

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

MARIA DE LOURDES ARROYO,

Plaintiff,

v.

Case No: 6:16-cv-1862-Orl-22TBS

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

REPORT AND RECOMMENDATION

Pending before the Court is Plaintiff's Uncontested Motion for Attorney's Fees, pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d) (Doc. 25). Plaintiff requests an award of fees **in the amount of \$3,206.99**. The schedule of hours attached to the application confirms the law firm's billable hours (Id. at 12-13). Defendant has no objection to the requested relief (Id. at ¶ 11).

Plaintiff asserts that she is the prevailing party in this litigation, that the Commissioner's position in the underlying action was not substantially justified, and that her net worth when this proceeding was filed was less than two million dollars¹ (Id. at ¶¶ 4-7). On November 13, 2017, I entered my report and recommendation in which I recommended that the district court reverse and remand this case back to Defendant for further proceedings pursuant to sentence four of 42 U.S.C. § 405(g) (Doc. 22). The district court adopted the report and recommendation on December 2, 2017 (Doc. 23)

¹ 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).

and the clerk entered judgment on December 5, 2017 (Doc. 24). Plaintiff filed this application for attorney's fees on February 17, 2018 (Doc. 25).

Plaintiff has attached a copy of her assignment of EAJA fees to her counsel (Doc. 25-1). In light of the assignment, Plaintiff requests (and Defendant agrees) that payment should be made payable to Plaintiff and delivered to her counsel unless she owes a federal debt. If the U.S. Department of the Treasury determines that Plaintiff does not owe a federal debt, the Government will accept Plaintiff's assignment of EAJA fees and pay fees directly to her counsel.

Pursuant to the provisions of the EAJA, I respectfully recommend that the district judge **GRANT** Plaintiff's uncontested motion for attorney's fees (Doc. 25), and award Plaintiff attorney's fees in the amount of **\$3,206.99**. It is further recommended that the district court authorize payment to Plaintiff's counsel if the Department of the Treasury determines that Plaintiff does not owe a debt to the Government.

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.

RESPECTFULLY RECOMMENDED in Orlando, Florida on February 20, 2018.


THOMAS B. SMITH
United States Magistrate Judge

Copies furnished to:

Presiding United States District Judge
Counsel of Record