

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JOHN FITZGERALD KEPFORD,

Plaintiff,

v.

CASE NO.: 8:17-CV-1931-T-30MAP

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

REPORT AND RECOMMENDATION

Before me is Plaintiff's Motion for Attorney's Fees Pursuant to the Equal Access to Justice Act (doc. 27).¹ Plaintiff seeks payment of attorney's fees in the amount of \$6,448.36 to be paid directly to Plaintiff's counsel pursuant to the EAJA.² On July 18, 2018, the District Judge entered an Order adopting my Report and Recommendation and remanding this case for further proceedings (doc. 25); judgment in Plaintiff's favor was entered the next day (doc. 26).³

In *Reeves v. Astrue*, 526 F.3d 732 (11th Cir. 2008), the Eleventh Circuit held that an EAJA fee award is awarded to the "prevailing party," not to counsel. However, in this case, the Plaintiff

¹ This District Judge has referred this matter to me.

² The amount Plaintiff seeks in fees represents 32.2 hours of total attorney time. Specifically, attorney Sarah Bohr requests fees at the rate of \$196.79 per hour for 4.2 hours of work performed in 2017, and \$200.78 per hour for 28.0 hours of work performed in 2018 (doc. 27).

³ The plaintiff in a social security case has 30 days beyond the 60-day appeal window to apply for fees and other expenses under the EAJA, for a total of 90 days after judgment. *See* 28 U.S.C. § 2412(d)(1)(B), (d)(2)(G); Fed. R. App. P. 4(a)(1)(B); *Gates v. Barnhart*, 325 F. Supp. 2d 1342, 1343 (M.D. Fla. 2002). In this case, Plaintiff timely filed his application for fees on October 15, 2018 (doc. 25).

has agreed to assign the EAJA award to his counsel (doc. 27-1). The Commissioner has not filed a response to Plaintiff's motion, and the deadline to do so has passed. Therefore, the Commissioner is deemed to not oppose the request for attorney's fees. By virtue of the fee assignment and the Defendant's lack of opposition, the award is payable to Plaintiff's counsel.

Accordingly, I RECOMMEND:

1. Plaintiff's unopposed Motion for Attorney's Fees (doc. 27) be GRANTED; and
2. Plaintiff be awarded attorney's fees in the amount of \$6,448.36, to be paid directly to Plaintiff's counsel, if Plaintiff does not owe a debt to the Government.⁴

IT IS SO RECOMMENDED at Tampa, Florida on October 29, 2018.



MARK A. PIZZO
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.

⁴ The Commissioner will determine whether Plaintiff owes a debt to the government. If he does, fees shall be made payable to Plaintiff and delivered to Plaintiff's counsel to satisfy the debt.

