

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

KATE CONNOR DONNELLY,

Plaintiff,

v.

Case No. 8:17-cv-981-T-24AEP

NANCY A. BERRYHILL,
Acting Commissioner of Social Security,

Defendant.

_____ /

REPORT AND RECOMMENDATION

This cause comes before the Court upon Plaintiff's Consent Petition for Attorney Fees (Doc. 26). By the motion, Plaintiff seeks an award of attorney's fees in the amount of \$7,530.55 and reimbursement of costs for service of process in the amount of \$40 pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412. On September 24, 2018, this Court entered an Order reversing and remanding the case to the Commissioner for further administrative proceedings (Doc. 24). Thereafter, the Clerk entered judgment in favor of Plaintiff (Doc. 25). As the prevailing party, Plaintiff now requests an award of attorney's fees and costs. *See* 28 U.S.C. § 2412(d)(1)(A); *cf. Shalala v. Schaefer*, 509 U.S. 292, 300-02 (1993) (concluding that a party who wins a sentence-four remand order under 42 U.S.C. § 405(g) is a prevailing party).

Namely, Plaintiff requests an award of attorneys' fees for time expended by two attorneys on this matter. Plaintiff seeks an award for 4 hours expended at an hourly rate of \$196.79 in 2017 and 0.6 hours expended at an hourly rate of \$200.78 in 2018 for work

performed by Attorney Marjorie Schmoyer, or a total of \$907.63 in fees (Doc. 26, at 2 & 3).¹ Additionally, Plaintiff seeks an award of 30.9 hours expended at an hourly rate of \$169.79 in 2017 and 2.7 hours expended at an hourly rate of \$200.78 in 2018 for work performed by Attorney Sarah Bohr, or a total of \$6,622.92 (Doc. 26, at 2 & 6). Based on the undersigned's own knowledge and experience, and for the reasons set forth in Plaintiff's motion, the undersigned concludes that both the hours expended and the hourly rates requested are fair and reasonable. Furthermore, as Plaintiff contends, the position of the United States was not substantially justified and no special circumstances exist which would make an award of attorney's fees unjust in this instance. *See* 28 U.S.C. § 2412(d)(1)(A). Indeed, the Commissioner does not oppose the requested relief (Doc. 26, at 2). After issuance of an order awarding EAJA fees, however, the United States Department of the Treasury will determine whether Plaintiff owes a debt to the government. If Plaintiff has no discernable federal debt, the government will accept Plaintiff's assignment of EAJA fees (*see* Doc. 26, at 4-5) and pay the fees directly to Plaintiff's counsel.

In addition, Plaintiff also seeks an award of \$40 for costs for service of process (Doc. 26, at 2 & 3). As the prevailing party, Plaintiff is likewise entitled to an award of such costs. 28 U.S.C. § 2412(a) & (d)(1)(A); Fed. R. Civ. P. 54(d)(1); *see* 28 U.S.C. § 1920. For the reasons set out in Plaintiff's motion, therefore, it is hereby

RECOMMENDED:

1. Plaintiff's Consent Petition for Attorney Fees (Doc. 26) be GRANTED.
2. Plaintiff be awarded attorneys' fees in the amount of \$7,530.55.

¹ Though the Statement of Services Rendered (Doc. 26, at 3) indicates that 4.70 hours were expended by Attorney Marjorie Schmoyer, the hours expended add up to 4.6 hours total. As such, the 4.7 calculation appears to constitute a scrivener's error, and, accordingly, the undersigned only considered the 4.6 hours expended.

3. Plaintiff be awarded costs in the amount of \$40.

IT IS SO REPORTED in Tampa, Florida, on this 19th day of December, 2018.



ANTHONY E. PORCELLI
United States Magistrate Judge

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.

cc: Hon. Susan C. Bucklew
Counsel of Record