

ERIE COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES

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ADOPTION ASSISTANCE FREQUENTLY ASKED QUESTIONS

- Q. Do the "contrary to the welfare" requirements at 45 CFR 1356.21© and (d) apply to the adoption assistance program?
- A. Yes. To fulfill the eligibility criteria when child's removal from the home is the result of court action, there must be a judicial determination to the effect that to remain in the home would be contrary to the child's welfare. Since a child's removal from the home must occur as a result of such judicial determination, the determination must be made in the first court ruling that sanctions (even temporarily) the removal of a child from the home, the child is not eligible for title IV-E adoption assistance. The contrary to the welfare finding must be explicit and made on a case by case basis.
- Q. What are the age requirements for AA?
- A. An adopted child may receive payments through the age of 18 and from 18 through 21 if the child has a mental or physical handicap which has been diagnosed by professional, Refer to rule 5101:2-49-04 for all the special needs conditions that qualify.
- Q. If a child is determined to meet the criteria by being enrolled in a program that would allow them to continue AA past the age of 18, does the child have to be continuously in the program?
- A. Yes, if a child meets the criteria to continue AA past the age of 18, then the child must be enrolled and attending the program that qualified them to continue AA. If the child is not enrolled in the program then the child is not longer eligible for AA.
- Q. Can a statement be included in at the adoption assistance agreement that if the child ever comes into the custody of the PCSA, the AA agreement automatically be adjusted?
- A. No, once a child is adopted and determined to be eligible for title IV-E adoption assistance, the adoption assistance payments may not by automatically adjusted without the agreement of the adoptive parents.
- Q. What is the FCM rate to establish AA on a purchase service FC placement?
- A. When determining adoption assistance for a child the actual rate paid the foster home is the rate that is used to determine the maximum amount of the adoption assistance payment, Furthermore, to calculate the maximum allowable FCM rate for a child in the custody of the PCSA, but placed in a home contracted through a PCPA, the OCSA would use this rate paid to the private home to calculate the AA. If a child is not in the custody of the PCSA then the PCSA must review the level of care the child would be3 if the child was placed in the care of the PSCA and the use that rate to calculate AA.



- Q. May a Title IV-E eligible child who being adopted by his or her foster parent continue to receive foster care maintenance payments up to the point of finalization?
- A. Yes, prior to the finalization of adoption, title IV-E eligible children who are being adopted by his or her foster parents may receive foster care maintenance payments if the home is licensed for foster care.
- Q. If a child is SSI eligible and not in the care and responsibility of a PCSA or a PCPA is the child eligible for AA?
- A. There are no additional criteria that a child must meet to be eligible for title IV-E adoption assistance when eligibility is based on a special needs child meeting SSI requirements. Specifically, how a child is removed from his or her home or whether the State has responsibility for the child's placement and care is irrelevant in this situation.
- Q. Is a child who is the subject of an independent adoption eligible for Title IV-E adoption assistance?
- A. An independent adoption is one in which the child is not under the responsibility of a public or private adoption agency. It is highly improbable that a child who is adopted through an independent adoption will be eligible for Title IV-E adoption assistance since many of these children are voluntarily relinquished at birth directly to an adoptive family. The only exceptions are: (1) a child who meets the eligibility criteria for SSI (Supplemental Security Income), and (2) a child in a subsequent adoption, and specific circumstances, if s/he received Title IV-E adoption assistance in a previous adoption. If the child of a child with special needs, there may not be any further requirements or restrictions to the child's eligibility for title IV-E adoption assistance.
- Q. May a State employ a means test when negotiating adoption assistance agreements?
- A. The use of a means test is prohibited in the process of selecting a suitable adoptive family, or in negotiating an adoption assistance agreement, including the amount of the adoption assistance payment. Adoptive parents cannot be rejected for adoption assistance, have payments reduced or denied an increase to his or her agreement because of his or her income or other resources. In the addition, the State cannot arbitrarily reject a request for an increase in the amount of subsidy (up to the amount the child would have received in foster care) in cases where the adoptive parents make life choices such as resigning one's job to stay home with the adopted child or to return to school. Adoptive parents can request a fair hearing if the state rejects such requests.
- Q. What must the PCSA consider when negotiating an AA agreement?
- A. The circumstances of the adopting parents must be considered together with the needs of the child when negotiating the adoption assistance agreement. Consideration of the circumstances of the adopting parents has been interpreted by the Department to pertain to the adoption family's capacity to incorporate the child into his or her household in relation to his or her lifestyle, standard of living and future plans, as well as his or her overall capacity to meet the immediate and future needs (including educational) of the child. Families with the same incomes or in similar circumstances will not necessarily agree on identical types or amounts of assistance.



- Q. Please explain the requirements regarding a child's eligibility for title IV-E adoption assistance when the adoptive parents die or the adoption is dissolved?
- A. In the situation where a child is adopted and receives title IV-E adoption assistance, but the adoption later dissolves or the adoptive parents die, a child may continue to be eligible for title IV-E adoption assistance in a subsequent adoption. The only determination that must be made by the State prior to the finalization of the subsequent adoption is whether the child is a child with special needs. Since title IV-E adoption assistance eligibility need not be re-established in such subsequent adoptions, the manner of a child's removal from the adoptive home, including whether the child voluntarily relinquished to an individual or private agency, is irrelevant.
- Q. When is a parent considered to be "no longer legally responsible for support?"
- A. A parent is considered no longer legally responsible for the support of a child when parental rights have been terminated or when the child becomes an emancipated minor, marries, or enlists in the military.
- Q. What is considered support of the child?
- A. "Any support" which includes various forms of financial support. The State may determine that payments for family therapy, tuition, clothing, maintenance of special equipment in the home, or services of the child's special needs, are acceptable forms of financial support, consequently, the State may continue the adoption assistance subsidy, if it determines that the parent is, in fact, providing some form of financial support to the child.
- Q. What are the responsibilities of States that have entered into interstate adoptions when the adoptive parents die or the adoption is dissolved?
- A. If a title IV-E adoption dissolves or the adoptive parent die and the child is placed with a State agency that assumes responsibility for placement and care, it is the placing State's responsibility to determine whether the child meets the definition of special needs, and pay the subsidy in a subsequent adoption. If, however, a public child welfare agency in a subsequent adoptive parents' State of residence that is responsible for determining whether the child meets the definition of special needs, entering into the adoption or the State that pays the title IV-E adoption assistance in the child's initial adoption is irrelevant in a subsequent adoption.
- Q. Do we have to continue to do an annual determination of children who meet the criteria to continue AA past the Age of 18?
- A. Yes, the annual determination is still a requirement for children who meet the criteria to continue AA past age of 18.
- Q. Can a State agency automatically suspend the adoption assistance payment for the duration of an adopted child's placement in foster care? The State agency would reinstate the payment upon the child's return home.
- A. No. An automatic suspension is, in effect, the equivalent to a termination of the adoption assistance payment and as such is unallowable under section 473(a) (4) (B) if the parent remains legally responsible or is providing any support for the child. However, consistent with section 473(a) (4) (B) of the Act, there may be circumstances in which adoptive parent(s) may be eligible for payments in a different amount. In these instances, a State may re-negotiate the agreement and reduce the payment for the duration of an adopted child's placement in foster care with the concurrence of the adoptive parent.



- Q. If a child come into custody can the agency automatically terminate the AA?
- A. Title IV-E, section 473(a) (4) (B) of the Social Security Act states that "no payment may be made to parents with respect to any child if the State determines that the parents are no longer legally responsible for the support of the child or if the State determines that the child is no longer receiving any support from such parents." Other than the age of the child, these two conditions are the only basis in the Act for terminating adoption assistance payments on behalf of a child unless requested by or agreed to by the adoptive parents. On the other hand, there is nothing to prevent the State agency or the court fro requesting or ordering the parents to contribute toward the cost of the child's care in the psychiatric facility, in the same manner as any other parents would be asked in similar situations.
- Q. If a child comes into care after the finalization of adoption and there is a Title IV-E AA, how can the agency recoup some of the cost of the child being in care?
- A. Since the Adoptive parents are still legally responsible for the support and care of the child, the PSCA should seek a child support order for the cost of care while the child is in the temporary custody of the agency. However, AA payments made to the adoptive parents terminate if a PCSA receives permanent custody of the child.
- Q. What is the state share of AA in the month a child is placed if the placement is not for the complete month? How doe we prorate?
- A. The State share is not prorated. The AA rate if prorated by the total AA payment for the month. The State share is up to \$250.00 of the AA payment in any given month. So the state will pay up to \$250.00 of the \$250.00 of the prorated amount. So if you are calculating AA for a partial month keep in mind the state share for the month is up to the \$250.00
- Q. Are there restrictions for how the Title IV-E adoption assistance funds may be spent?
- A. Once the adoption assistance agreement is signed and the child is adopted, the adoptive parents are free to make decisions about expenditures on behalf of the child without further agency approval or oversight, Hence, once an adoption assistance agreement is in effect, the parent can spend the subsidy in any way they see fit in incorporate the child into his or her lives.
- Q. Can a State suspend or reduce a Title IV-E adoption assistance subsidy if the adoptive parents fail to renew or recertify the adoption assistance agreement?
- A. No. It is incumbent upon adoptive parents to keep the State informed of material changes that might impact the parent's support, but a State cannot reduce or suspend adoption assistance if the adoptive parent(s) fail to reply to the State's request for information, renewal or recertification of the agreement, Therefore, suspensions or reduction in a title IV-E adoption assistance payment are not permitted without the concurrence of the adoptive parents under section 473(a) (3) of the act.

