IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

DEDKA SEKA,			
Plaintiff,)		
vs.)	Civil No.	15-cv-1350-CJP
NANCY A. BERRYHILL,)		
Acting Commissioner of Social)		
Security,)		
)		
Defendant. ¹			

MEMORANDUM AND ORDER

PROUD, Magistrate Judge:

This matter is before the Court on the Defendant's objection to plaintiff's Bill of Costs. (Doc. 31). Plaintiff filed a response at Doc. 33.

The parties initially agreed that plaintiff was entitled to an award in the amount of \$5,600.00. This Court entered an award of that amount on July 25, 2016. (Doc. 9). Plaintiff also filed a Bill of Costs for the initial \$400 filing fee. (Doc. 26). The Commissioner objects to the reimbursement of the filing fee.

The Commissioner's objection to plaintiff's request for the \$400 filing fee primarily takes issue with the source of reimbursement. The Commissioner argues that any cost should be paid from Social Security's fund rather than the Judgment Fund. As plaintiff notes, under **28 USCA § 2412(a)(1)** she is entitled to reimbursement of costs regardless of which fund they are paid from.

The Commissioner seems to argue that awarding the cost of the filing fee

¹ Nancy A. Berryhill is now the Acting Commissioner of Social Security. See, *Casey v. Berryhill*, __ F3d. __, 2017 WL 398309 (7th Cir. Jan. 30, 2017). She is automatically substituted as defendant in this case. See Fed. R. Civ. P. 25(d); 42 U.S.C. §405(g).

would be unjust because the U.S. Attorney's office is a separate and distinct body apart from Social Security Administration and the U.S. Attorney's Office had no control over plaintiff's claim prior to this action. The Commissioner cites 28 U.S.C.A. § 2412 (d)(3). This subparagraph, as plaintiff notes, only governs adversary adjudication and "agency proceedings to determine social security benefit allowances are not adversarial in nature, since the United States is not represented by counsel." *Cummings v. Sullivan*, 950 F.2d 492, 496 (7th Cir. 1991) (citation omitted). The Commissioner cites no authority to support its claim that the U.S. Attorney's Office and the Social Security Administration's relationship should impede plaintiff's claim for costs.

The EAJA does not distinguish between different bodies within the government, rather "United States' includes any agency and any official of the United States acting in his or her official capacity." 28 U.S.C.A. §2412(d)(2)(C). Whether the fault is that of the Administrative Law Judge, the Appeals Council, or the Commissioner's lawyers in court, the fault lies with the United States and the United States is liable for costs and fees. *See, e.g., Cummings*, 950 F.2d at 496-97 (holding that courts must consider both the pre-litigation and litigation positions of the United States, regardless of whether the agent was the Appeals Council prior to litigation or the Commissioner, through her attorneys, during litigation).

In the case at hand the U.S. Attorney's Office has acted and represented itself as the Commissioner's representative before this Court. A member of the U.S. Attorney's Office for the Southern District of Illinois signed each document

filed by the Commissioner in this case. Claiming that the U.S. Attorney's Office

and the Social Security Administration are separate and distinct but allowing

one individual to represent both entities simultaneously before the Court is

contradictory.

Further, the Commissioner cites no precedent that the reimbursement of

filing fees is a "special" circumstance and therefore makes the award of costs

unjust. Several cases from within the Seventh Circuit have allowed for the filing

fees to be paid from the judgment fund pursuant to 31 U.S.C. § 1304. Russell

v. Astrue, No. 11-CV-0666-MJR-CJP, 2012 WL 4060060, at *1 (S.D. III.

Sept. 14, 2012); U.S. v. Thouvenot, Wade & Moerschen, Inc., 596 F.3d 378

(7th Cir. 2010). Cardenas v. Comm'r of Soc. Sec., No. 4:14-CV-04090-JEH,

2016 WL 900623, at *2 (C.D. III. Mar. 9, 2016); Southerland v. Colvin, No.

114CV01177TWPMJD, 2016 WL 233613, at *1 (S.D. Ind. Jan. 19, 2016).

Therefore, plaintiff's Bill of Costs (Doc. 26) is APPROVED.

The Court awards \$400 in costs to be paid from the Judgment Fund of

the United States Treasury.

IT IS SO ORDERED.

DATE: April 3, 2017.

s/ Clifford J. Proud CLIFFORD J. PROUD

UNITED STATES MAGISTRATE JUDGE