

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

WILLIAM D. McCLELLAN,

Plaintiff,

v.

Case No. 8:22-cv-2831-VMC-AAS

**MARTIN O'MALLEY,
Commissioner of the Social
Security Administration,¹**

Defendant.

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REPORT AND RECOMMENDATION

William D. McClellan moves for attorney's fees and costs under the Equal Access to Justice Act (EAJA), 28 U.S.C. Section 2412. (Doc. 21). The Commissioner does not oppose Mr. McClellan's motion. (*Id.*, p. 3).

Mr. McClellan requests \$5,022.33 in attorney's fees. (*Id.*, p. 1). The EAJA permits awards for reasonable attorney's fees and costs to a prevailing party against the United States. 28 U.S.C. § 2412. A December 4, 2023 order remanded the Commissioner's final decision under sentence four of 42 U.S.C. Section 405(g) for further administrative proceedings. (Doc. 19). The Clerk entered judgment in Mr. McClellan's favor. (Doc. 20).

The Commissioner does not contest the following: Mr. McClellan is the

¹ On December 20, 2023, Martin O'Malley became the Commissioner of the Social Security Administration.

prevailing party; Mr. McClellan's net worth was less than \$2 million when he filed her complaint; the Commissioner's position was not substantially justified; and Mr. McClellan's attorney's fees request are reasonable. (Doc. 28, pp. 3–4). A court should grant a Social Security claimant's request for attorney's fees when it is unopposed. *See Jones v. Colvin*, No. 8:13-CV-2900-T-33AEP, 2015 WL 7721334 (M.D. Fla. Nov. 30, 2015) (awarding unopposed attorney's fees request). Thus, Mr. McClellan is entitled to \$5,022.33 in attorney's fees.

Attorney's fees awarded to a claimant under the EAJA can be offset to satisfy the claimant's pre-existing debt to the United States. *Astrue v. Ratliff*, 560 U.S. 586, 589 (2010). Following an order, the United States Department of the Treasury will determine whether Mr. McClellan owes a debt to the United States. Mr. McClellan assigned his rights to EAJA fees to his attorney. (Doc. 23). So, if Mr. McClellan has no federal debt, the United States will accept his assignment of EAJA fees and pay the fees directly to counsel.

Accordingly, the undersigned recommends Mr. McClellan's motion for attorney's fees under the EAJA (Doc. 21) be **GRANTED**. Mr. McClellan should be awarded **\$5,022.33** in attorney's fees.

ENTERED in Tampa, Florida on March 8, 2024.

Amanda Arnold Sansone

AMANDA ARNOLD SANSONE
United States Magistrate Judge

NOTICE TO PARTIES

The parties have fourteen days from the date they are served a copy of this report to file written objections to this report's proposed findings and recommendations or to seek an extension of the fourteen-day deadline to file written objections. 28 U.S.C. § 636(b)(1); 11th Cir. R. 3-1. A party's failure to object timely under 28 U.S.C. § 636(b)(1) waives that party's right to challenge on appeal the district court's order adopting this report's unobjected-to factual findings and legal conclusions. 11th Cir. R. 3-1.