

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. Ill. 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. Ill. 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