

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

MELISSA FOWLER,

Plaintiff,

v.

Case No: 2:16-cv-665-FtM-38CM

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

REPORT AND RECOMMENDATION¹

This matter comes before the Court upon review of Plaintiff's Unopposed Application for Attorney Fees Under the Equal Access to Justice Act, filed on April 11, 2018. [Doc. 33](#).² Plaintiff moves pursuant to [28 U.S.C. § 2412\(d\)](#) ("EAJA") for an award of attorney's fees in the amount of \$15,000.00. [Id. at 1](#). Plaintiff includes

¹ 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](#). **In order to expedite a final disposition of this matter, if the parties have no objection to this Report and Recommendation, they promptly may file a joint notice of no objection.**

² Disclaimer: Documents filed in CM/ECF may contain hyperlinks to other documents or websites. These hyperlinks are provided only for users' convenience. Users are cautioned that hyperlinked documents in CM/ECF are subject to PACER fees. By allowing hyperlinks to other websites, this Court does not endorse, recommend, approve or guarantee any third parties or the services or products they provide on their websites. Likewise, the Court has no agreements with any of these third parties or their websites. The Court accepts no responsibility for the availability or functionality of any hyperlink. Thus, the fact that a hyperlink ceases to work or directs the user to some other site does not affect the opinion of the Court.

an itemization of time confirming a total of 87.95 hours of attorney time performed in 2017 and 4.6 hours of attorney time performed in 2018 expended at hourly rates of \$196.01 and \$200.00, respectively. *Id.* at 6, 9-10. The parties have agreed to reduce the total number of itemized hours by 15.8 hours to reach an agreed upon amount of the total EAJA award. *Id.* at 6-7. Plaintiff states the Commissioner does not oppose the requested relief. *Id.* at 2. For the reasons stated herein, the Motion is due to be granted.

Under the EAJA, a claimant is eligible for an attorney fee award where: (1) the claimant is a prevailing party in a non-tort suit involving the United States; (2) the Government's position was not substantially justified; (3) the claimant filed a timely application for attorney's fees; (4) the claimant had a net worth of less than \$2 million at the time the complaint was filed; and (5) there are no special circumstances which would make the award of fees unjust. 28 U.S.C. § 2412(d).

In this case, the Court entered an Order affirming the decision of the Commissioner. Docs. 25, 27. Plaintiff sought appellate review in the Eleventh Circuit Court of Appeals. Doc. 30. The Commissioner filed a motion requesting voluntary remand of the case from the Eleventh Circuit, and the court of appeals entered an Order directing this Court to remand the case to the Commissioner for further proceedings. Doc. 32. An amended judgment in favor of Plaintiff was entered on April 12, 2018. Doc. 35. Plaintiff asserts that the Commissioner's position in the underlying action was not substantially justified, and that Plaintiff's net worth at the time this proceeding was filed was less than two million dollars.

[Doc. 33 at 2.](#) The Commissioner does not contest that Plaintiff meets the requirements under the EAJA, and the Court finds that all conditions have been met.

EAJA fees are “based upon prevailing market rates for the kind and quality of the services furnished,” not to exceed \$125.00 per hour unless the Court determines that an increase in the cost of living or a special factor justifies a higher fee. [28 U.S.C. § 2412\(d\)\(2\)\(A\)](#). Determination of the appropriate hourly rate is thus a two-step process. The Court first determines the prevailing market rate; then, if the prevailing rate exceeds \$125.00, the Court determines whether to adjust the hourly rate. [Meyer v. Sullivan, 958 F.2d 1029, 1033-34 \(11th Cir. 1992\)](#). The prevailing market rates must be determined according to rates customarily charged for similarly complex litigation, and are not limited to rates specifically for social security cases. [Watford v. Heckler, 765 F.2d 1562, 1568 \(11th Cir. 1985\)](#).

Plaintiff’s counsel is requesting an adjusted hourly rate that is authorized by applying the cost-of-living adjustment to the \$125.00 ceiling for work performed during 2017 and 2018. [Doc. 33 at 4-6](#). Because the Commissioner does not object to the adjusted hourly rates sought and they are within the rates permitted by the EAJA, the Court recommends \$196.01 and \$200.00 are appropriate and reasonable hourly rates for 2017 and 2018, respectively. Plaintiff’s counsel also has submitted a schedule of hours that includes an itemization of legal services performed, and has proposed reducing his hours by 15.8 hours (at \$200.00 per hour) to reach agreement on this issue. [Doc. 33 at 6-7](#). After reviewing the description of the services

provided, the Court also recommends that the time, as reduced, is reasonable and properly compensable.

ACCORDINGLY, it is hereby

RECOMMENDED:

1. Plaintiff's Unopposed Application for Attorney Fees Under the Equal Access to Justice Act ([Doc. 33](#)) be **GRANTED**, and attorney's fees in the total amount of \$15,000.00 be awarded to Plaintiff pursuant to the EAJA, [28 U.S.C. § 2412\(d\)](#);

2. If the United States Department of the Treasury determines that Plaintiff does not owe a federal debt, the Government accept Plaintiff's assignment of EAJA fees and pay fees directly to Plaintiff's counsel; and

3. The Clerk be directed to enter judgment for Plaintiff as to attorney's fees in the amount of \$15,000.00 under the Equal Access to Justice Act, [28 U.S.C. § 2412\(d\)](#).

DONE and **ENTERED** in Fort Myers, Florida on this 16th day of July, 2018.


CAROL MIRANDO
United States Magistrate Judge

Copies:
Counsel of record