

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

KELLY JO SPENCER,

Plaintiff,

v.

Case No. 6:22-cv-19-JRK

KILOLO KIJAKAZI,  
Acting Commissioner of Social  
Security,

Defendant.

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**ORDER**

This cause is before the Court on Plaintiff's Amended Unopposed Motion for Attorney's Fees and Memorandum in Support Thereof (Doc. No. 43; "Motion"), filed May 19, 2023. In the Motion, Plaintiff seeks an award of attorney's fees pursuant to the Equal Access to Justice Act ("EAJA") in the amount of \$9,092.85. Motion at 1, 3. Plaintiff represents that Defendant does not oppose the relief requested. Id. at 3, 11.

Plaintiff's counsel indicates the parties have agreed that counsel should be compensated for 39 hours of attorney work, at the rate of \$233.15. Id. at 1, 3, 10. Plaintiff is seeking a higher hourly rate than the \$125 specified by statute based on the increase in the cost of living since 1996, when the attorney's fee rate was last adjusted by Congress. See 28 U.S.C. § 2412(d)(2)(A) (permitting

fee awards at rates higher than \$125 per hour upon the Court's determination that cost of living has increased). Having examined the Consumer Price Index and the representations made in the Motion, the Court concludes an increase in inflation does justify a proportionate increase in attorneys' fees.<sup>1</sup> Further, in light of the parties' agreement to lower the amount of hours requested for Plaintiff's counsel and upon review of the file, the Court finds the number of hours expended is reasonable.<sup>2</sup>

Plaintiff has assigned her rights to any entitlement of attorney's fees due under the EAJA to her counsel. Motion at Ex. A (Net Worth and Fee Assignment Affidavit). Plaintiff's counsel requests that the payment for fees be made directly to counsel. Id. at 10.

Upon review, it is

**ORDERED:**

1. Plaintiff's Amended Unopposed Motion for Attorney's Fees and Memorandum in Support Thereof (Doc. No. 43) is **GRANTED**.

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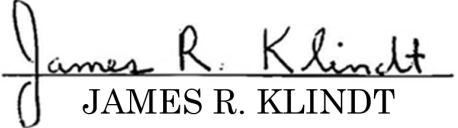
<sup>1</sup> See U.S. Dep't of Labor, Inflation Calculator, <http://data.bls.gov/cgi-bin/cpicalc.pl> (last visited November 15, 2023). In computing the hourly rate adjustment for the cost of living increase, the Consumer Price Index is generally used for the year in which the services were performed. See Masonry Masters, Inc. v. Nelson, 105 F.3d 708, 710-13 (D.C. Cir. 1997); see also Gates v. Barnhart, No. 5:01-cv-148-GRJ, 2002 WL 1452232, at \*3 (M.D. Fla. June 25, 2002) (unpublished).

<sup>2</sup> Still, the requested hours exceed those sought in the vast majority of fee motions presented to the undersigned for this type of case. Future requests of this nature are subject to more scrutiny.

2. The Clerk of Court is directed to enter judgment in favor of Plaintiff and against Defendant for attorney's fees in the amount of \$9,092.85 pursuant to 28 U.S.C. § 2412(d).

3. The Commissioner may exercise the discretion to honor Plaintiff's assignment of 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 Jacksonville, Florida on November 17, 2023.

  
JAMES R. KLINDT  
United States Magistrate Judge

kaw  
Copies to:  
Counsel of Record