

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

JAVIER PINEIRO ORTIZ

Plaintiff,

v.

Case No. 6:16-cv-1986-Orl-37DCI

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

ORDER

In this social security appeal, Plaintiff sought review of the Commissioner of Social Security's (the "**Commissioner**") decision to deny him disability benefits. (*See* Doc. 1.) On November 8, 2017, the Court reversed the Commissioner's final decision and remanded the action for further administrative proceedings. (Doc. 18.) The following day, the Court entered judgment in favor of Plaintiff. (Doc. 19.)

As the prevailing party, Plaintiff now: (1) seeks an award for attorney fees under the Equal Access to Justice Act ("**EAJA**") in the amount of **\$3,012.37**; and (2) requests that, if the U.S. Department of Treasury determines that she does not owe a debt to the U.S. Government, the Commissioner honor Plaintiff's assignment of the EAJA fees and pay those fees directly to his counsel.¹ (Doc. 20 ("**Fees Motion**").) On referral, U.S. Magistrate Judge Daniel C. Irick recommends that the Court grant the Fees Motion

¹ On October 19, 2016, Plaintiff assigned his right to any fees awarded under the EAJA to his counsel. (*See* Doc. 20-1 ("**Assignment**").)

in part. (Doc. 21 (“**R&R**”).)

In his R&R, Magistrate Judge Irick concludes that: (1) Plaintiff is entitled to the full amount of the requested EAJA fees; and (2) the hours worked and the hourly rate underlying the award are reasonable. (*Id.* at 4.) Magistrate Judge Irick, however, recommends that the Court deny the Fees Motion as to Plaintiff’s request to pay the EAJA fees directly to his counsel and notes that the decision of whether to honor the Assignment should be left to the Commissioner’s discretion. (*Id.* at 4–5.)

On January 9, 2018, the parties filed a joint notice indicating they did not object to the R&R. (Doc. 22.) Absent objections, the Court has examined the R&R only for clear error. *See Wiand v. Wells Fargo 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). Finding no clear error, the Court concludes that the R&R is due to be adopted in its entirety.

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

1. U.S. Magistrate Judge Daniel C. Irick’s Report and Recommendation (Doc. 21) is **ADOPTED, CONFIRMED**, and made a part of this Order.
2. Plaintiff’s Unopposed Motion for Award of Attorney’s Fees (Doc. 20) is **GRANTED IN PART** to the extent identified in the R&R.
3. The Court awards Plaintiff Javier Pineiro Ortiz attorney fees under the EAJA in the amount of **\$3,012.37**.
4. The Commissioner may exercise her discretion to honor Plaintiff’s assignment of the EAJA fees to counsel if the U.S Department of Treasury

determines that Plaintiff does not owe a debt to the U.S. Government.

DONE AND ORDERED in Chambers in Orlando, Florida, on January 10, 2018.




ROY B. DALTON JR.
United States District Judge

Copies to:
Counsel of Record