

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

STEVEN DEROCHE,

Plaintiff,

v.

Case No: 2:14-cv-189-FtM-CM

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

ORDER

This matter comes before the Court upon review of Plaintiff's Attorneys' Motion for Award of Attorney Fees Under 42 U.S.C. § 406(b) filed on December 14, 2018. Doc. 33. Plaintiff's counsel requests an award of \$13,442.25 in attorney's fees under 42 U.S.C. § 406(b), allegedly representing 25% of the balance of Plaintiff's past-due Social Security disability benefits. *Id.* at 1. Plaintiff's motion indicates, however, that an Award Notice has not yet been issued. *Id.* at 2. Plaintiff states his counsel was advised \$13,442.25 is being withheld to pay an attorney, but without knowing the total amount of past-due benefits, the Court has no means of confirming that \$13,442.25 is "not in excess of 25 percent of the total of the past-due benefits to which the claimant is entitled." 42 U.S.C. § 406(b)(1)(A). Therefore, the present motion will be denied without prejudice to be refiled when Plaintiff receives an Award Notice.

ACCORDINGLY, it is

ORDERED:

Plaintiff's Attorneys' Motion for Award of Attorney Fees Under 42 U.S.C. § 406(b) (Doc. 33) is **DENIED without prejudice**. Plaintiff shall file a renewed motion for attorney's fees under 42 U.S.C. § 406(b) by **January 23, 2019** if the Award Notice has since been received, or otherwise within **seven (7) days** of receiving the Award Notice.

DONE and **ORDERED** in Fort Myers, Florida on this 16th day of January, 2019.


CAROL MIRANDO
United States Magistrate Judge

Copies:
Counsel of record