

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

**YOANNA DIAZ,**

**Plaintiff,**

**v.**

**Case No.: 8:16-cv-2068-T-AAS**

**NANCY A. BERRYHILL, acting  
Commissioner of Social Security,<sup>1</sup>**

**Defendant.**

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**ORDER**

Yoanna Diaz moves for an award of attorney's fees, costs, and expenses, which the Commissioner does not oppose. (Doc. 19).

Ms. Diaz seeks attorney's fees in the amount of \$6,776.23 pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412. Ms. Diaz asks for \$5,966.48 in fees for work performed on the case in 2016, calculated at a rate of \$193.09 per hour for 30.9 hours, and \$809.75 in fees for work performed on the case in 2017, calculated at a rate of \$197.50 per hour for 4.1 hours.<sup>2</sup>

The Court entered an order reversing and remanding the case under sentence four of 42 U.S.C. § 405(g) to the Commissioner for further administrative proceedings. (Doc. 17). The Clerk entered judgment in Ms. Diaz's favor the same day. (Doc. 18). As the prevailing party, Ms. Diaz now requests an award of fees. *See* 28 U.S.C. § 2412(a)(1) & (d)(1)(A). As the Clerk entered

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<sup>1</sup> Between the filing of this suit and the entry of this Order, Nancy A. Berryhill replaced Carolyn W. Colvin as acting Commissioner. As such, Ms. Berryhill is "automatically substituted as a party." Fed. R. Civ. P. 25(d).

<sup>2</sup> The undersigned finds the hourly rates requested reasonable in light of Consumer Price Index Inflation Calculator. *See* 28 U.S.C. § 2412(d)(2)(A) ("[A]ttorney fees shall not be awarded in excess of \$125 per hour unless the court determines that an increase in the cost of living . . . justifies a higher fee.").

judgment in Ms. Diaz's favor on September 27, 2017, and Ms. Diaz moved for attorney's fees on December 20, 2017, the Court has jurisdiction to award the requested fees. *See* 28 U.S.C. § 2412(d)(1)(B).<sup>3</sup>

Ms. Diaz also seeks reimbursement for costs incurred as a result of the filing fee and serving the Commissioner in the amount of \$440.00. Under § 2412(a)(2), the prevailing party in an action brought against the United States may recover costs, including an amount equal to the filing fee prescribed under 28 U.S.C. § 1914, which in turn requires any party instituting a civil action to pay a filing fee of \$350.00. In the Middle District of Florida, the party instituting a civil action must also pay a \$50 administrative fee. *See* U.S. Dist. Court Middle Dist. of Fla., *Forms, Policies & Publications*, [uscourts.gov, http://www.flmd.uscourts.gov/forms/forms\\_policies.htm](http://www.flmd.uscourts.gov/forms/forms_policies.htm) (select "Fee Schedule"). Service of process fees are also reimbursable. *Sanfilippo v. Astrue*, No. 8:04-CV-2079-T-27MSS, 2007 WL 5159601, at \*7 (M.D. Fla. Sept. 10, 2007).

Lastly, Ms. Diaz requests reimbursement for expenses related to mailing her service of process to the Commissioner in the amount of \$13.35. The Commissioner does not oppose Ms. Diaz's request for expenses related to postage, but the Commissioner requests that the Court consider postage to be an "expense" and not a "cost" under 28 U.S.C. § 2412(a). In light of the Commissioner's lack of opposition, the Court will allow reimbursement of Ms. Diaz's postage expenses. *See Duffield v. Colvin*, No. 3:15-CV-1065-J-MCR, 2016 WL 6037306, at \*4 (M.D. Fla. Oct. 14, 2016).

After issuance of an order awarding EAJA fees, however, the United States Department of the Treasury will determine whether Ms. Diaz owes a debt to the government. If Ms. Diaz has no

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<sup>3</sup> The sixty-day appeal period expired on November 27, 2017, at which point the Court's judgment became final. *See* Fed. R. App. P. 4(a)(1)(b). Therefore, Ms. Diaz's deadline for filing a petition for EAJA fees is December 28, 2017. *See* 28 U.S.C. § 2412(d)(1)(B); *see also* Fed. R. Civ. P. 6(a)(1).

discernable federal debt, the government will accept Plaintiff's assignment of EAJA fees and pay the fees directly to Ms. Diaz's counsel. (Doc. 21, p. 2).

For the reasons set out in Ms. Diaz's motion, therefore, it is hereby **ORDERED**:

1. Ms. Diaz's Unopposed Motion for Award of Attorney's Fees and Costs/Expenses Pursuant to Equal Access to Justice Act, 28 U.S.C. § 2412(a), (Doc. 19) is **GRANTED**.
2. Ms. Diaz is awarded **\$6,776.23** in attorney's fees pursuant to the EAJA.
3. Ms. Diaz is awarded **\$440.00** in costs pursuant to the EAJA.
4. Ms. Diaz is awarded **\$13.35** in expenses pursuant to the EAJA.

**ORDERED** in Tampa, Florida, on this 21st day of December, 2017.



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AMANDA ARNOLD SANSONE  
United States Magistrate Judge