

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

KENNETH BLAKE WELCH,

Plaintiff,

v.

Case No. 6:16-cv-1670-Orl-37TBS

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

ORDER

In the instant action, Plaintiff appealed a final decision of the Commissioner of the Social Security Administration ("**Commissioner**") denying his application for disability and disability insurance benefits. (Doc. 1.) Following the Court's Order reversing the Commissioner's decision (Doc. 21), Plaintiff moved for an award of attorney fees totaling \$5,489.67, pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d).¹ (Doc. 23 ("**Motion**").) The Motion was unopposed, and on referral, U.S. Magistrate Judge Thomas B. Smith recommends that the Court: (1) grant the Motion; and (2) authorize payment to Plaintiff's counsel if the Department of Treasury determines that Plaintiff does not owe the Government a debt ("**Assignment Recommendation**"). (Doc. 24 ("**R&R**").)

The parties did not object to the R&R, and the time for doing so has now passed. As such, the Court has examined the R&R only for clear error. *See Wiand v. Wells Fargo*

¹ On March 30, 2018, Plaintiff assigned his right to any fees awarded under the EAJA to his counsel. (See Doc. 23-3 ("**Assignment**").)

Bank, N.A., No. 8:12-cv-557-T-27EAJ, 2016 WL 355490, at *1 (M.D. Fla. Jan. 28, 2016); *see also Marcort v. Prem, Inc.*, 208 F. App'x 781, 784 (11th Cir. 2006). In doing so, the Court takes issue with only one portion of the R&R—Magistrate Judge Smith's Assignment Recommendation. (Doc. 24, p. 2.) The decision to honor an assignment is left to the discretion of the Commissioner, *Astrue v. Ratliff*, 560 U.S. 586, 597 (2010), once the Department of Treasury determines that Plaintiff does not owe the Government a debt, 31 U.S.C. § 3727(b). As such, the Court rejects the Assignment Recommendation. In the absence of any other clear error, the balance of the R&R is due to be adopted.

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. U.S. Magistrate Judge Thomas B. Smith's Report and Recommendation (Doc. 24) is **ADOPTED IN PART AND REJECTED IN PART**:
 - a. The Assignment Recommendation is **REJECTED**.
 - b. In all other respects, the R&R is **ADOPTED, CONFIRMED**, and made a part of this Order.
2. Plaintiff's Motion for Award of Attorney Fees Pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d) (Doc. 23) is **GRANTED IN PART AND DENIED IN PART**.
 - a. The Motion is **GRANTED** to the extent that the Court awards Plaintiff \$5,489.67 in attorney fees.
 - b. In all other respects, the Motion is **DENIED**.
3. Notwithstanding the Court's rejection of the Assignment Recommendation, the Commissioner may exercise discretion to honor the

Assignment if the Department of Treasury determines that Plaintiff does not owe the Government a debt.

DONE AND ORDERED in Chambers in Orlando, Florida, on April 19, 2018.




ROY B. DALTON JR.
United States District Judge

Copies to:
Counsel of Record