

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

HENRY WILICK, JR.,

Plaintiff,

v.

Case No: 6:15-cv-863-Orl-40DCI

**COMMISSIONER OF SOCIAL
SECURITY,**

Defendant.

REPORT AND RECOMMENDATION

This cause comes before the Court for consideration without oral argument on the following motion:

**MOTION: RICHARD A. CULBERTSON'S UNCONTESTED
REQUEST FOR AUTHORIZATION TO CHARGE A
REASONABLE FEE PURSUANT TO 42 U.S.C. § 406(b)
(Doc. 34)**

FILED: January 30, 2019

THEREON it is RECOMMENDED that the motion be GRANTED.

Plaintiff's counsel moves for an award of attorney fees pursuant to 42 U.S.C. § 406(b)(1). Doc. 34 (the Motion).¹ Plaintiff's counsel states that following the Court's reversal of the Commissioner's decision denying disability benefits and remand of the case for further administrative proceedings, Plaintiff was awarded \$85,584.00 in past-due benefits. (Doc. 34 at 2; 34-2 at 7). A quarter of the total amount of benefits awarded in this matter equates to \$21,396.00. 42 U.S.C. § 406(b)(1) (recovery of such fees under this section may not exceed 25% of the total

¹ The Motion is unopposed. Doc. 34 at 3.

past-due benefits). Plaintiff's counsel, however, only seeks to recover \$16,768.82 in attorney fees pursuant to § 406(b). Doc. 34 at 2. Plaintiff's counsel states that the fees he seeks to collect includes a deduction of the attorney fees (\$4,627.18) previously awarded under the Equal Access to Justice Act (EAJA). *Id.* at 2; *see Jackson Comm'r of Soc. Sec.*, 601 F.3d 1268, 1274 (11th Cir. 2010) (holding that counsel may effectuate the refund of a smaller EAJA award by either refunding the amount awarded under the EAJA to the client or deducting that amount from counsel's request for § 406(b) fees). Upon review, the Court finds that Plaintiff's counsel's request for \$16,768.82 in attorney fees does not run afoul of the limit imposed by § 406(b) and is reasonable under the circumstances of this case.

Accordingly, it is respectfully **RECOMMENDED** that the Unopposed Request for Authorization to Charge a Reasonable Fee (Doc. 34) be **GRANTED** and Plaintiff's counsel be authorized to charge and collect from Plaintiff the sum of \$16,768.82 in attorney fees.

NOTICE TO PARTIES

A party has fourteen days from this date to file written objections to the Report and Recommendation's factual findings and legal conclusions. A party's failure to file written objections waives that party's right to challenge on appeal any unobjected-to factual finding or legal conclusion the district judge adopts from the Report and Recommendation. *See* 11th Cir. R. 3-1.

Recommended in Orlando, Florida on March 5, 2019.



DANIEL C. IRICK
UNITES STATES MAGISTRATE JUDGE

Copies furnished to:
Presiding Judge
Counsel of Record
Courtroom Deputy