

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION**

JOEAN LOWERY

PLAINTIFF

v.

3:09CV00013-WRW

**UNUM LIFE INSURANCE COMPANY
OF AMERICA**

DEFENDANT

ORDER

Pending is Plaintiff's Motion for Attorney's Fees (Doc. Nos.28, 36). Defendant has responded.¹

I consider Plaintiff's request in light of the five *Westerhaus*² factors. I find that while Defendant did not act in bad faith, Defendant is able to pay attorney's fees and an award of attorney's fees might have a deterrent effect. Further, the merits of the case weigh in Plaintiff's favor. Accordingly, Plaintiff's Motion is GRANTED to the extent set out below.

I will not award fees for the following services:

- | | |
|--------------------|-----------------------------------------------------------------------------------------------------------------------------|
| February 19, 2009: | Draft Application to Proceed IFP -- because the motion to proceed ifp was filed already on February 5, 2009. |
| February 19, 2009: | Review Notice of Appearance by Opposing Counsel -- because .2 hours to review a notice of appearance is excessive |
| June 18, 2009: | Review Motion to Extend Motion Deadline -- because .3 hours to review this unopposed, 6-sentence motion is excessive. |
| July 30, 2009: | Draft Order |
| August 7, 2009: | Draft Abstract of the Medical Record -- the Administrative Record filed contains medical records that speak for themselves. |
| February 12, 2010: | Draft Motion for Attorney's Fees |

¹Doc. No. 33.

²*Lawrence v. Westerhaus*, 794 F.2d 494, 496 (8th Cir. 1984).

February 12, 2010: Draft Brief in support of Motion for Attorney's Fees

The above services account for \$1,782.00 in attorney's fees and \$45.00 in paralegal fees,³ for a sum of \$1,872.00. Plaintiff's request also includes at least \$850.00 in fees for services that were rendered in 2007 and 2008 -- well before this case was ever filed and apparently in connection with the exhaustion of Plaintiff's administrative remedies. I will allow only half of those fees, or \$425. I will allow the total \$1,036.60 in requested costs.

Plaintiff's original request of \$11,584.60 less \$2,297 (\$1,872.00 plus \$425) results in an award of attorney's fees and costs in the total amount of \$9,287.60.

IT IS SO ORDERED this 29th day March, 2010.

/s/Wm. R. Wilson, Jr.
UNITED STATES DISTRICT JUDGE

³Because Plaintiff's attorney did not provide his hourly rate, to find an hourly rate I divided the amount of attorney's fees requested by the number of hours of service provided to reach the hourly rate of \$165.00. Ditto for paralegal fees at \$45 per hour.