

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FELICITA BURGOS,

Plaintiff,

v.

Case No. 6:17-cv-623-Orl-37MCR

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 her application for disability benefits. (Doc. 1.) Following the Court's Order reversing the Commissioner's decision (Doc. 24), Plaintiff moved for an award of attorney fees totaling \$3,660.17, pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d) ("**EAJA**") and reimbursement expenses of \$43.17 pursuant to 28 U.S.C. § 2412(a)(1).¹ (Doc. 26 ("**Motion**").) The Motion was unopposed, and on referral, U.S. Magistrate Judge Monte C. Richardson recommends that the Court: (1) grant the Motion; and (2) the Commissioner be directed to determine whether Plaintiff owes a debt to the government, and if not, the Government be directed to accept Plaintiff's assignment of fees and pay the fees directly to Plaintiff's counsel ("**Assignment Recommendation**"). (Doc. 27 ("**R&R**").)

¹ On March 30, 2017, Plaintiff assigned her right to any fees awarded under the EAJA to her counsel. (See Doc. 26-13 ("**Assignment**").)

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 Bank, N.A.*, No. 8:12-cv-557-T-27EAJ, 2016 WL 355490, at *1 (M.D. Fla. Jan. 28, 2016); *see also Macort 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 Richardson's Assignment Recommendation. (Doc. 27, p. 4.) 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 Monte C. Richardson's Report and Recommendation (Doc. 27) 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 Attorney's Fees Pursuant to the Equal Access to Justice Act, 28 U.S.C.A. Section 2412 (Doc. 26) is **GRANTED IN PART AND DENIED IN PART**:
 - a. The Motion is **GRANTED** to the extent that the Court awards Plaintiff attorney fees and reimbursement expenses.
 - b. The Clerk is **DIRECTED** to enter judgment in favor of Plaintiff and

against Defendant in the amount of \$3,660.17 for attorney and paralegal fees and \$43.17 for expenses.

c. 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 December 10, 2018.




ROY B. DALTON JR.
United States District Judge

Copies to:
Counsel of Record