

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
NORTHERN DIVISION

JOSEPH B. FLEMING

PLAINTIFF

vs.

Civil Case No. 1:07CV00022 HLJ

MICHAEL J. ASTRUE, Commissioner,
Social Security Administration

DEFENDANT

ORDER

Plaintiff has filed a motion for attorney's fees and expenses pursuant to the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412. He requests \$2,105.25 in fees, representing 10.80 hours of attorney work performed in 2007 and 2008 at an hourly rate of \$155.00, and 5.75 hours of work by a paralegal at the rate of \$75.00 per hour. Plaintiff also requests \$47.03 in costs. Defendant does not object to an award of fees and costs under the EAJA, and he does not object to the number of hours requested or the rates requested, or to the amount of costs.

Plaintiff states the requested \$155.00 per hour rate represents a 23.54% cost of living increase in the \$125.00 maximum statutory rate of compensation for work performed by an attorney set forth in § 2412(d)(2)(A)(ii). In other cases in this District, the court has granted an enhancement of the hourly rate of compensation to \$138.00. E.g., Brown v. Massanari, Case No. 3:99CV00458 (E.D.Ark. Sept. 19, 2001); Handford v. Massanari, Case No. 3:99CV00423 (E.D.Ark. Sept. 25, 2001). In those cases,

the plaintiffs presented sufficient proof of an 11% increase in the cost of living from March of 1996, when § 2412(d)(2)(A)(ii) was last amended, to December of 2000. Plaintiff here seeks an additional enhancement based on an increased cost of living up to September of 2007. The court has declined in the past to consider an increase in the cost of living beyond December of 2000, and it declines to do so in this case.

However, the Office of the General Counsel of the Social Security Administration has entered into agreements with counsel for other plaintiffs in cases in this district to calculate attorneys' fees on an annualized basis, using the Consumer Price Index for All Urban Consumers (CPI-U). The parties in those cases agreed that work performed in 2001 should be compensated at the rate of \$138.00 per hour, work performed in 2002 should be compensated at the rate of \$144.00 per hour and that in 2003 and thereafter the rate should be calculated using the mid-year CPI-U. Their calculations resulted in an agreed upon fee of \$147.00 per hour for work performed in 2003, \$152.00 for work performed in 2004 and \$156.00 for work performed in 2005. Cloinger v. Barnhart, 2:04CV 00172 (E.D. Ark. 2006). Since Plaintiff's hourly rate request falls within those agreed rates, the court will grant his request for compensation at a rate of \$155.00 per hour for work performed by his attorney.

Normally the court awards \$65.00 per hour for work performed by a paralegal. Plaintiff argues the hourly fee for a paralegal

should be \$75.00 per hour based on the prevailing market rate, and has submitted supporting affidavits. The Commissioner does not object to this request and the court presumes this increase is also part of the agreement between other counsel and the Office of the General Counsel. Accordingly, the court approves an award of fees in the amount of \$2105.25 and costs in the amount of \$47.03.

IT IS THEREFORE ORDERED that Plaintiff's motion for attorney's fees is GRANTED and Plaintiff is hereby awarded attorney's fees and expenses in the amount of \$2,152.28, pursuant to EAJA. The Commissioner is directed to certify said award and pay Plaintiff's attorney this amount.

SO ORDERED this 12th day of January, 2009.

Henry L. Jones, Jr.
United States Magistrate Judge