

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

JORGE TORRES,

Plaintiff,

v.

Case No. 6:23-cv-1691-RBD-RMN

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

ORDER

Before the Court is Plaintiff Jorge Torres's Motion for Attorney's Fees (Doc. 34).

In this Social Security disability benefits appeal, the Court reversed Defendant Commissioner's decision and awarded Plaintiff Jorge Torres benefits. (Docs. 31, 32.) Plaintiff then moved for an award of attorney's fees and costs under the Equal Access to Justice Act ("EAJA"). (Doc. 34); 28 U.S.C. § 2412(d). In his motion, Plaintiff indicated that Defendant opposed, but Defendant failed to timely respond to the motion. (*See* Doc. 34, p. 2.) On referral, U.S. Magistrate Judge Robert M. Norway entered a Report and Recommendation ("R&R") submitting that the Court should treat Plaintiff's motion as unopposed and award him \$27,719.59 of fees and costs. (Doc. 35.) Hours after the R&R had been entered, Defendant moved

for an extension of time to respond to Plaintiff's motion, citing a calendaring error for why he failed to timely respond. (Doc. 36.) The next day, Defendant moved for an extension to object to the R&R. (Doc. 37.) On referral, Judge Norway denied both motions. (Doc. 39.) Defendant then timely objected to the R&R, arguing that the number of hours in the recommended award is unreasonable. (Doc. 40.) Plaintiff responded in support of the R&R. (Doc. 41.) Plaintiff also requested he be awarded additional fees incurred since the entry of the R&R. (*Id.* at pp. 17-18.)

When a party objects to a magistrate judge's findings, the district judge must perform an independent de novo review of the record, the motions, and the objections. *See* 28 U.S.C. § 636(b)(1); *Ernest S. ex rel. Jeffrey S. v. State Bd. of Educ.*, 896 F.2d 507, 513 (11th Cir. 1990). But, "a district court has discretion to decline to consider a party's argument when that argument was not first presented to the magistrate judge." *Williams v. McNeil*, 557 F.3d 1287, 1292 (11th Cir. 2009). Citing other circuits, the Eleventh Circuit reasoned that permitting new arguments in front of the district judge may be "fundamentally unfair," and would cause "the magistrate judge's role [to be] reduced to that of a dress rehearsal. . . ." *Id.* at 1292. The court has discretion "even where . . . the district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to." *Illuminare Media, Inc. v. CAIR Fla., Inc.*, No. 22-10718, 2022 WL 4589357, at *3 n.2 (11th Cir. Sept. 30, 2022) (cleaned up). Here, the Court exercises its discretion by

declining to consider Defendant's argument that Plaintiff's requested amount of fees is unreasonable, because Defendant failed to timely submit this argument to Judge Norway. *See Williams*, 557 F.3d at 1292; *see also Freese v. Colvin*, No. 8:15-cv-1315, 2016 WL 6804893, at *1-2 (M.D. Fla. Nov. 16, 2016). So Defendant's objection to the award of fees is due to be overruled.

Plaintiff, in his response to Defendant's objection, also raises a new issue by requesting the Court award additional fees incurred during the litigation of this motion. (Doc. 41, pp. 17-18.) But a response is not the appropriate means for requesting relief. *See* Local Rule 3.01(a), (b). So the Court will not consider Plaintiff's request and instead will direct Plaintiff to file a short motion requesting the additional fees to which Defendant may respond.

Accordingly, it is **ORDERED AND ADJUDGED**:


1. Defendant's objection (Doc. 40) is **OVERRULED**.
2. The R&R (Doc. 35) is **ADOPTED AND CONFIRMED** and made a part of this Order in its entirety.
3. Plaintiff's motion (Doc. 34) is **GRANTED** to the extent that Plaintiff, as a prevailing party, is **AWARDED** EAJA attorney's fees and costs in the total sum of \$27,719.59. The remainder of Plaintiff's motion is **DENIED**.
4. By **Friday, January 31, 2025**, Plaintiff is **DIRECTED** to file a brief

motion requesting additional fees incurred while litigating the instant motion.

5. The file is to remain closed.

DONE AND ORDERED in Chambers in Orlando, Florida, on January 24, 2025.




ROY B. DALTON, JR.
United States District Judge