

**ECONOMIC ASSISTANCE**  
**IV-E FOSTER CARE ELIGIBILITY**

---

Service Chapter 447-10

**North Dakota Department of Human Services**  
**600 East Boulevard Dept. 325**  
**Bismarck, ND 58505-0250**

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division 10  
Program 400

Service 447  
Chapter 10

---

**Table of Contents**

**Economic Assistance IV-E Foster  
Care Eligibility 447-10**

**Introduction and Intent 447-10-05**

Foster Care Funding Sources 447-10-05-05

**Title IV-E Program 447-10-10**

**Emergency Assistance Service 447-10-11**

**Title IV-E Eligibility 447-10-15**

**Foster Care Eligibility Quality Assurance Reviews 447-10-18**

**Initial Eligibility 447-10-20**

Eligibility Month 447-10-20-05

Legal Status 447-10-20-10

AFDC Relatedness 447-10-20-15

AFDC Relatedness Test 447-10-20-15-05

Determining IV-E Eligibility with SSI in the Removal Household  
447-10-20-20-05

SSI Children Entering Foster Care 447-10-20-20-10

Agency Stewardship as the SSI/Social Security Organizational  
Representative Payee 447-10-20-20-20

Emergency Assistance Eligibility 447-10-20-25

Emergency Assistance Application Restriction 447-10-20-25-05

Regular Foster Care Eligibility 447-10-20-30

**Reimbursability 447-10-25**

Legal Responsibility 447-10-25-05

Reasonable Efforts - Requirements 447-10-25-10

Reasonable Efforts - Exceptions to Requirements 447-10-25-10-05

Reasonable Efforts - Preventing Placement 447-10-25-10-10

Permanency Hearing 447-10-25-10-20

Alternative Permanency Placements 447-10-25-10-20-05

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

Specified Caregiver 447-10-25-10-20-10  
Concurrent Receipt of TANF and Title IV-E 447-10-25-15  
Reimbursable Facility 447-10-25-20  
Need 447-10-25-25  
AFDC Deprivation 447-10-25-30  
Under the Age of 18 or 19 if in School 447-10-25-35

**Other Factors 447-10-30**

Role of DJS 447-10-30-05  
Case Plan 447-10-30-10  
Child's Income and Assets 447-10-30-15  
Tribal Agreements Regarding Title IV-E Payments 447-10-35

**Native American Parents Living on an Indian Reservation when the Child Enters Foster Care 447-10-40**

Jurisdictional Limitations - County Social Service Board 447-10-40-05  
Financial Responsibility of Foster Child Under the Custody of the Tribe 447-10-40-10  
Title IV-E - Role of County Social Service Board 447-10-40-10-05  
Title IV-E - Role of the Tribe 447-10-40-10-10  
Title IV-E - Role of DHS/CFS 447-10-40-10-15  
Native American Foster Child is Under Custody of DJS 447-10-40-15  
Role of County Social Service Board 447-10-40-15-05  
Role of DHS/CFS 447-10-40-15-10

**Native American Parents Living Off an Indian Reservation When the Child Enters Foster Care 447-10-45**

Financial Responsibility 447-10-45-05

**Alien Eligibility for Title IV-E 447-10-50**

Verifying Citizenship or Qualified Alien Status for Foster Care, Adoption Assistance, and Independent Living Payments 447-10-50-05  
18+ Continued Foster Care Eligibility 447-10-52

**Procedures 447-10-55**

Eligibility Process 447-10-55-05  
Right to Appeal and Fair Hearing 447-10-55-10

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

**Child Support Enforcement 447-10-60**

Good Cause for Refusing to Cooperate 447-10-60-05

Prompt Referral to Child Support Enforcement Agency 447-10-60-10

**Forms 447-10-70**

Foster Care Placement Notification, SFN 630 447-10-70-05

Title IV-E/Title XIX Application, SFN 641 447-10-70-10

Title IV-E Initial Eligibility Worksheet, SFN 869 447-10-70-20

Title IV-E 18+ Continued Care Eligibility, SFN 870 447-10-70-25

Title IV-E Income Calculation Worksheet, SFN 873 447-10-70-30

Understanding of the Parties for Continued Foster Care Services, SFN  
1781 447-10-70-35

Notice of Change Forms, SFN 45 447-10-70-40

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

## **Economic Assistance IV-E Foster Care Eligibility 447-10**

### **Introduction and Intent 447-10-05**

**(Revised 11/1/10 ML #3249)**

[View Archives](#)

It is the intent of the Department that every effort be made by the social worker/case manager and eligibility staff to secure sufficient information to determine if a child is Title IV-E eligible. It is the responsibility of the case manager to secure all needed information and provide that information to the eligibility worker. When a child is determined "not eligible" for Title IV-E because some of the required information is missing, there may be a greater financial cost to the state and county and a resulting reduction in other needed children's services.

If a parent refuses to provide needed information, the case manager should do all they can including securing a court order compelling the parent to cooperate. If a parent still refuses to provide needed information, consideration should be given to requiring the parent to pay 100% of the cost of care.

An eligibility determination must be completed for ALL children in Foster Care to determine if they are entitled to State or Federal benefits. Each of the criteria that must be considered when making this determination is discussed below. Most of these criteria apply to all children.

**NOTE:** Information related to foster care and subsidized adoption is confidential. Refer to N.D.C.C. § 50-06-15 and NDDHS chapter 110-01.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

**Foster Care Funding Sources 447-10-05-05**  
**(New 4/25/17 ML #3502)**

[View Archives](#)

North Dakota has access to three funding sources that draw on state and federal dollars to reimburse services for a child meeting all foster care eligibility and reimbursability criteria. The funding source is determined through the initial eligibility determination process.

Title IV-E of the Social Security Act

- Are the primary sources of Federal Funds for State Child Welfare Services
- A portion of States' costs are reimbursed
- Title IV-E is an "Uncapped entitlement"
- Any qualifying State expenditure will be partially reimbursed, or "matched," without limit.
- Foster care maintenance costs are reimbursed at Federally determined percentage (which is now at 50%) and the remaining share is funded with 100% state sharing of non-federal funds
- Administrative and training costs can be reimbursed up to 75%
- Tribes have access to IV-E funding ONLY through state and tribal agreements.

Emergency Assistance

- Federal dollars under Temporary Assistance for Needy Families (TANF)
- Foster care maintenance payments are reimbursed at a rate of 75% federal and 25% state
- No additional support is available to the state for administrative or training costs
- Not available to Tribes through state and tribal agreements

Regular Foster Care

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

- Foster care maintenance payments are paid at a rate of 100% state funds
- Not available to Tribes through state and tribal agreements

A child that does not meet the eligibility criteria as outlined in policy is not reimbursable through any of the funding sources listed above. Payment for ineligible children would be the responsibility of the custodial agency or family.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

**Title IV-E Program 447-10-10**  
**(Revised 5/15/07 ML #3087)**

[View Archives](#)

The TITLE IV-E program, authorized by Title IV, Part E of the Social Security Act, provides funds to states for maintaining certain children in foster care or in adoptive families. It also provides funds for the administration of the program and for the training of staff who work with the children. The IV-E program is not a new program. It replaced the old Title IV-A Foster Care program (AFDC-FC). Children classified as Title IV-E eligible must have some relationship to the general AFDC program authorized under Title IV, Part A (IV-A) of the Social Security Act in place in each state on July 16, 1996, and must meet certain other criteria. This manual defines and explains these criteria.

Assuring that all children who are in the custody of the state are considered for Title IV-E eligibility and certified if determined eligible, is the single most important step a state can take to increase funds available for child welfare. Experience in North Dakota and in other states indicates that identifying and certifying all eligible children for Title IV-E funds can increase the amount of federal dollars available to the state for child welfare programs.

This manual is designed to assist the eligibility specialist in the various tasks necessary to determine whether or not individual children meet the Title IV-E eligibility criteria. If individual children do not meet the Title IV-E eligibility criteria, then eligibility for Emergency Assistance or Regular Match Foster Care payment needs to be examined.



ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

**Emergency Assistance Service 447-10-11**  
**(New 4/25/17 ML #3502)**

[View Archives](#)

Emergency Assistance (EA) is an alternate funding source for children legally removed from a household that exceeds the income/asset limits under the 1996 AFDC guidelines or do not meet the deprivation requirements under Title IV-E. EA is not to be used when a child is Title IV-E eligible. All rules, policies, regulations, guidelines and other criteria pertaining to foster care remain the same.

Emergency Assistance is the provision of out-of-home care and family preservation services (including intensive in-home, parent aide, and case management work) to eligible families with children who are experiencing an emergency.

An emergency exists because:

1. A child is in out-of-home care; or
2. A child is at risk of out-of-home care; or
3. A child is the subject of a child abuse or neglect report; and
4. The emergency did not arise because an adult family member refused (without good cause) employment or training.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

**Title IV-E Eligibility 447-10-15**  
**(Revised 11/1/10 ML #3249)**

[View Archives](#)

Title IV-E benefits are an individual entitlement of certain foster care children. For these children, the federal government shares in the costs of maintaining the child. In addition it pays the state for the staff and administrative costs which are incurred when working with the child, the child's family, and the care provider. Finally the state receives 75% of the costs of training staff who work with Title IV-E eligible children, the child or who administer the foster care system for the child. There are two major categories of Title IV-E status: Eligibility and Reimbursability.

**The IV-E eligibility and reimbursability are determined on a one-time basis when the child enters foster care.** Title IV-E eligibility does not automatically confer federal benefits. The reimbursability criteria must be met for the state to receive federal support for the child. Once established, a child's eligibility and reimbursability will continue as long as the court order that sanctioned the child's removal from the home remains in effect. **There is only one instance when a child in continuous care would lose eligibility for Title IV-E:**

- When the youth reaches the age limit for the program.

An assessment of several Title IV-E criteria is required to determine whether the child is federally reimbursable. The child must be eligible to be reimbursable. The following discussion reviews all of the criteria, which make up the concepts of eligibility and reimbursability.

For foster care reimbursement, the child must be placed in a licensed (not provisional) or approved affidavit foster home/facility. Foster family homes/facilities that are approved must be held to the same standards as foster family homes that are licensed. Anything other than full licensure or approved affidavit is insufficient for meeting foster care eligibility requirements. (CFR 1355.20, effective March 27, 2000)

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

**Foster Care Eligibility Quality Assurance Reviews  
447-10-18**

**(Revised 5/30/19 ML #3550)**

[View Archives](#)

To ensure accurate eligibility determination and proper payments, a State Review team comprised of State and county eligibility workers will review a random stratified sample of foster care eligibility cases each year. All match codes will be pulled into the sample to ensure a comprehensive understanding of issues impacting Title IV-E eligibility. The case draw methodology will remain on file with Decision Support Services and can be made available upon request. The review will focus on the initial eligibility determination and payments authorized during a specific period under review. County agencies will receive notice of selected files 2 – 3 weeks prior to the scheduled review. Feedback will be provided to the financial county within 30 days following the review. If an error is discovered, the State Review Team will provide the financial county with an explanation of the error. The financial county must rectify correctable errors within 30 days from notification. If an error cannot be rectified within 30 days from notification, an extension may be requested prior to the corrective action due date. A request for an extension must be submitted via email to the department and include an explanation of the circumstances causing the delay. The approval and length of an extension is at the discretion of the department. The financial county must provide the State Review Team with documentation of the corrective action and the date of completion.

A financial county that is found to be out of compliance with State statutes, rules, or policies, or federal statutes and regulations when determining foster care eligibility or authorizing foster care payments will be required to submit a corrective action plan to Children and Family Services. The financial county will be required to refund payments made that are not in compliance with Service Chapter 447-10 Title IV-E Foster Care and Service Chapter 623-05 Foster Care Maintenance Payments. Reimbursement arrangements will be secured between the financial county and Department through the Corrective Action Plan.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

**Initial Eligibility 447-10-20**  
**(Revised 11/20/17 ML #3522)**

[View Archives](#)

North Dakota's foster care program is state supervised and county administered. Eligibility staff from the designated county social service agency is responsible for determining foster care eligibility based on the federal and state law, rule, and policy.

The county responsible to determine foster care eligibility is the county where the child's parent/legal guardian lived at the time of legal removal; otherwise referred to as the financial county.

Other circumstances that determine the designated county:

1. The residence of the parent is undetermined; the eligibility determination will be the responsibility of the agency where the child resided at the time of removal.
2. A child resides in North Dakota, but the parent is not a resident of North Dakota; the eligibility determination will be the responsibility of the agency where the child resided at the time of removal.
3. Neither the child nor the custodial parent/legal guardian are residents of North Dakota (ex: visitors to the state); eligibility determination will be the responsibility of the agency that received custody at the time of removal.

**Tribal:** If the child is under the custody of the Tribe, the county responsible to determine eligibility is the county in which the parent resided at the time of the child's legal removal from the home. If the case is not IV-E eligible, the county will notify the Tribe and close the case.

**Division of Juvenile Services (DJS):** If the child is under the custody of DJS, the county responsible to determine eligibility is the county in which the parent resided at the time of the child's legal removal from the home.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division 10  
Program 400

Service 447  
Chapter 10

---

Basic eligibility criteria apply when a child enters foster care:

1. The child must be legally removed from the home through a court order as defined in this chapter.
2. The child must meet the AFDC relatedness test in the month the court petition to place the child in out of home care was filed. (Effective July 1, 1997, wherever AFDC is mentioned here, it relates to the eligibility rules as of July 16, 1996, pursuant to P.L. 104-193.)

Foster care eligibility requires county staff to determine:

1. If the child is eligible for Title IV E.
2. If the child is not IV-E eligible, determine if the child is eligible for Emergency Assistance.
3. If the child is not eligible for Emergency Assistance, determine if the child is eligible for Regular Foster Care.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

**Eligibility Month 447-10-20-05**

**(Revised 11/1/10 ML #3249)**

[View Archives](#)

The eligibility month is the month during which the petition for the care of the child, which eventually led to a court ordered removal of the child, is filed. It is important to note that the date the child enters foster care does not necessarily define the eligibility month.

The date a child was removed as the result of a court order may be different from the date of the actual petition by days, weeks, or even months. Here again it is the date of the petition, not the removal, which defines the eligibility month. If no petition was filed, then the date of the emergency or temporary removal order will be used to determine the eligibility month.

Occasionally a petition is filed which results in an order granting the County Social Service Board, Division of Juvenile Services (DJS), or the Executive Director custody of the child, but allows the child to remain in his/her own home. If, at a later time, the custodian wants to remove the child from the home, a second order must be obtained which contains the determination that "continuation in the home is contrary to the best interest of the child." The eligibility month becomes the month that the petition or motion was filed which resulted in the second order that authorized the child's removal from the home. It is important to note, \*each time a child is removed from the home, an order must be obtained that contains the required Title IV-E judicial determination regardless of whether the agency retained legal custody while the child was in the home.

Except for a Trial Home Visit: A trial home visit must be a planned, formalized, agency-supervised visit in the reunification home for a specified period of time not to exceed six months, unless otherwise authorized by the court. A trial home visit must be discussed at permanency planning and entered into a child's case plan, and no foster care payments are made during the visit period. Casual or incidental visits, e.g., to attend a wedding

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

or funeral, are not considered “trial home visits” even if they are part of the child’s reunification plan.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

**Legal Status 447-10-20-10**

**(Revised 11/20/17 ML #3522)**

[View Archives](#)

Applies to all children in foster care.

Initial foster care eligibility determination requires a court order\* from a court of competent jurisdiction signed by a Judge, Tribal Judge, Juvenile Referee or Magistrate which contains:

- The legal removal of a child from the home.
- A judicial finding that continuation in the home is contrary to the welfare of the child or removal is in the best interest of the child (initial order).\*
- A judicial finding of reasonable efforts to prevent removal (within 60 days of removal).\*
- A transfer of care and responsibility for a child to a county social service agency, tribal social service agency of which North Dakota Department of Human Services has an agreement, or the Division of Juvenile Services.
- Authorization for the custodial agency to place the child out of the home.

An emergency removal order issued by a juvenile court officer or juvenile court director allows for the removal of the child, but requires a detention or shelter care hearing within 96 hours. Juvenile Court Officers and Juvenile Court Directors are not authorized to make judicial findings of "contrary to the welfare" and "reasonable efforts", but do have the authority to remove a child until further hearing by the court.

- \* Documentation of Judicial Determinations: If the reasonable efforts and contrary to the welfare judicial determinations are not included as required in the court orders, a transcript of the court proceedings is the only other documentation accepted to verify that these required determinations have been made. Neither affidavits nor nunc pro tunc orders will be accepted as verification documentation in support of the required reasonable efforts and



ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division 10  
Program 400

Service 447  
Chapter 10

---

contrary to the welfare judicial determinations.

Removal of a child from the child's home for placement in foster care must be based on judicial findings stated in the court's order, and determined on a case-by-case basis in a manner that complies with the requirements of Titles IV-B and IV-E of the Social Security Act [42 U.S.C. 620, et seq., and 42 U.S.C. 6701, et seq.], as amended, and federal regulations adopted thereunder.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

**AFDC Relatedness 447-10-20-15**  
**(Revised 5/15/07 ML #3087)**

[View Archives](#)

**Applies to Title IV-E benefits only.**

In the eligibility month the child must have had a relatedness to the Aid to Families with Dependent Children Program authorized under Title IV, Part A of the Social Security Act.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

**AFDC Relatedness Test 447-10-20-15-05**  
**(Revised 4/25/17 ML #3502)**

[View Archives](#)

**Applies to Title IV-E benefits only.**

A child meets the AFDC relatedness test if one of the following conditions is met:

- The child would have been eligible for AFDC based on July 16, 1996 rules; or
- The child did not live with the AFDC specified relative in the eligibility month\*, but did live with the specified relative in any of the preceding six months and would have received AFDC in the eligibility month if he/she had been living with the specified relative and an application had been made.

\* based on July 16, 1996 rules.

Both tests require that you look at the home from which the child was legally removed. The removal home for IV-E eligibility determination is the household of the person(s) from whom custody of the child was judicially taken or voluntarily given to the State.

To be IV-E eligible, a child must have lived with a parent or other specified relative at some point in the preceding six months of the month of the initiation of court proceedings to remove the child. The "living with" and "removal from" requirements have to be satisfied by the same specified relative. If a child lived with no relative during this period, the child is not IV-E eligible during the entire episode of foster care.

The second test requires reconstruction of the child's situation in the eligibility month to determine whether AFDC eligibility was possible. In essence, the tests measure the same set of categorical circumstances in

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

which the child found himself. In the first test those circumstances were actually documented; in the second, the agency must attempt to determine retrospectively whether those circumstances existed.

To determine the preceding period to be considered, first identify the date on which the petition to remove the child was filed. (Note that this may differ from the "clocked" petition date.) In the event that no petition was submitted, use the date of the earliest court order, which removes the child. Beginning with the month preceding this date, count back six months. The period begins on the first day of that six-month period and ends on the petition date.

Three circumstances which define AFDC eligibility (or hypothetical AFDC eligibility) are the following for Title IV-E purposes:

1. Living with a Specified Relative

During the month(s) under consideration, the child must have lived with a specified relative. A specified relative is defined as:

- a. Any relation by blood (including half-blood), marriage, or adoption who is within the fifth degree of kinship to the dependent child.

The caretaker relative must therefore be a parent (1st degree), grandparent (2nd degree), sibling (2nd degree), great-grandparent (3rd degree), uncle or aunt (3rd degree), nephew or niece (3rd degree), great-great grandparent (4th degree), great-uncle or aunt (4th degree), first cousin (4th degree), great-great-great grandparent (5th degree), great-great uncle or aunt (5th degree), or a first cousin once removed (5th degree).

- b. Stepfather, stepmother, stepbrother, and stepsister.
- c. Persons who legally adopt a child, as well as the natural and other legally adopted children of such persons; or
- d. Spouses of any persons named in the above groups even after the marriage is terminated by death or divorce.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

A child is considered to have been "living with" a parent or other specified relative if the child resided with that person for at least one night in any household during the period under consideration. In the absence of evidence to the contrary, the intent to live with the person should be assumed.

**EXAMPLE A:**

The petition is filed for placement of a child on July 31, 2004, and the child went into foster care on that day. The period to be considered for the "living with" requirement is January 1, 2004, through July 31, 2004. The child lived with friends for the month of January, returned to the parental home in February, and then a run away shelter until the child's placement in foster care. Since the child resided with the specified relative within six months of the petition to the court that led to the removal, the child may be IV-E eligible, assuming other IV-E conditions are met.

**EXAMPLE B:**

The petition is filed for placement of a child on July 31, 2004, and the child went into foster care on that day. The period to be considered for the "living with" requirement is January 1, 2004, through July 31, 2004. The child lived in a runaway shelter continuously from December 25, 2003, through July 31, 2004. This child is not IV-E eligible during the entire foster care episode, which commenced July 31, 1999.

**EXAMPLE C:**

A child lives with a related caretaker who is not the child's legal guardian for seven months before the caretaker contacted the agency to remove the child from his/her home. The agency petitions the court and the court removes custody from the parents and the agency physically removes the child from the home of the related caretaker. The child is ineligible for IV-E foster care since he or she had not lived with a specified relative who is the child's legal guardian within six months of the agency's petition to the court.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

Removal home:

Once the "living with" requirement is established, the next step is to determine the removal home to be used in the deprivation and resource test for AFDC relatedness. The applicable court order(s) are critical for determining the removal home, it is the legal home of removal which is the focus of the IV-E eligibility determination. All of the signed court orders pertaining to each case must be in the case file.

Federal regulations effective March 27, 2000, revised the requirements of a "removal home" to include a provision for "constructive removal," defined to include all of the following:

- Non-physical removal of the child.
- The child continues to live with a relative or non-relative caretaker.
- The child lived with a parent or other "specified relative" within the preceding six months.
- The legal custody of the child was removed from a parent or other "specified relative."

"Removal" previously meant strictly a physical removal from the home of a specified relative. The new federal regulations effective March 27, 2000, added the concept of "constructive removal," which is a non-physical removal and applies to situations where a child is living with a relative or non-relative caretaker but has lived with a parent or other specified relative who is the child's caretaker within the last six months, and legal custody is removed from the parent/guardian and the child continues to reside with the caretaker.

For example, child was living with mother. Mother left child with grandmother – mother failed to return. Court removed custody from mother and gave care, custody, and control to county social services. Court order had all requisite foster care findings and all other IV-E requirements were met. Grandmother was licensed to provider foster care. This is a IV-E eligible situation. It is considered a constructive removal.

Federal Regulations provide (1356.21):

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division 10  
Program 400

Service 447  
Chapter 10

A removal has not occurred in situations where legal custody is removed from the parent or relative and the child remains with the same relative in that home under supervision by the State agency.

A child is considered constructively removed on the date of the first judicial order removing custody, even temporarily, from the appropriate specified relative or the date that the voluntary placement agreement is signed by all relevant parties.

Refer to the following chart entitled "Home of Removal" together with sample cases "Six Case Examples – Is this Constructive Removal" to help identify case situations which can be claimed as "constructive removals." Please refer your questions to the regional supervisor at your human service center, or Children and Family Services Division.

**HOME OF REMOVAL**

Child		Title IV-E Old Federal Regs	Federal Regs 3/27/00	Capitola Case*
1	Lives in Court Ordered Removal Home <b>Example: Case #1</b>	N	N	--
2	Lived with no relative prior 6 months <b>Example: Case #2</b>	N	N	--
3	Physical removal from eligible Court Ordered Removal Home <b>Example:</b>	E	E	--

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division 10  
Program 400

Service 447  
Chapter 10

<b>Case #3</b>				
4	Not physically removed by Court Order Lived with Eligible Court Ordered Removal Home within 6 months "Constructive Removal" <b>Example: Case #4</b>	N	E	E
5	Not physically removed by Court Order Lived with Eligible Court Ordered Removal Home over 6 months ago <b>Example: Case #5</b>	N	N	E
6	Not physically removed by Court Order Lives with relative over 6 months Court Ordered Removal Home not eligible <b>Example: Case #6</b>	N	N	

\* Capitola Case: Land v. Anderson case re: "constructive removal" – appeal pending.

**Six Case Examples – Is This Constructive Removal?**

**Case #1:** Child has been legally removed from parent’s custody into agency custody, with the stipulation that the child may reside in the parent’s home under agency supervision until the agency decides otherwise. In other words, the child is still at home after the court ordered "legal" removal. This child was not IV-E eligible under the old rules and is not IV-E eligible under the new rules. **If child needs to enter foster care, a new court ordered removal with all requisite foster care language is required. This applies to any child.**



ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

**Case #2:** Child lived with no relative during the six months prior to the petition or court order month. Under both old and new federal rules, this case is not IV-E eligible since it does not meet the AFDC requirement of living with a specified relative in the six months preceding application.

**Case #3:** Child is physically removed from parent's or other relative's home by court order. The removal home was AFDC eligible (or would have been eligible) in the removal month. Case is Title IV-E eligible under both old and new regulations.

**Case #4:** Child was legally removed by court order from an AFDC eligible home, in which the child was not residing in the petition/court order month, but in which the child lived within the six months preceding that month. The child would not have been eligible under the old federal regulations because there was no physical removal. Under the new federal regulations, the case is Title IV-E eligible, as the new regulations consider this a "constructive" removal.

**Case #5:** This is the Capitola Land case. The court legally removed the child from an AFDC eligible home which the child had left more than six months previously. At the time of court action, the child was residing in another relative's AFDC eligible home. Under the old regulations this was not Title IV-E because there was no physical removal pursuant to the court order. The new regulations say this is not Title IV-E eligible because the child did not live with the AFDC eligible relative during the six months prior to the petition/court order month. The Land v. Anderson decision holds this case to be Title IV-E eligible. The Land v. Anderson decision of the California Supreme Court is under appeal in the federal Ninth Circuit Court.

**Case #6:** In this situation, the removal home was not AFDC eligible, but the current home where the child resides is AFDC eligible. This child is not Title IV-E eligible under the old rule (no physical removal) and not Title IV-E eligible under the new rule (constructive removal home was not Title IV-E eligible).

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

**NOTE:** In any case eligible for foster care, the court order must have all requisite foster care elements.

2. Deprivation

The AFDC deprivation factor means that the child has been deprived of the support of one or both parents as the result of:

- a. Death of a parent
- b. Continued absence of parent:
  - i. Separation or Divorce
  - ii. Imprisonment
  - iii. Unmarried Parenthood
  - iv. Desertion/Abandonment.

Absence due solely to active duty in the armed forces, employment, school, or training is not deprivation.

Also, if a parent is expected to return home within 30 days, deprivation is not present.

- c. Physical or mental incapacity of a parent. The incapacity must last at least 30 days and must reduce the person's ability to work or provide care for a child and must be documented in the case record.

Incapacitation may be demonstrated by any one of the following:

- i. A visually observable incapacity documented by the caseworker.
- ii. A medical report from a physician indicating that the incapacity will exist for at least 30 days and impairs ability to work or care for the child.
- iii. A parent's receipt of SSI for disability or blindness, or recognition of disability or blindness by the Veteran's Administration or Social Security Administration.
- d. Unemployment or underemployment of the principal wage earner.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

A child living with both parents is deprived of parental support if the principal wage earner is unemployed or underemployed and meets requirements listed below.

Principal Wage Earner:

A primary wage earner must be established when both the biological or adoptive parents reside in the same household before it can be determined if the deprivation of unemployed or underemployed applies.

The primary wage earner is defined as the parent who earned the greater amount in the 24 month period prior to the eligibility month. This parent remains the principal wage earner for as long as the child is in custody during the current custody episode.

If both parents earned an identical amount of income (or earned no income) in such 24-month period, the agency shall designate which parent shall be the principal earner.

Unemployed or Underemployed of the Principal Wage Earner.

A child is considered to have a deprivation of unemployed/underemployed parent when the established primary wage earner (PWE) is:

1. Unemployed in the eligibility month and unemployed in the month prior to the eligibility month or
2. Underemployed due to intermittent work. Intermittent work is defined as the PWE is employed in the eligibility month, but worked less than 100 hours in each of the two months prior to the eligibility month.

The number of employment hours include reported hours worked and any hours claimed as holiday and sick pay hours;

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

or if self-employed, in the absence of credible information, by dividing the gross monthly income by minimum wage.

The household income cannot exceed the 185% Standards and Net Income (Need) standard for the household size.

When the only means of income to a household is self-employment and both parents are actively involved in the business, consider both parents working more than 100 hours.

If the parent is on paid leave from an employer (such as sick or vacation leave), the parent is not considered to be unemployed or working less than 100 hours. Any paid hours count as employed hours.

**AFDC GROUP**

The AFDC group (filing unit/household composition) for initial IV-E eligibility determination is the grouping of persons from the removal home whose income and assets are considered in determining financial need.

1. If the child's parent was the caretaker relative from whom custody was judicially taken or voluntarily given to the State, the AFDC group includes:
  - a. The child;
  - b. Biological or adoptive parents; and
  - c. Biological, adoptive, and half-siblings of the foster child who meet the definition of dependent child and who live in the same household.
  
2. If the caretaker relative from whom custody was judicially taken or voluntarily given to the State was not the child's parent, the AFDC group includes:
  - a. The child; and
  - b. Any biological, adoptive, and half-siblings of the foster child who meet the definition of dependent child, and who live in the same household.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

3. Any household member receiving SSI benefits is not counted as a member of the AFDC group, unless the household member is the foster child. In addition, the SSI benefits and any other income or assets of the SSI recipient are not counted in determining financial need. (The foster child is counted as a member of the AFDC group, even if the child has SSI. The child's income and assets are excluded.)
4. A stepparent is not counted as a member of the child's AFDC Group, but is a member of the stepparent's AFDC group. The stepparent's AFDC group is utilized in deeming the stepparent's income.
5. A child receiving adoption assistance, other than the foster child, may be excluded from the AFDC group. (The child's income and assets are not counted if excluded from the AFDC group.) If the adoption assistance recipient is the foster child, do not count the child's income and assets when determining eligibility; however, count the child as a member of the AFDC group.

The following must be considered in order to determine need:

a. Asset Limit and Definition

Countable assets of the AFDC group may not exceed \$10,000 during the eligibility month. Assets are defined as a "resource that a person possesses or owns." Assets must be available, which means that a member of the AFDC group owns it or has the legal right to sell it or dispose of it for the individual's own benefit. An asset is determined by its equity value, which is the current market value minus any debts still owing on the asset.

Countable Assets

Countable assets may include:

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

- Real property including land, houses, buildings, and trailer homes.
- Liquid assets, such as savings and checking accounts, stocks, bonds, mutual fund shares, promissory notes, mortgages, cash value of insurance policies, trust funds, and agreements in escrow.
- All motor vehicles, such as cars, trucks, motorbikes, motorcycles, snowmobiles, boats, campers, and trailers.
- Instruments and tools.
- Livestock.
- Merchandise and inventory.
- Time-shares and time-share agreements.
- Certain aliens who have been legally admitted in the United States for permanent residence must have assets of their sponsors counted when determining eligibility for AFDC. Contact the Title IV-E/Medicaid Trainer for more details when a sponsor is involved.

#### Asset Exclusions

Exclude the following from countable assets:

- Home, its contents and surrounding property.
- Equity value of up to \$1,500 of one car or other motor vehicle. Count any value in excess of this amount towards the \$10,000.00 asset limitations.
- The equity value of a vehicle is its fair market value minus the amount owed on it. The fair market value is the average trade-in value listed in the most current Used Car Guide Book put out by the National Automobile Dealers Association (NADA). Do not add or deduct values for optional equipment or mileage. If the vehicle is not listed in the Used Care Guide Book, contact a dealer for an estimate of value.
- Per capita payments or any asset purchased with per capita payments made to tribal members by the Secretary of the Interior or the tribe.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

- Irrevocable burial trusts. Exempt the value of an irrevocable burial trust fund such as a pre-arranged funeral plan. Exempt one burial space and any item related to repositories used for the remains of the deceased for any member of the household. This includes caskets, concrete vaults, crypts, urns, and grave markers. In addition, if a recipient owns a gravesite, the value of which includes the opening and closing, the value of these services is also excluded.
- Allow a \$1,500 burial/funeral fund exemption for each eligible AFDC group member, subtracting the value of any irrevocable burial trust from the \$1,500 burial/funeral fund exemption.
- Real property, if a household is making a bona fide effort to sell real property during the month of removal.
- Income producing personal property necessary for employment.
- Educational assistance.
- Loans, including reverse equity loans endorsed in writing for repayment.
- Lump sum insurance payments for lost, stolen, or damaged property if the available money is used to replace the lost, stolen, or damaged property, and the property was exempt at the time of loss.

#### Availability of Assets

Count only assets that are available to the AFDC group. Assets are available when an individual legally owns the asset and has possession of the asset.

#### Joint Accounts

When a person in the AFDC group and someone who is not in the AFDC group jointly owns a bank account, count all of the funds as an asset for the person in the AFDC

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

group if the AFDC group member can legally withdraw the funds from the account.

If one account holder is in the AFDC group and another account holder is not in the AFDC group but is in an FEP assistance household, divide the funds equally between the two households.

If the person claims that the asset does not belong to him/her, allow the individual to refute ownership.

Document why the joint account was set up and who made the deposits and withdrawals from the account.

Joint Ownership of Assets

If more than one person owns property, determine the share that belongs to the person(s) in the AFDC group. Unless there is a condition of ownership specifically prohibiting the sale of any part of the asset without permission of all owners, the share that belongs to the person in the AFDC group is counted as an available asset.

When Legal Factors Hinder the Availability of an Asset

When determining if an AFDC group meets the asset limit during the eligibility month, if legal factors hinder making the asset available, the asset is exempt. For example, a condition of ownership may prohibit selling the asset without the consent of both parties. In this case, the asset is exempt because legal factors hinder making the asset available.



ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

If the cost of making the asset available exceeds its value, efforts do not have to be made to make the asset available.

### 3. Income

Income eligibility determination is based upon the best estimate of income, AFDC group size, and child care costs during the eligibility month, based upon available information. Past income and consideration of changes during the eligibility month should be taken into account when determining AFDC group income. Information needs to be verified. A parent's signed statement of income meets the verification requirement.

Use the household and worker's reasonable expectations and knowledge of the circumstances during the eligibility month when determining income. Document the AFDC group's earned and unearned income clearly in the case record.

#### Income Tests

The AFDC group must pass two income tests for the eligibility month for the initial IV-E eligibility determination.

##### *First Test = 185% Income Test*

The AFDC group's countable gross income must not exceed 185% of the AFDC Need Standard. Gross countable income is total income, earned and unearned, the AFDC group received during the eligibility month plus any deemed stepparent income. Do not count excluded earned and unearned income. If the gross income is less than or equal to 185% of the AFDC Need Standard, proceed to the second income test. **If the gross income is more than 185% of the AFDC Need Standard, the foster child is not IV-E eligible.**

##### *Second Test = 100% Income Test*

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

The AFDC group's countable gross income minus allowable deductions must not exceed 100% of the AFDC Need Standard. This is determined by subtracting allowable deductions from countable earned income (not less than zero), and adding this adjusted earned income to the countable unearned income and any deemed stepparent income. Allowable deductions from earned income include:

a. Work Allowance

Subtract \$90.00 work expense allowance from each employed person's earnings in the household.

b. Day Care

Subtract the monthly cost of day care from the earned income of the member of the AFDC group paying the expense if: (1) the day care expense is for a child or an adult member of the AFDC group, and (2) the day care expense is paid to a person not included in the AFDC group. The day care expense may be deducted up to the limits as specified below:

Child Under Age 2	\$200 per person/month
Age 2 or Over	\$175 per person/month

If the net income is less than the AFDC Need Standard, the household meets the income criteria for AFDC eligibility. **If the net income is EQUAL to OR GREATER than the AFDC Need Standard, the household does not meet the income criteria for AFDC eligibility and the foster child is not IV-E eligible.**

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

Deeming Stepparent Income

If a stepparent lives in the household, the stepparent's gross income must be "deemed" to the foster child. Deeming means determining the amount of the stepparent's income to be included in the total gross income available to the foster child. To determine the deemed amount:

Determine the stepparent's gross income (earned and unearned).

Determine the AFDC group size for the stepparent. The AFDC group size consists of the stepparent and any of the stepparent's biological or adoptive children who meet the dependent child criteria (living in the home, or out of the home and not receiving child support) who are not a child in common with the other spouse in the household. (The stepparent will not be counted in the AFDC group for the foster child.)

Subtract \$90 earned income work deduction if the stepparent is working.

Subtract the 100% AFDC Need Standard amount for the stepparent's AFDC group size.

Subtract any child support/alimony the stepparent is paying.

The remaining income is the income to be deemed (added) to the child's available income. (For the 100% income test, do not deduct the \$90 earned income work deduction again.)

Lump Sum Payments as Income

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

Lump sum payments, such as Social Security lump sums and severance pay, are income and can be earned or unearned. Costs of legal fees expended to make the lump sum available, payments for past medical bills, and funeral or burial expenses (if the lump sum was intended to cover funeral or burial expenses) are subtracted from the lump sum before determining income eligibility.

Counting Lump Sum Payments for Initial Eligibility

A lump sum received during the eligibility month is counted as income in the month received. If the lump sum belongs to the foster child and has not been fully spent during the eligibility month, any remaining portion is an asset.

A lump sum received prior to the eligibility month is not countable as income. Any remaining portion of the lump sum left during the eligibility month is an asset.

Do not count any lump sum payments received by an SSI recipient as either income or assets when determining if a household meets AFDC criteria.

Unearned Income

1. Countable Unearned Income

Unearned income is income received by an individual for which no service is performed. Countable unearned income includes, but is not limited to, the following:

Pensions and annuities such as Railroad Retirement, Social Security, Veterans Administration, and Civil Service payments.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

Disability benefits such as industrial compensation, sick pay or worker's compensation, mortgage insurance, and paycheck insurance.

Unemployment compensation.

Strike or union benefits.

VA allotments and GI Bill.

Child support (after \$50 deduction per household) and alimony. Child support and alimony payments belong to the person for whom they are intended, not the person who may be receiving payments on behalf of the individual.

Money from churches, charitable organizations, lodges, unions, friends, or relatives (except as noted under exemptions for gifts, below).

Interest and dividend payments from stocks, bonds, savings, and insurance.

Trusts, inheritances, personal injury settlements, and life insurance benefits.

Tribal fund gratuities.

JTPA needs based payments and supported service payments that are not reimbursements.

Money from sales contracts and mortgages.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

Rental income, if another individual or company manages the rental property for the owner. (In these cases, the owner collects money from the manager.)

Unearned Income Exclusions

The following types of unearned income are not counted for AFDC purposes:

Foster care payments, adoption assistance payments, or cost of care payments for a child in State custody.

All unearned in-kind income.

Income of an SSI recipient. (Do not count SSI income or any other income received by an SSI recipient.)

The first \$50.00 of current child support payments collected each month.

JTPA unearned income of a dependent child.

Travel and training allowances and reimbursement.

Educational assistance and college work study, with the exception of Veterans Educational Assistance intended for family members of the student.

Loans, including reverse equity loans, endorsed in writing for payment.

Cash gifts of up to \$30 per household member received in any one quarter. (Count the amount exceeding the \$30 limit.)

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

Cash to pay for shared living expenses received from a person living in the removal home who is not a member of the AFDC group.

Income tax refunds and Earned Income Tax Credit (EITC) payments.

Payments for home energy assistance, rental subsidies, and relocation assistance.

Food programs such as Food Stamps, WIC, USDA surplus food, home delivered meals, or school lunch.

Special payments made by law, including:

Payments or reimbursements made to volunteers under the Retired Senior Volunteers Program, Green Thumb, Foster Grandparent Program, VISTA volunteers, Senior Health Aides, SCORE, Senior Companion Program, and ACE.

Payments to Japanese and Aleut people who were relocated during wartime.

Payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation.

Payments made from the Radiation Exposure Compensation Act.

Payments under the Disaster Relief and Emergency Assistance Amendments of 1988.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

Certain Native American Payments

Income accrues too many Indians from leasing real property held in trust by the federal government. Such income includes payments from range unit leasing, farm leases, gravel pit contract sales, etc. Lease payments are usually deposited in and disbursed through Individual Indian Monies (IIM) Accounts, maintained by the Bureau of Indian Affairs, although they are sometimes made directly to the applicant/recipient by the lessee. Please note that the Omnibus Budget Reconciliation Act of 1993 provides that up to \$2,000 per year of income received by the individual Indians (IIM's) which is derived from leases or other uses of individually owned trust or restricted lands shall not be counted as income.

Eligibility staff must verify Individual Indian Monies (IIM) Accounts in order to determine the yearly amount and source of income deposited for exclusion purposes. Although other forms of verification are acceptable, county social service boards can best obtain information about deposits to IIM Accounts for each member of the assistance unit by use of SFN 42/413, "Individual Indian Monies Account."

Under P.L. 93-134, enacted October 19, 1973, judgment funds distributed after that date to members of Indian tribes are to be disregarded as income or assets. To remain exempt, however, per capita funds must be kept separate and apart from countable assets. Otherwise it is not possible to differentiate between funds that are exempt and funds that are not. Commingling of funds renders the entire account nonexempt.

Any proceeds from tribal gaming/gambling establishments distributed to enrolled tribal members (residing on or off the reservation) must be considered unearned income.

Earned Income



ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

Countable Earned Income

Earned income is income in cash or in-kind for which a person performs a service. Sources of earned income include, but are not limited to:

Wages, salaries, bonuses, commissions, and tips, including JTPA wages of a child other than the foster child, Job Corps payments, Americorps living allowances and deemed income of a stepparent.

Sick pay and temporary disability insurance or temporary workers compensation payments, which are employer funded.

Severance pay, including the cash-out of vacation pay and sick pay.

Rental income, only if the owner to receive the income performs managerial duties.

Monies from self-employment, including earnings over a period of time for which settlement is made at one given time, such as farm crops, livestock, and poultry.

Training incentive payments and work allowances.

Benefits received by a household member as a reward for service, such as free shelter, vendor payments, or any additional allowances given for shelter to a member of the armed forces.

Certain aliens who have been legally admitted in the United States for permanent residence must have income of their sponsors counted when determining eligibility for

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

AFDC. Contact the Title IV-E/Medicaid Trainer for more details when a sponsor is involved.

Earned Income Exclusions

Incentive and training expenses paid under a client's plan with the Department of Workforce Services.

Reimbursements from an employer for any work expense or allowances from an employer for travel and training.

Earned Income Tax Credit (EITC) payments received as part of the regular paycheck or received as a lump sum along with the household's income tax refund.

Income paid by the U.S. Census Bureau to temporary census takers.

JTPA earned income of a dependent child.

A child's earned income who is a full-time student.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

**Determining IV-E Eligibility with SSI in the Removal Household 447-10-20-20-05**

**(Revised 5/15/07 ML #3087)**

[View Archives](#)

When another member of the child's household (home of removal) is receiving SSI during the child's removal month, these SSI payments should be disregarded as income and the SSI eligible person should not be counted in the computation of the number of persons in the household.

**EXAMPLE:** A child is removed from the home of the child's disabled SSI-eligible father who receives \$500/month SSI and also earns \$200/month, the child's stepmother, and her two other children. The stepmother is employed part time and earned \$300 per month. For the IV-E means test, the removal household of five persons (counting the child removed) is treated as a household of four; one adult and three children, since the SSI eligible parent is not counted. Father and his income, both earned and unearned, are excluded, leaving countable household income of \$300/month. This case would meet both the AFDC deprivation (absent mother and disabled parent) and the means tests.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

**SSI Children Entering Foster Care 447-10-20-20-10**  
**(Revised 11/1/10 ML #3249)**

[View Archives](#)

Some children are already recipients of SSI when they enter foster care. It is critical, and it is North Dakota policy, that such children must be thoroughly evaluated for IV-E eligibility. Receipt of SSI payments alone never makes a child ineligible for IV-E, regardless of the SSI amount received.

In some instances a parent or a disabled child may receive SSI while the remaining members of the family receive AFDC. To comply with federal law, an SSI recipient shall not be regarded as a member of the assistance unit for purposes of computing the AFDC grant. Consequently, assets and/or income which are owned solely by the SSI recipient, including that portion of income which is disregarded by the Social Security Administration in determining SSI entitlement, may not be considered available to the AFDC family. Similarly, income, which is earmarked for members of the AFDC unit, including income earned by the eligible AFDC caretaker, must be applied against the family's needs with no portion of such income being "deemed" to the SSI recipient. However, income, liquid assets, and/or real and personal property owned jointly by the SSI recipient and AFDC applicant/recipient are to be apportioned equally on a 50-50 basis between the SSI and AFDC units, unless otherwise indicated.

**NOTE:** RSDI, SSA, and SSDI payments are computed as income to the family in determining IV-E eligibility. SSI is not to be confused with RSDI, which is Retirement, Survivors', and Disability Insurance administered by the Social Security Administration. RSDI is sometimes referred to as SSA (Social Security Administration payments) or SSDI (Social Security Disability Insurance payments). These are non-means-tested benefits paid to adults and children as survivors or dependents of a deceased or disabled person who has paid into the Social Security Trust Fund.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

SSI payment receipt does not disqualify a child for IV-E. On the contrary, SSI eligibility is a good indicator (although not a guarantee) that a child entering care will meet the means test for IV-E eligibility during the removal month, since that child has previously passed the similar SSI means test. To be IV-E eligible, of course, the home of removal must still, during the petition month, meet the AFDC means test and deprivation test, plus the IV-E legal status test and judicial language test.

When an SSI child enters foster care, the agency must apply to become the SSI Representative Payee for the child and must then elect either to receive the SSI payment or claim IV-E funds for the cost of the child's care. (See 447-10-20-20-20.)

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

**Agency Stewardship as the SSI/Social Security  
Organizational Representative Payee 447-10-20-20-20  
(Revised 4/3/13 ML #3368)**

[View Archives](#)

**Definitions:**

**Social Security Administration (SSA):** is an independent Federal government agency that administers two major benefit programs.

**RSDI Benefits – Retirement, Survivors and Disability Insurance:** Benefits paid by SSA under Title II of the Social Security Act. These are commonly called **social security (SSA)** benefits. They are based on the earnings of a worker who has paid into the system by paying Federal Insurance Contributions Act (FICA) tax for a specified period of time. A worker, or his or her family, can receive RSDI benefits upon the worker's attainment of a certain retirement age, disability, or death.

**SSI Benefits – Supplemental Security Income:** Benefits paid by SSA under Title XVI of the Social Security Act for aged, blind, and disabled persons with little or no income or resources.

**Representative Payee** – an individual or organization appointed by SSA to receive and manage the **social security** or **SSI** benefits of another person. A representative payee must use the funds they manage for the exclusive use and benefit, and in the best interest of the beneficiary.

Representative Payees are categorized into two broad groups:

- **Individual payees** – These include relatives, guardians, friends, or any other interested person who is in a position to care for the beneficiary.
- **Organizational payees** – These can include social service agencies, institutions, State or local government agencies, or financial institutions.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

Please refer to the Social Security Administration website for a complete description of Representative Payee responsibilities.

North Dakota policy is that the agency responsible for a child in care who is or becomes a Social Security Insurance (SSI) or Social Security (SS or SSA) benefit recipient shall apply to the Social Security Administration to become the Organizational Representative Payee for the child's SSI/SSA payments during the time the child is in placement.

There are three exceptions to the agency becoming the organizational representative payee

1. The agency has applied to become the organizational representative payee and the request is denied by Social Security Administration. In this situation, the agency must send a written request to the representative payee notifying them of the agency's custody and request the SSI or Social Security benefits received on behalf of the child be forwarded to the agency to be applied toward the cost of the child's care.
2. The current representative payee is willing to fully cooperate and has agreed to forward the SSI or Social Security benefits received on behalf of the child to the agency. In this situation, some form of an agreement of understanding should be outlined and signed by both parties. The agency should send Social Security Administration a copy of the custody order, the agreement with the current representative payee and an explanation of the child's current living arrangement for their records.
3. Short term placement as defined below.

NOTE: In exceptions 1 and 2, if the current representative payee refuses or fails to forward the benefit amount to the county, the agency must contact Social Security Administration and notify them of the representative payee's failure to cooperate.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

Prior to an agency's request to become the Organizational Representative Payee, the best interest and needs of the child must be considered, as does the effect it may have on their social security eligibility.

To apply to be an organizational representative payee, contact the local Social Security Administration office. They will be able to explain the requirements and provide the necessary forms for becoming an organizational representative payee. It may be necessary for a specific representative from the agency to handle this function each time. It takes approximately 30-60 days, possibly more, for the representative payee to be changed.

#### Short Term Placements

The definition of short term placement is a placement in foster care that is generally 60 days or less.

In the event of a short term placement, it would not be considered in the best interest of the child and the family for the agency to become the organizational representative payee of the child's Social Security or SSI benefits. This is due to the amount of time it takes for Social Security Administration to make the representative payee change and that a bank account must be established for direct deposit of the funds. Also, by changing the representative payee, it may cause a delay of benefits to the child if the agency should receive the payment after the child has already returned home. If this is the case, benefits must be returned to Social Security Administration to be reissued.

If the child's placement covers a full calendar month, it will be necessary for the agency to request reimbursement of the Social security or SSI benefits from the family member or representative payee that receives the Social Security or SSI benefits on behalf of the child. Those funds must be applied toward the care costs of the child for that month.

Example: Child entered care on July 15th; it is the intent to return the child to the home sometime in September. July 15th to July 31st is considered a partial month and the agency would not request reimbursement of July's social security benefits. Starting August 1st through August 31st, it will be necessary to request the child's



ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

August Social Security or SSI benefits be turned over to the agency to be applied toward the care costs of the child for that month unless it was otherwise determined the money be used to meet personal needs of the child. At this point, it should be determined if the child will, in fact, return home or stay in care.

If the child is expected to return home, the case manager will evaluate the child's needs. The current needs of the child for reunification purposes requiring monetary funding should be relayed to the representative payee. It is expected the representative payee will make efforts to meet those needs using the child's social security benefits for the month. In September the agency would not request reimbursement of the foster care expenditures due to using September benefits to meet the child's needs upon returning to the home.

### **EXTENDED PLACEMENTS**

If the child is not expected to return home or it is determined at any time during a short term placement the child will continue in care, the agency should apply to become the organizational representative payee with the exception of #1 or #2 listed above.

### **DIRECT DEPOSIT**

When an agency becomes an organizational representative payee, a checking or savings accounts at a bank, credit union, or financial institution must be set up for direct deposit of the funds. Contact your local financial institution to discuss options. Organizational representative payees do not have the option of a Direct Express Card.

### **ACCOUNT TITLING AND TYPES OF BANK ACCOUNTS**

Accounts must be established in a way that shows the beneficiary owns the account and the payee have only a fiduciary interest.

Do not use a joint account format because this allows a beneficiary direct access to their funds.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

When establishing the account, use the name of the organization on the title, not the name of an individual employee.

Here are two recommended titles:

“(Beneficiary's name) by (agency name), representative payee,” or

“(Agency name), representative payee for (beneficiary's name).”

Although these are the most common methods of identifying accounts, other account titles, which show beneficiary ownership and the agency as fiduciary, are acceptable. When in doubt, ask your bank.

Try to set up an account that earns interest, minimizes fees and helps keep clear records.

If an agency serves as an organizational representative payee for a large number of beneficiaries, Social Security Administration may allow them to establish a collective account. Payments may be deposited into a master checking or savings account with individual sub-accounts for each beneficiary. This kind of account is called a collective account. **Do not confuse this kind of account with your organization’s operating account. An agency may not mix a beneficiary’s funds with the agency’s funds.**

Social Security Administration must approve a collective account before it is set up. Therefore, contact your local Social Security Administration office for guidance. The office will ensure that the collective account is established in accordance with SSA rules.

### **HOW TO APPLY FOR DIRECT DEPOSIT**

Beneficiaries or representative payees receiving benefits on behalf of a beneficiary with an established bank or credit union account can sign up by calling 1-800-333-1795.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

To apply for direct deposit, the recipient will be required to have an existing financial institution account and provide the following:

- Account type: checking or savings
- Account number
- Financial institution's routing number
- Social Security number of the beneficiary

**APPLYING SOCIAL SECURITY AND SSI PAYMENTS**

In general, SSI/Social Security funds for the child are to be applied to the cost of the child's care, including irregular care costs, and meeting the personal needs of the child. As payee, the beneficiary's Social Security or SSI funds may not be used for anything other than his or her use and benefit. But more than that, the payee must use reasoned judgments and use the funds in the beneficiary's best interest. To be able to do this, the payee must be aware of the beneficiary's basic current and reasonably foreseeable needs.

"Current and foreseeable needs" means primarily food, shelter, clothing, and medical expenses not covered by Medicare, Medicaid or provided by a residential institution. Once the current and foreseeable needs have been satisfied, a payee may use the remaining funds for the beneficiary's personal comfort items, recreation and miscellaneous expenses.

It is recommended that an agency should establish internal procedures and guidelines governing how beneficiary funds will be managed. These internal procedures should also include internal controls to help ensure the integrity and accuracy of the accounting system. The Social Security website provides a brief description of common practices.

The Social Security Administration requires the representative payee to complete a Representative Payee Report about once every year. It will be necessary for the agency to keep accurate records for reporting how the beneficiary's benefits were spent over a specific time frame indicated on the report.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

At least \$30 per month of the Social Security or SSI funds should be set aside and spent for the personal needs of the beneficiary. If the beneficiary is receiving SSI benefits and living in an institution, this is required by the Social Security Administration.

The \$30 per month "personal needs" funds may not be used to buy items that the institution ordinarily provides, or for items that are paid for by a State or Federal program. See the "Guide for Organizational Rep Payees" on the Social Security Administration website for examples of appropriate personal needs spending

Social Security (SSA) benefits are considered unearned income for the child. The benefit amount received for a specific month is to be applied toward the care costs of the child for the same month. A personal needs amount of \$30 should be retained. The balance of the monthly Social Security benefit must be counted as a receivable toward the monthly standard and irregular payment expended during the month. Any amount in excess of the standard and irregular expenses in a given month is to be retained and may be used for the personal needs of the child. Payments should be in the form of a cashier check or money order payable to the Department of Human Services, along with an SFN 827 Credit Form.

### **SSI VERSUS TITLE IV-E OR EA FUNDING SOURCE**

In the case of children who are eligible for both SSI and Title IV-E or EA funding, an important part of the agency stewardship is determining which federal funding source to elect for the foster care income maintenance costs.

The Social Security Administration must be notified of the child's placement, the amount expended for the child's care and which funding source will be used. An agency cannot claim both SSI and Title IV-E or EA. If the child's living arrangement should change and it affects the amount expended, consideration must again be given to the federal funding source. Social Security Administration must be notified so adjustments can be made. If the child returns home or to a non-paid foster care placement, Social Security Administration must be notified immediately so benefits can be redetermined and reinstated to the full allowable amount as soon as possible.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

**NOTE:** if SSI payments are offset past the annual SSI review/renewal date, resumption of SSI payments may require a redetermination or review.

**NOTE:** offset SSI payments are permanently lost to the child or agency, not merely delayed or “banked.”

The first and primary concern of the representative payee in this decision must always be the interests of the child. SSI should not be offset if (a) the SSI payments are significantly greater than the cost of the child’s foster care and the child’s appropriate access to the difference would be impaired; (b) the foster care placement is expected to be very short term and reinstating SSI payments would disrupt the child’s support; or (c) for any reason it is known that offsetting SSI payments would jeopardize future eligibility for such benefits by the child.

Consider the following when determining which funding source to use. The agency should consider the fiscal interest of the state in electing IV-E or EA funding in lieu of SSI payments as well as the child’s cost of care. As a rule of thumb, whenever the cost of care is double the child’s monthly SSI payment, it will always be in the State’s fiscal interest to offset SSI and claim IV-E or EA funding. (In 1999, the IV-E income maintenance federal share is about 70%, so it is currently in the state’s fiscal interest to claim IV-E whenever the cost of care equals more than 170% of the SSI payment.)

**EXAMPLE 1:** A disabled child in residential care receives monthly SSI of \$552. The cost of care for this child is \$1500 per month, which the state partially offsets with the \$552 SSI received as Organizational Representative Payee. It is in the fiscal interest of the state to offset the SSI and claim IV-E income maintenance instead, which will bring  $\$1500 \times 70\% = \$1050$  per month federal to the state – twice as much as the \$552 SSI.

**EXAMPLE 2:** A disabled child in foster care receives monthly SSI of \$552. The child’s therapeutic foster care costs the state \$600 per

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

month. It is in the state's interest to retain the \$552 SSI, since IV-E would bring less:  $\$600 \times 70\% = \$420$ .

**EXAMPLE 3:** A disabled child in foster care receives monthly SSI of \$552.00. The child's family foster care cost is \$357.74 per month. The cost of care is less than the SSI; therefore, we would continue the SSI for the child. If it is in the best interest of the child, the agency would need to apply to become the payee for the SSI and each month submit the care cost of \$357.74 to the state. The remaining balance of \$194.26 would then be put into an established savings account for the child. In this same instance, \$100.00 child care costs are also being paid for as an irregular expense. \$100.00 would be sent into the state for reimbursement of this expense and the remaining balance of \$94.26 would be deposited into the child's bank account.

Even when the federal claim is only marginally above the SSI amount, the IV-E or EA election may be wise. Placements of disabled children are more frequently longer-term than others, and the cumulative state costs of making the "wrong" IV-E or EA versus SSI election can be enormous over time. Given the potential fiscal consequences, county staff should seek supervisory or state office guidance where judgments on this election seem particularly difficult.

**NOTE** regardless whether SSI or IV-E is claimed for the foster care cost, IV-E administration will be claimed for this case. This is accomplished by counting such a case either as a IV-E reimbursable case (FM), or as one which is IV-E eligible but not IV-E reimbursable (FN) for the months in which SSI is claimed.

**EXCESS SOCIAL SECURITY AND SSI FUNDS**

As organizational representative payee, the agency must deposit any amounts not expended for such care or personal needs in an account for the child. Upon the child's discharge from foster care, the organizational representative payee must turn over any conserved benefits, savings, or other investments and any interest earned on the benefits to Social Security Administration. Social Security Administration will reissue the returned benefits to either a new representative payee or to a beneficiary

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

currently receiving direct payment. The Social Security Administration requires periodic reports of such Representative Payee stewardship.

**MATCH SYMBOL FM/FN OR EA/RM**

The federal funding source affects both Title IV-E (FM) and Emergency Assistance (EA) match children. The funding source can change throughout the child's foster care episode based on the placement expenditures, the length of the placement and if it is in the best interest to make the change. When a child is SSI and IV-E eligible (FM) or determined Emergency Assistance (EA), the match symbol used when authorizing payments is based on the funding source claimed at the time of payment.

When SSI is claimed, the child's match symbol must be changed from FM to FN or EA to RM. Social Security Insurance (SSI) federal funds through the United States Treasury's general fund, and match symbols FM and EA are partially funded with federal funds. The child remains Title IV-E eligible or EA eligible, but not reimbursable. Therefore a change must be made to the match symbol to eliminate drawing federal funds from two sources.

If SSI has been suspended, IV-E is claimed, the child is IV-E eligible and IV-E reimbursable. Therefore their match symbol is FM.

Resources:

The Official Website of the U.S. Social Security Administration  
<http://www.ssa.gov/>

Training Organizational Representative Payees  
<http://www.ssa.gov/payee/LessonPlan-2005-2.htm#WHATISORG>

*Guide for Organizational Payees -*  
<http://www.ssa.gov/payee/NewGuide/toc.htm>

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

**Emergency Assistance Eligibility 447-10-20-25**  
**(New 4/25/17 ML #3502)**

[View Archives](#)

A foster child must be determined ineligible for Title IV-E funding prior to determining Emergency Assistance (EA) eligibility. The eligibility worker must complete the initial eligibility determination as outlined under 447-10-20.

An Emergency Assistance Service Application ([SFN 38](#)) must be completed by the parent/guardian or representative or a legal custodian to determine eligibility for EA. **When a child is in foster care, the legal custodian may make application and sign for emergency assistance.** If a family is currently receiving services such as parent aide, intensive in-home services, or case management services, an Emergency Assistance Service Application (SFN 38) may already be completed and on file in the case management service file. A copy of the current SFN 38 should be obtained from the case management service file in lieu of completing a new SFN 38 (see Emergency Assistance Application Restrictions for details).

A child must meet the following criteria to be Emergency Assistance (EA) eligible. An emergency exists because:

1. A child is in out-of-home care; or
2. A child is at risk of out-of-home care; or
3. A child is the subject of a child abuse or neglect report; and
4. The emergency did not arise because an adult family member refused (without good cause) employment or training.

In addition, the child must meet all three categories listed below:

1. The child must have lived with a parent or specified relative within the last six months prior to the foster care eligibility month or at initial placement.
2. The child or family member currently does not have sufficient resources immediately available to pay for emergency assistance services (self-declaration by the applicant).



ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

3. The application must be made by a parent or specified relative of a child under age 21 or by a legal custodian on behalf of a child under. A child age 18, in the 18+ Continued Care Program may sign the emergency assistance application.

Foster children, who are determined eligible for EA, must have a copy of the SFN 38 Emergency Assistance Service Application in the foster care eligibility file to support the eligibility determination.

A child eligible for EA, but in receipt of SSI, is not reimbursable through EA. Regular Foster Care funds must be used to reimburse foster care expenditures in any month in which the child received SSI. Refer to section 447-10-20-20-20.

Children do not meet the Emergency Assistance eligibility if:

1. He/she meets Title IV-E eligibility criteria
2. He/she did not physically reside with a parent or specified relative during the six months prior to the eligibility month.

A child that has not physically resided with a parent or specified relative during the six months prior to the eligibility month and meets all other eligibility criteria, is not eligible for Emergency Assistance, but would be eligible under Regular Foster Care.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

**Emergency Assistance Application Restriction  
447-10-20-25-05**

**(New 4/25/17 ML #3502)**

[View Archives](#)

North Dakota has defined emergency assistance broadly. It is not necessary to have a separate service application each time the family receives a different service. For example, if a family received intensive in-home service for three months and then a child went into foster care, it is not necessary to have a new Emergency Assistance Service Application (SFN 38). Thus, there would only be nine months of service eligibility left for foster care. If the emergency continues, a new Emergency Assistance Service Application (SFN 38) must be completed every 365 days.

Emergency Assistance is limited to a maximum duration of 12 months (365 days), or less, per authorization period, as necessary to alleviate the emergency condition.

If the emergency has not been resolved to permit the return of the child to the home, another SFN 38, Emergency Assistance Service Application is required within 30 days of the effective date of the prior year's SFN 38 for a period not to exceed 365 days.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

**Regular Foster Care Eligibility 447-10-20-30**  
**(New 4/25/17 ML #3502)**

[View Archives](#)

A child that is not eligible for Title IV-E or Emergency Assistance because they have not lived with a relative at any time during the 6 months prior to the eligibility month and meets all other foster care eligibility criteria is eligible for Regular Foster Care.

An example would be if a child has not had contact with their biological family and relatives in the six months prior to the eligibility month and has resided with a non-relative for the entire time.

Foster care expenditures for a Title IV-E or Emergency Assistance eligible child, who is in receipt of SSI in any given month, must be reimbursed through regular foster care. Refer to section [447-10-20-20](#).

All of the rules, policies, regulations, and guidelines pertaining to permanency planning and other eligibility criteria for foster care remain the same.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

## **Reimbursability 447-10-25**

**(Revised 11/1/10 ML #3249)**

[View Archives](#)

Once eligibility is established, the Eligibility Specialist must determine, whether the child's care was reimbursable by the federal government. Reimbursability requires that a series of conditions be met in order for foster care payments to be reimbursable. Non-reimbursability does not affect eligibility, nor does it mean that reimbursability cannot be established for the following month or for later months. There are seven reimbursability criteria. They are:

1. Legal Responsibility
2. Court certification of "reasonable efforts"
3. Not in receipt of TANF or Supplemental Security Income (SSI)
4. Reimbursable placement (the foster home must have a "full" license – not provisional)
5. Need
6. Deprivation pertains to either parent for any of the following:
  - Absence
  - Death
  - Physical/mental disability
  - Unemployment/ under employment
7. Under 18 or a child between the ages of 18 and 19 in secondary school or training full time, and expected to graduate or complete training before turning age 19.

Not all the criteria will apply to all children, nor will all the criteria apply in any one-month. In fact, the first three criteria are largely one-time tests. That is, once the criteria have been verified, there is no need to check them again. Other criteria are only checked at specific points in a child's life, e.g., the under 18 criteria.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

**Legal Responsibility 447-10-25-05**  
**(Revised 1/12/15 ML #3429)**

[View Archives](#)

**Applies to all children in Foster Care.**

There must be a court order, as defined in Legal Status 447-10-20-10, which gives a public agency legal responsibility for the custody and placement of the child. Removal of a child from the child's home for placement in the foster care must be based on judicial findings stated in the court's order, and determined on a case-by-case basis in a manner that complies with the requirements of Titles IV-B and IV-E of the Social Security Act.

Judicial determinations must be made by a District Court Judge, Tribal Judge, or judicial referee, which has the authority to make such a determination.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

**Reasonable Efforts - Requirements 447-10-25-10**  
**(Revised 11/20/17 ML #3522)**

[View Archives](#)

Federal child welfare requirements and North Dakota law requires a judicial determination that an agency has made reasonable efforts to prevent removal/placement or reasonable efforts were not required due to emergency or aggravated circumstances and within 12 months, reasonable efforts have been made to finalize the permanent plan.

A court finding that "reasonable efforts have been made to prevent the child's removal from the home" or "reasonable efforts are not required" must be made within 60 days of the child's actual removal from the home. If a finding is not made within this period, the child's entire foster care episode is ineligible and non-reimbursable.

A permanency hearing is required within 30 days of a court finding of "no reasonable efforts are required to return the child home" when the removal is a result of aggravated circumstances as defined under section 447-10-25-10-05.

A court finding that the agency has made reasonable efforts to finalize the permanency plan must be made within 12 months from when the child "enters foster care." If it is not made within this period, the placement becomes non-reimbursable for any month in which there are no findings. The placement will again be reimbursable, providing all other criteria are met, starting the first day of the month in which the court finds the agency has made reasonable efforts to finalize the permanency plan.

The findings must be explicit, specific, and made on a case by case basis. The detailed findings can be provided in a number of ways:

1. The court order describes the efforts in the language of the court order or findings;

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

2. The court order contains language that cross references or refers specifically to detailed statements in an agency or other report submitted to the court.
3. Items may be checked off from a detailed checklist within the court order.

If there are no detailed findings describing reasonable efforts, but the court verbally made them during the course of the hearing, the transcript can be used to document these findings.

Affidavits, nunc pro tunc orders, and orders simply referring to state laws requiring reasonable efforts for removal do not meet the requirement. 45 C.F.R. § 1356.21(d). Affidavits can be incorporated by reference to offer details and substance to the judicial determination made by the judge, but an affidavit incorporated by reference cannot make a judicial determination. Also, the exact wording of the federal statute does not have to be used as long as the findings make clear that the agency made reasonable efforts.

Reasonable efforts to place a child for adoption, with a fit and willing relative or other appropriate individual as a legal guardian, or in another planned permanent living arrangement, may be made concurrently with reasonable efforts to return the child safely to the child's home.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

**Reasonable Efforts - Exceptions to Requirements  
447-10-25-10-05**

**(Revised 11/1/10 ML #3249)**

[View Archives](#)

Reasonable efforts to prevent removal or return a child home are not required if a judicial determination is obtained that such efforts are not required because:

1. Certain felonies have been committed against the child or another child of the parent,
2. The parent has previously had parental rights to another child involuntarily terminated, or
3. When "aggravated circumstances" are present, as specified and defined by state law.

The regulations repeat the suggested federal statutory language for aggravated circumstances: abandonment, torture, chronic abuse, and sexual abuse.

When children are removed in emergency situations, the court must consider whether appropriate services were or should have been provided. When the court determines that it was reasonable for the agency to make no effort to provide services to prevent removal (or to return the child home) as a result of emergency circumstances, such as the safety or protection of the child, there must be a judicial determination to the effect that efforts to prevent removal or reunify the family **have not been made due to the immediate danger to the child or that efforts were not possible due to the emergency situation.**



ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

**Reasonable Efforts - Preventing Placement  
447-10-25-10-10**

**(Revised 11/1/10 ML #3249)**

[View Archives](#)

Part of the permanency planning philosophy includes the premise that every effort will be made to prevent the placement as well as developing and maintaining adequate care plans once the child is in care. The decision to place a child outside their home is a monumental one, which should be made only with the greatest care and deliberation. It damages whatever continuity the child has experienced and introduces new emotional risks.

The agency shall provide a range of services and commit its resources to preserve the child's family and prevent inappropriate placements. The agency shall ensure that placement is arranged only after services to improve conditions that may necessitate placement have been provided and failed, or offered and refused; and when there is a clear danger to the physical and emotional well being of the child. These requirements are based upon federal law found in Parts IV-B and IV-E of the Social Security Act.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division 10  
Program 400

Service 447  
Chapter 10

---

## **Permanency Hearing 447-10-25-10-20**

**(Revised 11/1/10 ML #3249)**

[View Archives](#)

**Every child in foster care must have a “permanency hearing” within 12 months of the child/youth entry to foster care or continuing in foster care following a previous permanency hearing.** The hearing must be held in a juvenile court or tribal court of competent jurisdiction (these replace the former dispositional hearings), or as an option, by the Division of Juvenile Services (DJS) for youth under its custody as a placement hearing under N.D.C.C. § 27-21.

**A judicial determination that the agency has made reasonable efforts to finalize the permanency plan that is in effect (whether the plan is reunification, adoption, legal guardianship, placement with a fit and willing relative, or placement in another planned permanent living arrangement) within twelve months of the date the child is considered to have entered foster care, and at least once every twelve months thereafter while the child is in foster care. The requirement for subsequent permanency hearings applies to all children, including children placed in a permanent foster home or a preadoptive home.**

In addition, a permanency hearing in the court or DJS must be conducted within thirty (30) days after a court determines that reasonable efforts are not required because:

1. Certain felonies have been committed against the child or another Child of the parent,
2. The parent has previously had parental rights to another child involuntarily terminated, or
3. When “aggravated circumstances” are present, as specified and defined by state law.

The regulations repeat the suggested federal statutory language for aggravated circumstances: abandonment, torture, chronic abuse, and sexual abuse.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

The hearing shall determine the court-approved permanency plan for the child that determines, if applicable, when:

1. The child will be returned to the parent;
2. The child will be placed with a relative;
3. The child will be placed with a legal guardian;
4. The legal custodian (or State) will petition for termination of parental rights;
5. The child will be placed for adoption; or
6. The child will be placed in another planned permanent living arrangement. This applies in cases where the legal custodian has documented to the court a compelling reason for determining that it would not be in the best interests of the child to return home, be referred for termination of parental rights, or be placed for adoption with a fit and willing relative or with a legal guardian.

The hearing shall also determine:

1. Whether and, if applicable, to place siblings in the same foster care, relative, guardianship, or adoptive placement, unless it is determined that the joint placement would be contrary to the safety or well-being of any of the siblings.
2. Whether and, if applicable, in the case of siblings removed from their home who are not jointly placed, to provide for frequent visitation or other ongoing interaction between the siblings, unless it is determined to be contrary to the safety or well-being of any of the siblings.
3. Whether an out-of-state placement continues to be appropriate and in the best interest of the child; and
4. In the case of a child who has reached age 16, the services needed to assist the child to make the transition from foster care to independent living.

**Federal Regulations changed effective March 27, 2000, related to children in long-term care with a specified caregiver.** It is no longer acceptable for a court to name a specific foster home in the court order. Placement and care responsibilities must rest with the agency, or foster care payment cannot be made. The requirement for 12-month permanency

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

hearings (formerly dispositional hearings), now applies to ALL children in foster care.

Paper reviews, ex parte hearings, agreed orders, or other actions or hearings which are not open to the participation of the parents of the child, the child (if of appropriate age), and the foster parents or preadoptive parent (if any) are not permanency hearings.

Continued Court Orders:

When findings of reasonable efforts to finalize the child's permanent plan are negative, insufficient or missing, foster care payments cannot be made until there is a positive finding. Continuances of the permanency hearing date and extension of the current court order which may delay the 'finding' of the permanency hearing until after the twelfth month will not meet the requirements of IV-E reimbursability. The required finding must be made every 12 months while the child is in care from the time the child is considered to have entered foster care. Foster care payments will terminate on the last day of the calendar month in which the findings were due. Once permanency findings are issued by the court, payments may be reinstated back to the first day of the calendar month in which the findings are made.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

**Alternative Permanency Placements 447-10-25-10-20-05  
(Revised 5/15/07 ML #3087)**

[View Archives](#)

The Adoption and Safe Families Act (ASFA) regulations effective March 27, 2000, require a significant change in practice related to long-term foster care. The changes are consistent with discouraging the use of long-term foster care, and the preference for another permanency arrangement for the child such as adoption or guardianship. Throughout the new federal regulations related to ASFA, you will note references to "another planned permanent living arrangement," and few, if any, references to long-term foster care.

The requirement for the 12-month permanency hearing (and every 12 months thereafter) applies to the child "in another planned permanent living arrangement."

**Children entering "another planned permanency living arrangement":**

When other options such as reunification, adoption, legal guardianship, or permanent placement with a fit and willing relative have been ruled out, and it is concluded that "another planned permanent living arrangement" is the most appropriate plan for the child, the agency must document to the court the compelling reason for the alternate plan.

The child's case plan along with the "compelling reasons" document must be available to the court for review during the next permanency hearing.

**Permanency Planning Requirements:**

The quarterly permanency planning reviews now apply to all children in foster care, including those in "another planned permanent living arrangement". This will ensure that the placement is reviewed and the case plan kept up-to-date for the court's yearly review at the 12 month ( or sooner) permanency planning.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

**Specified Caregiver 447-10-25-10-20-10**  
**(Revised 5/15/07 ML #3087)**

[View Archives](#)

The Supplementary Information to the federal regulations issued January 25, 2000, clarifies that it is not permissible for courts to extend their responsibilities to include ordering a child's placement with a specific foster care provider. The child's placement and care responsibility must be with a public agency (the State agency or another public agency with whom the State agency has an agreement).

Once a court has ordered a placement with a specific provider, it has assumed the State agency's placement responsibility.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

**Concurrent Receipt of TANF and Title IV-E 447-10-25-15  
(Revised 5/15/07 ML #3087)**

[View Archives](#)

There is no prohibition in the Title IV-E program against the concurrent payment of TANF and Title IV-E benefits on behalf of the same child.

The purpose of Title IV-E foster care payments is to provide for the maintenance of TANF-eligible children in foster care when they cannot remain in their own homes. The Title IV-E payment to the foster parents or child care institution to provide for the child's needs is made in lieu of the TANF payment to the family from which the child has been removed. Title IV-E may begin from the first day of placement in the month in which all eligibility criteria are met, regardless of whether a TANF payment has been made on the child's behalf for that same month.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

**Reimbursable Facility 447-10-25-20**

**(Revised 11/1/10 ML #3249)**

[View Archives](#)

**Applies to all children in foster care.**

A foster care payment can be made only to an authorized foster care provider. There are three types of providers who meet the law's definition of a reimbursable facility:

1. A licensed or affidavit foster family home, not a provisional license;
2. A private, non-profit or for-profit, non-medical group home or residential child care facility licensed by the state;
3. A public non-medical group home or institution, which is licensed for no more than 25 children.



ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

**Need 447-10-25-25**  
**(Revised 5/15/07 ML #3087)**

[View Archives](#)

To maintain reimbursability the child must have a financial need in AFDC terms. Need has two elements. First, the income available to the child must be less than the costs of maintaining the child. Income available includes all forms of income the child receives. Income is the gain or benefit, earned or unearned, derived from labor, business, capital, or property, which is received or is available to the assistance unit. It is considered when actually available when the applicant has a legal interest in a liquidated sum and has the legal ability to make such sum available for support or maintenance. All unearned income would be considered available to the child, while earned income would only be partially available since the AFDC rules allow disregards for work expenses and for earnings of employed students in accordance with Service Chapter 400-15-10. The cost of maintaining the child is the amount the state is paying for the foster care placement of the child. In any month where the child's income after deductions exceeds this amount, the child is not reimbursable.

The earnings of a part-time student employed part-time are counted in the eligibility test in the initial month only. All other earnings of a dependent child who is a full-time student or a part-time student not employed full-time are exempt.

The second element of need is a child's assets. If a child's assets exceed \$10,000 in non-exempt assets in any month the child is not reimbursable.

At re-determination, a child in foster care is considered his/her own assistance unit and financial need is determined based on income and assets available to the child. In establishing the initial eligibility, the income and assets of the child's parent(s) would have been considered if the child lived with either parent in the eligibility month. In the test of need in a reimbursability determination, the income and assets of the child's parents are not to be considered. The income test against the State need standard

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

is applicable to the child's available income at all times throughout the foster care episode.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

**AFDC Deprivation 447-10-25-30**  
**(Revised 5/15/07 ML #3087)**

[View Archives](#)

**Applies to Title IV-E eligible children only.**

A child in foster care must continue to meet one of the AFDC deprivation factors in order to maintain Title IV-E reimbursability. In the foster care context this means that if the child were to be returned to the home from which he or she was removed, deprivation would exist in that home. As with the eligibility determination this means that one or both parents is absent from the home, or physically or mentally disabled, or that the principal wage-earning parent is unemployed or under employed. The "home" considered in the reimbursability deprivation test is the home from which the child was removed in the eligibility test. A child was removed from the home of a relative other than the parents, it is this home, which is considered in establishing reimbursability, and the deprivation factor is permanent absence. However, the deprivation factor of absence would no longer apply if the parents move in with this relative.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

**Under the Age of 18 or 19 if in School 447-10-25-35**  
**(Revised 1/12/15 ML #3429)**

[View Archives](#)

(Applies to all children.)

A child loses Title IV-E eligibility and reimbursability when the child reaches the age of 18, unless the child is enrolled full-time in high school or an equivalent course of study and can reasonably be expected to graduate prior to the child's nineteenth birthday. If the child meets this exception, reimbursement may continue until the child graduates or turns 19, whichever occurs first.

When the child turns 18, the 18+ Continued Care Program is available.  
(See 624-05-23)

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

**Other Factors 447-10-30**

**Role of DJS 447-10-30-05**

**(Revised 4/25/17 ML #3502)**

[View Archives](#)

When financial assistance is needed to provide foster care payments, the parent(s), person or agency legally responsible for the financial support of the foster child or children needing foster care will make application on SFN 641, Title IV-E/Title XIX Application-Foster Care. The Division of Juvenile Services (DJS) is responsible to provide the county eligibility staff with all individual and family information (including copies of court orders, income, assets, determination of deprivation and other AFDC related requirements) regarding a child so a proper determination of Title IV-E eligibility may be made. The eligibility staff determines eligibility but DJS must provide the necessary documentation.

Every attempt should be made to provide the Administrative County with a timely application. Documentation needed to determine Title IV-E eligibility and reimbursability must be received by the Administrative County within 45 days of receiving the application for foster care. If the information is not received within 45 days, the application will be considered incomplete and closed. Retroactive payments in excess of 90 days are not allowed. For the purposes of initial payment, foster care expenses in excess of 90 days from when all documents are received by the administrative county to determine eligibility would not be eligible for reimbursement.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

**Case Plan 447-10-30-10**  
**(Revised 11/1/10 ML #3249)**

[View Archives](#)

**Applies to all children in Foster Care.**

As a condition of receipt of federal financial participation, social service personnel or personnel of a public agency which has a currently effective agreement with the Department of Human Services for providing such services must develop and maintain a case plan.

(See Service Chapter 624-05-15-50)

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

**Child's Income and Assets 447-10-30-15**  
**(Revised 5/15/07 ML #3087)**

[View Archives](#)

Children's earned and unearned income and assets must be evaluated very closely. The basic principal is that the payment to the foster parents should be made by the state. If the child has income, or assets in excess of \$10,000\*, the County should use these funds to reimburse the state for the child's cost of care. The child may continue to be entitled to a State foster care payment, even if the child's countable assets exceed \$10,000, as long as the County reimburses the State for the amount of the payment. This is only applicable to on-going foster care cases, in which the child's assets have built up in excess of the \$10,000. For an initial foster care case, if the assets are over \$10,000 there is no eligibility for foster care payment until spend down of assets has occurred.

The steps involved in determining how to handle the child's income or excess assets are presented below. In all cases the payment to the foster home is made by the State.

1. Does the child have countable income?

No: Go to B.

Yes: Yes: Is the child's income greater than the cost of the child's care?

Yes: The County reimburses the State for the amount the State paid. The excess income is put in an account for the child.

No: The County reimburses the State with the child's entire income. Go to B.

2. Does the child have assets?

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

- No: Stop, no additional action needs to be taken.
- Yes: Are the child's assets greater than \$10,000?
- No: Stop, no additional action needs to be taken.
- Yes: The funds from the child's account in excess of \$10,000 must be used to reimburse the State for the child's cost of care.

Example:

- a. The child is in a Family Foster Home. His cost of care is \$425. per month. His income is \$500.

The State pays the foster parents \$425. The County reimburses the State the full \$425. The balance of the child's income -- \$75. is placed in an account for the child.

The situation continues for two years. At the end of this two-year period, the child has \$10,800 in his account. The State continues to make the payment to the foster parents even though there is more than \$10,000 in the child's account, as long as the County continues to reimburse the State for the child's cost of care.

- b. The same child moves to a group home where his cost of care is \$800. His income continues to be \$500 per month. When the child is placed in the group home the amount in his account is \$10,800.

The State pays the group home \$800. The County reimburses the State with the child's income of \$500, plus \$300 from the child's account each month until the balance in the child's account is \$10,000. That is, in each of the first two months the child is in this home the County will send \$300 from his account. In the third month, the County will send \$200 from



ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

this account. Beginning in the fourth month, the County will only send the child's income.

\* Federal law change 12/14/1999

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

**Tribal Agreements Regarding Title IV-E Payments  
447-10-35**

**(Revised 5/15/07 ML #3087)**

[View Archives](#)

The North Dakota Department of Human Services has entered into formal agreements with interested Indian tribes pertaining to Title IV-E (AFDC related) foster care eligibility. The agreements allow the tribe or tribal court to retain jurisdiction including placement and care responsibilities of children and still have Title IV-E foster care eligibility for a child if all other Title IV-E foster care eligibility requirements are met.

The North Dakota Department of Human Services has agreements with the following tribes:

- Spirit Lake Sioux Nation (formerly Devils Lake Sioux Tribe)
- Standing Rock Sioux Tribe
- Three Affiliated Tribes (Fort Berthold)
- Turtle Mountain Band of Chippewa Indians

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

**Native American Parents Living on an Indian Reservation  
when the Child Enters Foster Care 447-10-40**

**Jurisdictional Limitations - County Social Service Board  
447-10-40-05**

**(Revised 5/15/07 ML #3087)**

[View Archives](#)

On the federal Indian reservations, the role of the county social service board must fall within judicial and jurisdictional limitations. The state recognizes a government-to-government relationship with the tribes.

The role of the county social service board is limited because the state has neither criminal nor civil jurisdiction over Native American children.

The tribe has the right to set their own foster home licensing standards. The state will accept an affidavit of compliance with the tribal licensing standards. The standards must be reasonably in accord with a national licensing standard, be adopted by formal tribal resolution, and submitted to the Department along with a copy of the standards.

Tribes may only receive title IV-E funds pursuant to a title IV-E agreement with a State. A Tribe that enters into such an agreement must comport with section 471(a)(20) of the Act and section 1356.30 in accordance with the State plan in order to receive title IV-E funding on behalf of children placed in the homes it approves. The Tribe must provide documentation that criminal records checks have been conducted with respect to prospective foster and adoptive parents.

The background check consists of the following:

1. Completion of "Personal Authorization for Criminal Record Inquiry," SFN 838, for each adult in the prospective foster home.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

2. Completion of "Background Check Address Disclosure," SFN 377, for each adult in the prospective foster home.
3. Completion of two fingerprinting cards, if required.

In the absence of unique tribal foster care licensing standards, the state will accept an affidavit (signed by a tribal official) that the home meets state licensing standards.

State law applies to non-Indian persons on Indian reservations, including the requirement for licensing foster homes in accordance with state law and rules for the care of any foster child.

By tribal resolution, press release, and otherwise, Native American people have made known a concern over the removal or possible removal of Native American children from the reservation to a non-Indian culture off the reservation. This concern is to be recognized and respected. Therefore, with reference to Native American children living on a federal Indian reservation, representatives of the Department of Human Services and county government will not be involved in the removal of any Indian child from the child's parents or the placement of the Indian child off the reservation. The county may respond to the Tribal Court in terms of social information or recommendations. In keeping with this concept, the county social service board is not to accept legal custody of a Native American child unless the appropriate court has first determined the child is to live and be cared for off the reservation.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

**Financial Responsibility of Foster Child Under the Custody  
of the Tribe 447-10-40-10**

**Title IV-E - Role of County Social Service Board  
447-10-40-10-05**

**(Revised 4/25/17 ML #3502)**

[View Archives](#)

When Title IV-E financial assistance is needed to provide foster care payments, the parent(s), person or tribal agency legally responsible for the financial support of the foster child or children needing foster care will make application on SFN 641, Title IVE/ Title XIX Application-Foster Care. The tribe is responsible to provide the county eligibility staff with all individual and family information (including copies of court orders, income, assets, determination of deprivation and other AFDC related requirements) regarding a child so a proper determination of Title IV-E eligibility may be made. The eligibility staff determines eligibility, but the tribe must provide the necessary documentation.

Every attempt should be made to provide the Administrative County with a timely application. Documentation needed to determine Title IV-E eligibility and reimbursability must be received by the Administrative County within 45 days of receiving the application for foster care. If the information is not received within 45 days, the application will be considered incomplete and closed. Retroactive payments in excess of 90 days are not allowed. For the purposes of initial payment, foster care expenses in excess of 90 days from when all documents are received by the administrative county to determine eligibility would not be eligible for reimbursement.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

**Title IV-E - Role of the Tribe 447-10-40-10-10**  
**(Revised 5/30/19 ML #3550)**

[View Archives](#)

The tribe is responsible to provide the designated county staff with all required documentation needed for initial Title IV-E eligibility determination.

Every attempt should be made to provide the Administrative County with a timely application. All documentation needed to determine Title IV-E eligibility and reimbursability should be submitted to the Administrative County within 45 days from the date the child was legally removed from the home. The tribe will be notified by the designated county staff of information that is incomplete or missing that is required to determine eligibility.

If complete information is not received within 45 days of the date the county initially received the eligibility documents, the application will be considered incomplete and the county will return the information to the tribe closing the case. The case may be resubmitted to the designated county for eligibility determination once all of the information that made the prior submission incomplete is obtained.

Retroactive payments in excess of 90 days from the time eligibility can be determined are not allowed. For the purposes of initial payment, foster care expenses in excess of 90 days from when all documents are received by the administrative county to determine eligibility would not be eligible for reimbursement.

Documents required for Title IV-E eligibility determination include:

- Copies of the initial removal order and subsequent court orders, along with incorporated affidavits/petitions;
- A completed SFN 630 – Foster Care Placement Notification;
- A completed SFN 641 – Title IV-E Title XIX Application Foster Care; and

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

The tribe will be notified by the designated county of the determination for each case. A case that is determined non-IV-E will be returned with a cover letter explaining why the case was ineligible for IV-E.

Cases that are Title IV-E eligible must be entered into the case management system and payments must be authorized through the payment system by the designated county. The tribe is responsible to provide the county with copies of subsequent court orders that contain timely and necessary judicial determinations for ongoing reimbursability. An SFN 45 – Notice of Change is required for all status changes. Care plan information is required to keep the case management system and payment system current to allow accurate payments to providers.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

**Title IV-E - Role of DHS/CFS 447-10-40-10-15**  
**(Revised 5/15/07 ML #3087)**

[View Archives](#)

Maintenance payments for the care of children who are Title IV-E eligible and reimbursable are a state and federal financial responsibility. The proper matching symbol code to use for eligible children is NA.

**Note:** This is limited to payment for children whose parent caretaker was living on a federal reservation at the time the child entered foster care, whether the child is placed on or off the reservation.

One hundred percent (100%) state and federal financial responsibility is based on where the parent(s) of the Native American child were living at the time the petition was filed that led to the removal of the child and is limited to the following counties of "financial responsibility":

Benson	Mercer
Dunn	Mountrail
Eddy	Rolette
McKenzie	Sargent
McLean	Sioux



ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

**Native American Foster Child is Under Custody of DJS  
447-10-40-15**

**Role of County Social Service Board 477-10-40-15-05  
(Revised 5/30/19 ML #3550)**

[View Archives](#)

The county social service board is responsible to determine eligibility and reimburse eligible foster care expenditures for any foster child under the legal custody of the Division of Juvenile Services in accordance with NDDHS Service Manual Chapters 447-10 and 623-05. All efforts should be made to secure Title IV-E eligibility.

For Indian children who are Title IV-E eligible, the proper match symbol is NA.

For Indian children under the custody of the Division of Juvenile Services Only, who are not Title IV-E eligible, and whose parents live on the reservation at the time the child enters foster care, the proper match symbol is NR for the ten designated counties assisting with tribal foster care eligibility.

For Indian children under the custody of the Division of Juvenile Services, who are not Title IV-E eligible, and whose parents did not live on the reservation at the time the child enters foster care, the match symbol will be EA or RM depending on the eligibility determination outcome as per policy.

Federal regulation, 45 CFR 1356.67 mandates that each state with a Title IV-E plan approved under section 471 of the Social Security Act must establish and maintain procedures, in consultation with Indian tribes, for the transfer of responsibility for the placement and care of a child to a tribal Title IV-E agency, or an Indian tribe with a Title IV-E Agreement. The transfer of a child's case should not affect the child's eligibility, receipt of

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

services, or payments under Title IV-E or the Medical Assistance program operated under Title XIX.

The tribe of an Indian child has the right to intervene at any time in a child custody proceeding in State court. Upon the transfer of a child from state court to tribal court, county agencies should follow current procedures or develop procedures, in consultation with the tribe, that ensure the following:

1. Title IV-E is established at the time of transfer, if it has not already been determined.
2. Essential documents and information necessary to continue a child's eligibility under Title IV-E and Medicaid programs under Title XIX are provided in a timely manner to the tribal Title IV-E agency, or an Indian tribe with a title IV-E Agreement, including but not limited to:
  - a. All judicial determinations to the effect that continuation in the home from which the child was removed would be contrary to the welfare of the child and that reasonable efforts to prevent removal and return the child home were made, and that reasonable efforts have been made to place siblings in the same home or provide for frequent visitation or other ongoing interaction between siblings when it is not possible to place them together;
  - b. Other documentation the county social service agency has that relates to the child's Title IV-E eligibility;
  - c. Information and documentation available to the county social service agency regarding the child's eligibility or potential eligibility for other federal benefits;
  - d. The case plan, including the child's health and education records; and,
  - e. Information and documentation of the child's placement settings.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

**Role of DHS/CFS 447-10-40-15-10**

**(Revised 5/15/07 ML #3087)**

[View Archives](#)

Financial responsibility for foster care maintenance payments shall be 100% federal and state.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

**Native American Parents Living Off an Indian Reservation  
When the Child Enters Foster Care 447-10-45**

**Financial Responsibility 447-10-45-05**

**(Revised 5/15/07 ML #3087)**

[View Archives](#)

There are no special provisions for financial responsibility for a Native American child who enters foster care when his/her primary caretaker parent(s) is living off the reservation.

The county is responsible to determine foster care eligibility the same as for any other child. The custodian is responsible to provide all individual and family information to the eligibility staff so proper foster care eligibility can be determined. Financial responsibility is shared between federal, state, and county governments based on eligibility.

There is no NA or NR matching symbol within this category.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

**Alien Eligibility for Title IV-E 447-10-50**  
**(Revised 5/15/07 ML #3087)**

[View Archives](#)

(Applies to All Children in Foster Care)

Effective August 22, 1996, with the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Congress requires that States verify United States citizenship or qualified alien status of persons who are recipients of certain public benefits, which include Title IV-E federal foster care (income maintenance), adoption assistance, and independent living payments. Citizenship or qualified alien status is not required for a child to receive child welfare services or child protective services, even though funded under Title IV-B or IV-E Administration, since such protective services do not meet the law's definition of "public benefits." Current federal guidance is found in ACYF-CB-PIQ-99-01 and in Attorney General Order No. 2129-97, "Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996," 63 Fed. Reg. 61344 (Nov. 17, 1997).

Note that this supersedes prior federal law and policy, as well as North Dakota practice, which allowed Title IV-E foster care and adoption assistance payments for resident alien children who otherwise would not have been eligible for Aid to Families with Dependent Children. **Now Title IV-E eligibility for income maintenance, adoption assistance, or independent living payments requires U.S. citizenship or Qualified Alien status, which excludes certain aliens such as undocumented aliens or aliens legally admitted on a temporary basis for work, study, or pleasure.**

The U.S. Citizenship requirement is met if an individual is one of the following:

- A person (other than the child of a foreign diplomat) born in one of the States or in the District of Columbia, Puerto Rico, Guam, the U.S.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

Virgin Islands, or the Northern Mariana Islands who has not renounced or otherwise lost his or her citizenship;

- A person born outside of the United States to at least one U.S. Citizen parent (sometimes referred to as "derivative citizen");
- A naturalized U.S. citizen; or
- A U.S. non-citizen national, a person born in American Samoa or Swain's Island on or after the date the U.S. acquired them, or a person whose parents are U.S. non-citizen nationals (subject to certain residency requirements).

A "Qualified Alien" is a person who, at the time of application, is:

1. An alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act;
2. An alien granted asylum under section 208 of such Act;
3. A refugee admitted to the U.S. under section 207 of such Act;
4. An alien who is paroled into the U.S. under section 212(d)(5) of such Act for a period of at least one year;
5. An alien whose deportation is being withheld under section 243(h) of such Act, as in effect immediately before April 1, 1997, or section 241(b)(3) of such Act;
6. An alien who is granted conditional entry pursuant to section 203(a)(7) as in effect prior to April 1, 1980;
7. An alien who is a Cuban or Haitian entrant (as defined in section 501(3) of the Refugee Education Assistance act of 1980); or
8. An alien who (or whose child or parent) has been battered or subjected to extreme cruelty in the U.S. (See Exhibit B to Attachment 5 of the Department of Justice Interim Guidance, 62 fed. Reg. 61344 (Nov. 17, 1997) for the requirements that must be met for an alien to fall within this category of qualified alien).

Because of the complexity of rules regarding citizenship and alien status, staff are urged to seek supervisory and Departmental expert advice when addressing questions that may arise as to these issues.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

**Verifying Citizenship or Qualified Alien Status for Foster Care, Adoption Assistance, and Independent Living Payments 447-10-50-05**

**(Revised 5/15/07 ML #3087)**

[View Archives](#)

The law regarding U.S. citizenship and nationality is complex. Because the process of verifying an individual's status as a U.S. citizen, U.S. non-citizen national, or qualified alien raises significant issues involving privacy and anti-discrimination protections, federal guidance is that no verification of an applicant's status in this regard should be undertaken where benefits are not contingent on such status. Therefore, whenever there are indications that the child is not likely to be foster care eligible for other reasons, citizenship/qualified alien verification should not be pursued.

A child must be either a United States citizen by birth or naturalization, or must be a qualified alien. U.S. citizenship follows that of the child's U.S. citizen parent(s) or is established by being born in this country. Children who are in the U.S. under a visitor or tourist visa or under a student arrangement are not eligible for foster care.

Qualified alien status must be verified through the Immigration and Naturalization Services verification process utilizing the information on the Alien Registration Card designated as I-94.

The procedures to be followed for determination of citizenship/qualified alien status during the initial Title IV-E eligibility process are as follows:

STEP 1:	Request that the parent or the child's representative complete <u>SFN 641</u> indicating that the child is a U.S. citizen or an alien, and sign the form under penalty of perjury. File this completed form in the child's eligibility record.
---------	--

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

STEP 2:	Request that the parent or child’s representative provide evidence of the child’s citizenship, e.g., a copy of the child’s birth certificate, hospital birth record, U.S. consular report of birth, U.S. passport, a Certificate of Citizenship, or a Certificate of Naturalization. Keep a photocopy of such evidence in the child’s eligibility record.
STEP 3:	If the child is an alien, request that the parent or child’s representative provide a copy of a current document issued by the U.S. Immigration and Naturalization Services (INS), such as Form I-551, I-94, I-688B, or I-766. Contact the INS to verify that the immigration status is current and that it indicates citizenship or qualified alien status. Eligibility staff can verify citizenship or alien status by using the Verification of Citizenship or Alien Status – Systematic Alien Verification for Entitlements (SAVE) in accordance with Service chapter 449-05-25. Record the INS response in the child’s eligibility record.
STEP 4:	If the child is otherwise Title IV-E eligible and reimbursable, but does not meet the citizenship/qualified alien test, note this fact at the bottom (end) of <u>SFN 870</u> . Also, record the citizenship status of the child and family members on <u>SFN 641</u> where indicated.



ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

**18+ Continued Foster Care Eligibility 447-10-52**  
**(NEW 11/1/19 ML #3565)**

[View Archives](#)

18+ Continued Foster Care is available to eligible foster care children up to the age of 21 if the child meets certain criteria. The child must have aged out of foster care while in the custody of a North Dakota public agency including; County Social Services, Department of Human Services, Tribal Social Services and the Division of Juvenile Services (DJS).

**Children under the custody of Division of Juvenile Services**

The North Dakota Department of Human Services has a formal agreement with the ND Division of Juvenile Services (DJS) to offer foster care placements for children in need of out of home care. ND law prohibits DJS from case managing a child who is not in their court ordered custody. If a DJS child ages out of foster care and requests to continue in 18+ Continued Care, the DJS case manager is responsible to refer the case and discuss transfer details with the county social service office.

**Children under the custody of Tribal Social Services**

The North Dakota Department of Human Services has a formal agreement with Standing Rock Sioux Tribe, Three Affiliated Tribes, Turtle Mountain Band of Chippewa and Spirit Lake Sioux Tribe. The Title IV-E agreements allow the Tribe to retain jurisdiction of children interested in participating in the 18+ Continued Care program. The Tribe remains responsible for providing full case management to the foster child and all documentation for eligibility determination and case management to the county. Eligible maintenance payments for the care of an 18+ child will be authorized by the county and paid by the state.

1. **Tribal Title IV-E**

- a. A child under the custody of Tribal Social Services, who was Title IV-E eligible and meets the criteria of "aging out", is eligible for 18+ Continued Care.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division 10  
Program 400

Service 447  
Chapter 10

---

2. **Tribal Non-Title IV-E**

- a. A child under the custody of Tribal Social Services, who was not Title IV-E eligible upon "aging out", may qualify for 18+ Continued Care. The child must apply and have their eligibility determined. If found to be Title IV-E eligible as "child only", the child would be eligible to participate in the 18+ Continued Care program. If the child loses Title IV-E eligibility or reimbursability while participating in the 18+ Continued Care program, the county will close the case and the state will no longer be financially responsible.

**Placement and Care**

The 18+ Continued Foster Care Agreement (SFN 60) allows for a bridge in service and payment. The eligibility determination at the time the child ages out of foster care will determine the effective date of the agreement.

**Title IV-E Eligible Child:**

- Continued foster care date = day before their 18th birthday.
- Returned to foster care date = day returned to foster care.

**Not Title IV-E Eligible Child:**

- New foster care date = day after current court order expired.
- Return to foster care date = day returned to foster care.

The agreement authorizes the agency placement and care responsibility until a formal court order can be obtained. An 18+ Continued Foster Care Agreement is not required until the court ordered custody expires when the order extends past the child's 18th birthday.

An 18+ court order authorizing placement and care responsibility to the agency must be obtained within 90 days of the effective date of the 18+ Continued Foster Care Agreement.

**Eligibility Month**

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

The month of the effective date on the SFN 60, 18+ Continued Foster Care Agreement, is considered the removal month for a child that requires a new eligibility determination.

**AFDC Income and Assets**

The income and assets available to an 18+ child that no longer meets the definition of a dependent child must be considered in the eligibility month when determining eligibility for 18+ Continued Care. An 18+ child is considered an AFDC unit of one.

Exclusions:

- The income and assets of an applicant in receipt of SSI. If the applicant is the foster care child, they are counted in the AFDC unit, but their income and assets are excluded.
- The earnings of a dependent child who is a full-time student in high school.

See Manual Chapter 447-10 AFDC Relatedness for additional exclusions.

If a child's available net income exceeds the daily foster care rate, reimbursability may still exist since the needs of the child include costs other than basic maintenance.

**Dependent Child**

An 18+ child is considered a "Dependent Child" if they are a full-time student in high school (or in an equivalent level of vocational/technical training) if they are expected to complete high school or vocational training curriculum before attaining age 19.

**Student Status**

1. A child participating in Job Corps is considered to be a student.
2. A child is considered in regular attendance for the months in which he/she is not in school because of official vacation, illness, or convalescence if the plan is to continue training when the event that prompted the interruption has run its course.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

3. A child is considered a dependent child during the entire month of his/her 18th birthday.
4. A child is no longer considered a dependent child the month after one of the following occurs:
  - a. They turn 18 and are no longer attending high school or an equivalent course of study.
  - b. They graduate from high school or an equivalent course of study before turning age 19.
  - c. They turn 19 and are still attending high school or an equivalent course of study.
5. The terms "full-time" and "part-time" school attendance are defined as follows:
  - a. "Full-time" attendance in a secondary school (high school) requires four or more units of credit. "Part-time" is anything less than four units of credit.
  - b. "Full-time" attendance in college or university requires 12 or more semester or quarter hours and "part-time" is less than 12 semester or quarter hours. Full time summer school normally means one-half of the semester hours earned during a regular quarter or semester.
  - c. "Full-time" in a vocational/technical school, under state operation, means 12 or more semester or quarter hours, and "part-time" is less than 12 semester or quarter hours. There is no uniform defined criteria of what constitutes full or part-time attendance in private vocational/technical schools such as for auto mechanics, auto body repair, hair stylists, etc.

**18+ Court order**

All children continuing in or returning to the 18+ program must have a court hearing within 90 days of the effective date of the 18+ Continued Foster Care Agreement (SFN 60). A child will lose eligibility and reimbursability for the remainder of their placement starting on the 91st day if the agency fails to obtain an 18+ court order within 90 days.

For Title IV-E eligible children continuing in the 18+ program, the requirement of timely permanency findings does not change. Permanency

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

findings must be obtained 12 months from the date the child entered foster care or 12 months from the last permanency hearing.

A child that is not Title IV-E eligible at the time they age out of foster care must be discharged from the foster care program and the case closed. The foster care discharge date must be equal to the court order expiration date or the date the child age 18 or greater under agency custody is discharged from the foster care program. Permanency findings are required within 12 months from the effective date of the child's return to care.

For payment purposes, the 18+ court order must include:

1. The child willfully entered the 18+ Continued Foster Care Agreement.
2. A judicial determination that it is in the best interest for the child to remain in or return to foster care.
3. A judicial determination the agency has made reasonable efforts to meet the youth's needs before a foster care placement.
4. Permanency goal for the child.
5. Permanency Hearing: A judicial determination the agency has made reasonable efforts to finalize the permanency plan specific to the youth.
6. Placement and care responsibility to the agency.

**Eligibility Determination**

All 18+ eligibility determinations require the following:

1. A current 18+ Continued Foster Care Agreement (SFN 60)
2. A court order containing the required 18+ judicial determinations obtained within 90 days of the effective date of the 18+ Continued Foster Care Agreement (SFN 60).
3. Continued Eligibility
  - A. Title IV-E: If the child was previously Title IV-E, no redetermination is necessary. However, income and assets must be reviewed to determine the child's reimbursability.
  - B. Non-Title IV-E: If the child was not previously Title IV-E eligible prior to aging out, a new eligibility determination is required specific to the child only.

Based on the child's determination, the following documents are required:

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

**Title IV-E children**

**1. Remain in ND 18+ Continued Care:**

- a. Child remains Title IV-E eligible
- b. A new determination is not required, but income and assets must be monitored for continued reimbursability.
- c. Additional documentation in the eligibility file must include:
  - i. SFN 60, 18+ Continued Foster Care Agreement
  - ii. SFN 45, Notice of Change
  - iii. 18+ Court Order

**2. Return within six months of discharge:**

- a. Child remains Title IV-E eligible.
- b. Reimbursability must be established.
- c. Additional documentation in the eligibility file must include:
  - i. SFN 641 Title IV-E Title XIX Application – Foster Care specific to the 18+ Continued Care eligibility month and signed by the child.
  - ii. SFN 870, Title IV-E 18+ Continued Care Eligibility
  - iii. SFN 873, Title IV-E Income Calculation Worksheet if child has income
  - iv. SFN 60, 18+ Continued Foster Care Agreement
  - v. SFN 45, Notice of Change
  - vi. 18+ Court Order

**Non-Title IV-E children aging out of foster care**

All non-IV-E children must be discharged from the foster care program upon aging out of foster care. A child must “return” to foster care if they wish to continue in the 18+ program. The child must apply for 18+ Continued Foster Care and a new eligibility determination is required.

**1. Return to 18+ Continued Care:**

- a. Additional documentation in the eligibility file must include:

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

- i. SFN 641 Title IV-E Title XIX Application – Foster Care specific to the 18+ Continued Care eligibility month and signed by the child.
- ii. SFN 870, Title IV-E 18+ Continued Care Eligibility
- iii. SFN 873, Title IV-E Income Calculation Worksheet if child has income
- iv. SFN 60, 18+ Continued Foster Care Agreement
- v. SFN 45, Notice of Change
- vi. 18+ Court Order

### **Reimbursability**

To maintain reimbursability the child must have a financial need in AFDC terms. Need has two elements. First, the income available to the child must be less than the costs of maintaining the child. Income available includes all forms of income the child receives. Income is the gain or benefit, earned or unearned, derived from labor, business, capital, or property, which is received or is available to the assistance unit. It is considered actually available when the applicant has a legal interest in a liquidated sum and has the legal ability to make such sum available for support or maintenance. Any earnings designated for a sole purpose and not available for support or maintenance are excluded. All unearned income would be considered available to the child, while earned income would only be partially available since the AFDC rules allow disregards for work expenses and for earnings of employed. The cost of maintaining the child is the amount the state is paying for the foster care placement of the child. In any month where the child's income after deductions exceeds this amount, the child is not reimbursable.

### **Medical Services**

The Foster Care Application (SFN 641) must be completed in order to reinstate Medicaid for children who exit and return to foster care after age 18. Title IV-E Title XIX Redetermination – Foster Care (SFN 642) may be used to re-determine Medicaid annually for children who remain in foster care past the child's 18th birthday. Children who are discharged from foster care at or after age 18 are eligible for Medicaid until the age of 26.

**Additional 18+ Policy:** 18+ Continued Care program policy can be found in 624-05 and 18+ maintenance payment policy can be found in 623-05.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

## **Procedures 447-10-55**

### **Eligibility Process 447-10-55-05**

**(Revised 5/30/19 ML #3550)**

[View Archives](#)

The eligibility determination process begins with the case manager completing the Foster Care Placement Notification form, [SFN 630](#), for all children who enter care. This form along with a copy of the removal court order and if incorporated, the petition or affidavit, which resulted in the removal, are sent to the county eligibility staff.

The Title IV-E/Title XIX Application-Foster Care form, [SFN 641](#), must be provided for completion to the child's parents or guardian from whom the child was legally removed. If the parents or guardian fail to complete and return the application timely, the case manager must follow-up with the parents or guardian to assist in completing the application and to secure the needed information. As a last resort, if the parents or guardian are uncooperative or refuse to complete the application, the case manager may complete the application on the family's behalf; which may result in the child being determined non-Title IV-E eligible due to unknown information.

All efforts should be made to have all forms completed and sent to the designated county eligibility worker within 45 days of the removal. Forms that are incomplete or missing information will cause a delay in eligibility determination and payment to the provider.

The eligibility staff must use the Title IV-E eligibility determination forms Title IV-E Initial Eligibility, [SFN 869](#), and Income Calculation Worksheet, [SFN 873](#), to determine if the child is eligible for Title IV-E, Emergency Assistance, or regular foster care based on the July 16, 1996, AFDC rules. Once eligibility has been determined, the eligibility staff will enter and authorize the payment on CCWIPS and authorize Medical Assistance coverage as appropriate. If the child is eligible for Title IV-E benefits, the child becomes "categorically" Medicaid eligible. Worker will authorize the Medicaid accordingly. If the child is not eligible for Title IV-E benefits, a



ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

Medicaid determination must be made according to the Medicaid guidelines.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

**Right to Appeal and Fair Hearing 447-10-55-10**  
**(Revised 5/15/07 ML #3087)**

[View Archives](#)

Any person who is dissatisfied as the result of an action taken or not taken by a county social service board or the North Dakota Department of Human Services with respect to his application is legally entitled to appeal for an impartial review of the circumstances through the fair hearing procedure (N.D.A.C. Chapter [75-01-03](#)).

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

**Child Support Enforcement 447-10-60**  
**(Revised 11/1/10 ML #3249)**

[View Archives](#)

Federal law requires states to take all necessary steps to enforce the assignment of support rights and, if necessary, establish support orders on behalf of children receiving foster care. N.D.C.C. § 50-09-06.1 provides that all support obligations are automatically assigned to the state when it is determined that a child is eligible for foster care. The assignment is not conditioned upon the consent of the parents.

For the purposes of this Chapter "parent(s)" is defined as the natural parent(s), adoptive parent(s), or guardian legally responsible for the support of the child.

It is important that parent(s) maintain a tie to and responsibility for their child in foster care. Involvement in financial support for that child is one component of that continuing involvement and responsibility. With that in mind, the Department has established procedures for the parent(s)' equitable financial support while their child is in foster care.

Whenever a child enters foster care, it is expected that the parent(s) will be fully involved in developing plans for their children in foster care, including payments of maintenance and medical costs.

A referral to Child Support Enforcement is made against each parent when a child is eligible for foster care, with two exceptions. A referral will not be made against either parent:

1. If one or both parents receive a subsidized adoption payment on behalf of a child in foster care, or
2. If the child's placement was short-term. For purposes of this exception, "short-term" is defined as follows:
  - a. The child exited the placement by the time the referral would be sent, and

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

b. The child was in the placement for 60 days or less.

Both criteria a and b must be met in order for the referral to be eliminated (i.e., not made). If the child is in placement at the time of referral, a referral is made regardless of the amount of time the child has been in placement.

The existence of good cause must be noted on the referral.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

**Good Cause for Refusing to Cooperate 447-10-60-05**  
**(Revised 5/15/07 ML #3087)**

[View Archives](#)

In Section 208 of Public Law 94-88 in August 1975, Congress recognized that the AFDC custodian may have "good cause" not to cooperate with the child support collection effort. Accordingly, all custodians must be given the opportunity to claim a "good cause" exemption. This is accomplished by providing each with a [SFN 443](#), Notice of Right to Claim 'Good Cause', at time of application. The notice briefly summarizes the legislative intent of the Child Support Enforcement Program, defines the custodian's responsibility to cooperate in the support enforcement effort, and provides a detailed explanation of the procedure for filing an exemption if the individual is interested in pursuing this course of action. The custodian shall be given sufficient time to read the notice(s) and raise questions before signing. Any custodian wishing to claim a "good cause" exemption shall so indicate in writing by completing [SFN 446](#), Request to Claim 'Good Cause'.

EVIDENCE NEEDED TO ESTABLISH GOOD CAUSE - There must be evidence to substantiate a claim of "good cause." Congress clearly intended that exemptions on the basis of physical or emotional harm, either to the child or to the custodian, which in turn could be expected to reduce his or her capacity to care for the child, would be allowed only for circumstances of a genuine and serious nature. Mere belief that cooperation might result in harm is not a sufficient basis for finding "good cause." Evidence upon which the county social service board bases its finding on the "good cause" issue must be supported by written statements and contained in the case record.

Note: Do not invoke good cause based on your assessment of the family financial situation. Continue to refer cases even if there seems to be a financial burden on the family. It is the responsibility of Child Support Enforcement to always take into account the financial situation when they work the case.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

It is the custodian's responsibility to provide the county social service board with the evidence needed to establish "good cause." The custodian is normally given 20 days from the date of claim to collect the evidence although in exceptional cases the county social service board may grant reasonable additional time to allow for difficulty in obtaining proof. Records of law enforcement, social service, or adoption agencies may be readily available to document instances of rape, physical harm, or pending adoption, perhaps without requiring further investigation by the county social service board. Documentation of anticipated emotional harm to the child or custodian, however, may be somewhat more elusive. Whenever the claim is based in whole or in part on anticipated emotional harm, the county social service board shall consider the following:

1. The present emotional state of the individual subject to emotional harm;
2. The emotional health history of the individual subject to emotional harm;
3. Intensity and probable duration of the emotional impairment;
4. The degree of cooperation to be required; and
5. The extent of involvement of the child in the paternity establishment or support enforcement activity to be undertaken.

COUNTY SOCIAL SERVICE BOARD ROLE IN OBTAINING EVIDENCE -

Upon request, the county social service board is required to assist the custodian in obtaining evidence necessary to support a "good cause" claim. This, however, is not intended to place an unreasonable burden on staff by allowing the claimant to require a "fishing expedition" in order to delay or frustrate a final determination. The county social service board's obligation to assist in this process, if requested, does not shift the custodian's basic responsibility to produce evidence to support the claim. Eligibility staff will promptly notify the custodian if additional evidence is necessary and indicate the specific type of document needed and how to go about obtaining it. Additionally, the staff is expected to actively assist in obtaining evidence when the individual is not reasonably able to obtain it. Even then the custodian may be able to provide specifics as to the type of document or record he/she believes will support the claim, and its source.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

The county social service board is obligated to assume direct responsibility for investigating a "good cause" claim when it believes that the custodian's claim is authentic even though confirming evidence may not be available. This need may occur when the claim is based on a fear of serious physical harm and the claim is believed by agency staff. Such investigation will be conducted without requiring corroborative evidence by the custodian and may involve a careful review of the case record, evaluation of the credibility of the custodian's statements, and/or a confidential interview with an observer who has good reasons for not giving a written statement. Based on such an investigation and on professional judgment, the county social service board may find that "good cause" exists without the availability of absolute corroborative evidence.

During an investigation of a "good cause" claim, care must be taken to ensure that the location of the child is not revealed. In some circumstances, contact with the absent parent or alleged father may be deemed necessary to establish the claim. Before doing so, however, the custodian must be notified of this in order to be afforded the opportunity to (1) present additional information that makes contact with the absent parent unnecessary, or (2) have the "good cause" claim denied.

"GOOD CAUSE" CLAIMS TO BE PROCESSED PROMPTLY - Except for extenuating circumstances, the "good cause" issue must be determined with the same degree of promptness as for the determination of other factors of AFDC eligibility (45 days). The county social service board may not deny, delay, or discontinue assistance pending the resolution of the "good cause" claim. In the process of making a final determination, eligibility staff is required to give Child Support Enforcement staff the opportunity to review and comment on the findings and basis for the proposed decision. It is emphasized, however, that responsibility for the final determination rests with eligibility staff after consultation with supervisory and Child Support Enforcement staff, and sometimes with social service personnel.

CHILD SUPPORT ENFORCEMENT STAFF TO BE KEPT INFORMED OF "GOOD CAUSE" STATUS - It is essential that eligibility staff keep Child Support Enforcement staff informed on the status of all "good cause" claims. This includes:

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

1. Promptly notifying Child Support Enforcement of all custodians who claim "good cause" exemptions and requesting suspension of child support activity pending a determination;
2. Promptly reporting to Child Support Enforcement all cases in which it has been determined that there is "good cause" for refusal to cooperate. If good cause is claimed, it temporarily suspends the effort of the child support unit to recover any costs expended for the child's care, for the period when good cause is in effect. It does not forgive those obligations. If good cause no longer exists, or the child returns home, the child support unit has an obligation to make recovery efforts for those funds expended while good cause was in effect; and
3. Promptly notifying Child Support Enforcement of all cases in which it has been determined that "good cause" for refusing to cooperate does not exist and that child support enforcement activity can begin or resume.

CLAIMANTS OF "GOOD CAUSE" TO BE INFORMED OF DECISION - The custodian must be advised, in writing, of the county social service board's final decision that "good cause" does or does not exist and the basis for the findings. A copy of this communication shall be placed in the file. If "good cause" was determined not to exist, the communication must remind the custodian of the obligation to cooperate with the child support effort. It must also advise him/her of the right to appeal this decision. In the event the custodian does appeal, the Child Support Enforcement Agency shall be advised to delay its activity until the results of the appeal are known.

PERIODIC REVIEW OF "GOOD CAUSE" CLAIMS - The county social service board is required to review, not less frequently than EVERY 6 months, cases in which "good cause" was previously found to exist. Rather than routinely conducting full scale re-reviews on every case, however, a complete follow-up needs to be done on only those in which the original finding of "good cause" was based on a circumstance that is subject to change. If it is found that circumstances have changed so that "good cause" no longer exists, the recipient shall be so advised in writing. If "good cause" is found to continue to exist, the claimant must again be informed in writing.

Once the child support enforcement unit collects all the funds that were expended while good cause was in effect, any remaining child support that is collected is paid out on behalf of the child. For a family where both



ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

parents reside together, the remaining unassigned child support can be forgiven by court order.

It is important to locate any existing health insurance coverage for the child and determine whether the policy covers foster care expenses incurred by the child. Applying insurance proceeds to the foster care costs benefits, the child and the family by reducing or eliminating the family's obligation to reimburse taxpayers for assistance and, at the same time, saves money for county, state, and federal governments.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

**Prompt Referral to Child Support Enforcement Agency  
447-10-60-10**

**(Revised 11/1/10 ML #3249)**

[View Archives](#)

The Department of Human Services uses automated systems to transmit and receive referrals. The referral information sent to Child Support Enforcement is used to establish paternity, locate the absent parent(s), and establish and enforce a support order. The referral may be transmitted by the County Social Service Board to Child Support Enforcement at any time following placement, but must be transmitted at time of initial payment authorization, at the latest.

Upon receipt of the referral, the Regional Child Support Enforcement Unit will establish a case and proceed based on the content of the information.

1. If the case is a good cause case, the Regional Child Support Enforcement Unit will open a case on the child support system and then close the case to IV-D services.
2. If good cause does not exist, the Regional Child Support Enforcement Unit will proceed to provide the child support services to enforce the assignment of support rights including, if necessary, establishing support orders on behalf of children receiving foster care. N.D.C.C. § 50-09-06.1.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

**Forms 447-10-70**  
**(Revised 11/1/10 ML #3249)**

[View Archives](#)

All foster care forms are available electronically via [E-Forms](#). If the forms are completed properly, the eligibility staff will be able to correctly determine eligibility.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

**Foster Care Placement Notification, SFN 630  
447-10-70-05**

**(Revised 5/30/19 ML #3550)**

[View Archives](#)

SFN 630 is a mandatory form to be completed by the case manager designed to notify the eligibility staff when a child has entered foster care. The form provides child, parent, placement, court order and residence specific information. A copy of the pertinent court documents should be attached when submitting to the eligibility worker. This form is used by the eligibility worker in conjunction with the SFN 641, Title IV-E Title XIX Application-Foster Care in determining foster care eligibility.

This form is available electronically via E-Forms.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

**Title IV-E/Title XIX Application, SFN 641 447-10-70-10  
(Revised 4/20/2017 ML #3505)**

[View Archives](#)

The SFN 641 is a mandatory form and serves a dual purpose of a foster care eligibility application and a Medicaid application.

The parent or legal guardian of the removal home is responsible for completing the SFN 641. Agencies should make every effort through face to face contact, telephone calls, and, if necessary, by order of the court to obtain the information from the parent or guardian of the legal removal home. If all efforts fail and there is still no cooperation, as a last resort the case manager may complete the application on behalf of the family.

Eligibility staff must utilize the information on the completed form to assist in eligibility determination for Title IV-E foster care and Title XIX Medicaid.

This is a fillable and savable form and can be found on the North Dakota State E-Forms site <http://www.state.nd.us/eforms/>.

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

**Title IV-E Initial Eligibility Worksheet, SFN 869  
447-10-70-20**

**(Revised 5/15/07 ML #3087)**

[View Archives](#)

This mandatory ([SFN 869](#), Title IV-E Initial Eligibility Worksheet) form is completed once, at every child's entry to foster care, to determine eligibility for federal funds.

This form is available electronically via E-Forms.

<http://www.state.nd.us/eforms/>

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

**Title IV-E 18+ Continued Care Eligibility, SFN 870  
447-10-70-25**

**(Revised 11/1/19 ML #3565)**

[View Archives](#)

This mandatory form ([SFN 870](#), Title IV-E 18+ Continued Care Eligibility) is completed to assist in determining eligibility and reimbursability of 18+ youth continuing and returning to the 18+ Continued Foster Care program.

This form is available electronically via E-Forms.

<http://www.state.nd.us/eforms/>

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

**Title IV-E Income Calculation Worksheet, SFN 873  
447-10-70-30**

**(Revised 11/1/10 ML #3249)**

[View Archives](#)

SFN 873, Title IV-E Income Calculation Worksheet, is completed when the child's family has earned/unearned income and a copy put in the eligibility file.

This form is available electronically via E-Forms.

<http://www.state.nd.us/eforms/>



ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

**Understanding of the Parties for Continued Foster Care  
Services, SFN 1781 447-10-70-35**

**(Revised 5/15/07 ML #3087)**

[View Archives](#)

The form, Understanding of the Parties for Continued Foster Care Services, [SFN 1781](#), is to be used to give the agency the authority to continue to provide services and authorize payment for the child.

This form is available on CCWIPS and completed by the social worker and signed by the 18-year-old child in foster care.

This form is available electronically via E-Forms.

<http://www.state.nd.us/eforms/>

ECONOMIC ASSISTANCE  
IV-E FOSTER CARE ELIGIBILITY

Division10  
Program 400

Service 447  
Chapter 10

---

**Notice of Change Forms, SFN 45 447-10-70-40**  
**(Revised 4/25/17 ML #3502)**

[View Archives](#)

The Notice of Change, [SFN 45](#), is a required form which must be completed by the foster care case manager when changes occur in the child's case; including placement, foster care status, and parent information.

The intent of this form is to quickly update/alert the eligibility worker to make payment authorization adjustments accordingly. Overpayments will occur if the eligibility worker is not notified by the foster care case manager of a placement/status change.

Eligibility staff must forward a copy of the completed form to Child Support if there is a change in health information or parent information.