

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

SHAUN URWILER,

Plaintiff,

v.

Case No. 8:22-cv-1273-JRK

MARTIN J. O'MALLEY,
Commissioner of Social Security,¹

Defendant.

_____ /

ORDER

This cause is before the Court on Plaintiff's Unopposed Motion for and Memorandum in Support of Award of EAJA Fees (Doc. No. 20; "Motion"), filed December 22, 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 \$7,447.92 and reimbursement of the \$402.00 filing fee, for a total of \$7,849.92. Motion at 1, 4. Plaintiff represents that Defendant does not oppose the relief requested. Id. at 1.

Plaintiff's counsel indicates a total of 31.7 hours were expended in the representation of Plaintiff before the Court. Id. at 1, 3; see id. at Ex. B (attached

¹ Mr. O'Malley was sworn in as Commissioner of the Social Security Administration on December 20, 2023. Pursuant to Rule 25(d)(1), Federal Rules of Civil Procedure, Mr. O'Malley should be substituted for Kilolo Kijakazi as Defendant in this suit. No further action need be taken to continue this suit by reason of the last sentence of section 205(g) of the Social Security Act, 42 U.S.C. § 405(g).

Time Breakdown), Ex. C (Attorney's Affidavit). Plaintiff requests an hourly rate of \$234.95. Id. at 1, 3. 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.¹ Further, the number of hours expended is reasonable.

Plaintiff also requests reimbursement of \$402.00 in costs expended for the filing of the Complaint (Doc. No. 1). Motion at 1, 4, Ex. E (Receipt). Defendant does not oppose this request, and the Court finds it to be appropriate. See 28 U.S.C. §§ 1920, 2412(a)(1).

Plaintiff has assigned his rights to any entitlement of attorney's fees due under the EAJA to his counsel. Motion at 4, Ex. A (Plaintiff's Affidavit and Assignment of EAJA Fee). Plaintiff represents as follows regarding the assignment:

¹ See U.S. Dep't of Labor, Inflation Calculator, <http://data.bls.gov/cgi-bin/cpicalc.pl> (last visited Feb. 9, 2024). 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).

[A]fter the Court issues an Order awarding EAJA fees to Plaintiff, the Commissioner will determine whether Plaintiff owes a debt to the government. If the U.S. Department of the Treasury determines that Plaintiff does not owe a federal debt, the government will accept Plaintiff's assignment of EAJA fees and pay fees directly to Plaintiff's counsel, Laurel Marois Ackerman, Esquire.

Motion at 4.

In light of the foregoing, it is

ORDERED:

1. Plaintiff's Unopposed Motion for and Memorandum in Support of Award of EAJA Fees (Doc. No. 20) is **GRANTED**.

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 \$7,447.92 pursuant to 28 U.S.C. § 2412(d), and for costs in the amount of \$402.00 pursuant to 28 U.S.C. § 2412(a)(1).

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 February 9, 2024.


JAMES R. KLINDT
United States Magistrate Judge

kaw
Copies to:
Counsel of Record