Manual sections 7.3 Q/A #1, 8.3C.5, 8.3C.2 Q/A #3 and 1.2B.7, NYTD Federal Guidance Q/A #8.10, ACYF-CB-PI-10-11, and ACYF-CB-PI-08-03

To go to this question directly in the Child Welfare Policy Manual, go to:

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Federal Child Welfare Manual Update

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

3. Question: *(new 2.25.11)*

In determining whether an applicable child who is a special needs child is eligible for title IV-E adoption assistance through the Supplemental Security Income (SSI) pathway, may a title IV-E agency make the determination that the child meets the medical or disability requirements for SSI benefits?

(See section 473(a)(2)(A)(ii)(I)(bb) of the Social Security Act).

Answer: Yes. For the purposes of determining whether an applicable child who is a special needs child is eligible for title IV-E adoption assistance through the SSI pathway, the title IV-E agency may make the determination that the child meets the medical or disability requirements for SSI benefits. The title IV-E agency is not making an SSI eligibility determination on behalf of the child, as that responsibility lies with the Social Security Administration and that includes a financial eligibility component. Rather, the title IV-E agency is responsible for title IV-E adoption assistance eligibility determinations, and therefore the agency is permitted to make the determination that the child meets the medical or disability requirements for SSI benefits for title IV-E eligibility purposes.

- **Source/Date:** 2/24/2011
- **Legal and Related References:** Social Security Act - Sections 473(a)(1)(B)(ii), 473(a)(2)(A)(ii)(I)(bb) and 473(c)(2)(B)(ii)

To go to this question directly in the Child Welfare Policy Manual, go to:

http://www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citiID=49

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Federal Child Welfare Manual Update

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

3. Question: *(new 2.25.11)*

In determining whether an applicable child who is a special needs child is eligible for title IV-E adoption assistance through the Supplemental Security Income (SSI) pathway, may a title IV-E agency make the determination that the child meets the medical or disability requirements for SSI benefits? (See section 473(a)(2)(A)(ii)(I)(bb) of the Social Security Act).

Answer: Yes. For the purposes of determining whether an applicable child who is a special needs child is eligible for title IV-E adoption assistance through the SSI pathway, the title IV-E agency may make the determination that the child meets the medical or disability requirements for SSI benefits. The title IV-E agency is not making an SSI eligibility determination on behalf of the child, as that responsibility lies with the Social Security Administration and that includes a financial eligibility component. Rather, the title IV-E agency is responsible for title IV-E adoption assistance eligibility determinations, and therefore the agency is permitted to make the determination that the child meets the medical or disability requirements for SSI benefits for title IV-E eligibility purposes.

- **Source/Date:** 2/24/2011
- **Legal and Related References:** Social Security Act - Sections 473(a)(1)(B)(ii), 473(a)(2)(A)(ii)(I)(bb) and 473(c)(2)(B)(ii)

To go to this question directly in the Child Welfare Policy Manual, go to:

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Federal Child Welfare Manual Update

8.5A Guardianship Assistance Program, Agreements

2. Question: *(new 2.25.11)*

For the Guardianship Assistance Program (GAP), does a title IV-E agency have the flexibility to establish a cap on specific components (e.g., attorney fees) of the nonrecurring expenses that it must pay in connection with obtaining legal guardianship of the child?

Answer: No. Section 473(d)(1)(B)(iv) of the Social Security Act provides that a GAP agreement must specify, among other things, that the title IV-E agency will pay the total cost of nonrecurring expenses associated with obtaining legal guardianship of the child, to the extent the total cost does not exceed \$2,000. Such language does not permit a title IV-E agency the discretion to establish such a cap on specific items that qualify as nonrecurring expenses.

- **Source/Date:** 2/24/2011
- **Legal and Related References:** Social Security Act – Section 473(d)(1)(B)(iv)

3. Question: *(new 2.25.11)*

May a title IV-E agency include a provision in the Guardianship Assistance Program (GAP) agreement terminating payments if the guardian and the child move to another country?

Answer: Yes. The title IV-E agency has the flexibility to include a provision in the GAP agreement terminating payments if the guardian and the child move to another country. ACYF-CB-PI-10-11 states that a title IV-E agency has broad discretion to establish how it will evaluate, reevaluate, or terminate GAP agreements. The PI states, [f]or example, a title IV-E agency may establish agreements that: . . . allow the agency to suspend or discontinue guardianship assistance payments when a certain event occurs. Accordingly, a title IV-E agency may provide in the GAP agreement that moving to another country is an event that could cause the suspension or discontinuation of GAP payments.

- **Source/Date:** 2/24/2011
- **Legal and Related References:** Social Security Act – Section 473(d)(1), ACYF-CB-PI-10-11

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Federal Child Welfare Manual Update

8.5B Guardianship Assistance Program, Eligibility

1. Question: *(deleted 3.24.10)*

May a title IV-E agency that operates the Guardianship Assistance Program (GAP) require a child to have resided in foster care with the prospective relative guardian for a minimum period longer than six consecutive months for the child to be eligible for the GAP program?

6. Question: *(new 2.25.11)*

Please provide additional guidance on what counts as a “consecutive month” for purposes of determining eligibility for title IV-E kinship guardianship assistance payments.

Answer: One of the eligibility criteria for title IV-E kinship guardianship assistance payments is that the child must be eligible for title IV-E foster care maintenance payments for at least a consecutive six-month period while the child resided in the prospective relative guardian’s licensed or approved foster family home. A month may be counted in the six consecutive month period if the child met all of the title IV-E foster care maintenance payment eligibility criteria for at least one day of that particular month while in the prospective relative guardian’s home, and is therefore eligible for a title IV-E foster care maintenance payment for at least a portion of that month.

- **Source/Date:** 2/24/2011
- **Legal and Related References:** Social Security Act – Section 472, 473(d)(3)(A)(i)(II), 45 CFR 1355.20(a), ACYF-CB-PI-10-11

To go to this question directly in the Child Welfare Policy Manual, go to:

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Federal Child Welfare Manual Update

8.5C Guardianship Assistance Program, Payments

2. Question: *(new 2.25.11)*

For the Guardianship Assistance Program (GAP), does a title IV-E agency have the flexibility to establish a cap on specific components (e.g., attorney fees) of the nonrecurring expenses that it must pay in connection with obtaining legal guardianship of the child?

Answer: No. Section 473(d)(1)(B)(iv) of the Social Security Act provides that a GAP agreement must specify, among other things, that the title IV-E agency will pay the total cost of nonrecurring expenses associated with obtaining legal guardianship of the child, to the extent the total cost does not exceed \$2,000. Such language does not permit a title IV-E agency the discretion to establish such a cap on specific items that qualify as nonrecurring expenses.

- **Source/Date:** 2/24/2011
- **Legal and Related References:** Social Security Act – Section 473(d)(1)(B)(iv)

3. Question: *(new 2.25.11)*

If a relative guardian moves to another country on a temporary or permanent basis with the child for whom he/she is the guardian, would the relative guardian still be eligible to receive title IV-E Guardianship Assistance Program payments directly on behalf of the child?

Answer: Yes. The title IV-E agency may provide title IV-E payments to a relative guardian on behalf of the child when living outside of the U.S. The already established guardian must have entered into a guardianship agreement with the title IV-E agency on behalf of an eligible child.

- **Source/Date:** 2/24/2011
- **Legal and Related References:** Social Security Act – Section 473(d)(1)

To go to these questions directly in the Child Welfare Policy Manual, go to:

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Federal Child Welfare Manual Update

8.5C.1 Guardianship Assistance Program, Payments, Termination

1. Question: *(new 2.25.11)*

May a title IV-E agency include a provision in the Guardianship Assistance Program (GAP) agreement terminating payments if the guardian and the child move to another country?

Answer: Yes. The title IV-E agency has the flexibility to include a provision in the GAP agreement terminating payments if the guardian and the child move to another country. ACYF-CB-PI-10-11 states that a title IV-E agency has broad discretion to establish how it will evaluate, reevaluate, or terminate GAP agreements. The PI states, [f]or example, a title IV-E agency may establish agreements that: . . . allow the agency to suspend or discontinue guardianship assistance payments when a certain event occurs.? Accordingly, a title IV-E agency may provide in the GAP agreement that moving to another country is an event that could cause the suspension or discontinuation of GAP payments.

- **Source/Date:** 2/24/2011
- **Legal and Related References:** Social Security Act – Section 473(d)(1), ACYF-CB-PI-10-11

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