

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

DENNIS KEITH BATES

PLAINTIFF

V.

NO. 3:12CV00002 JTR

CAROLYN W. COLVIN,
Commissioner, Social
Security Administration

DEFENDANT

ORDER

On November 26, 2012, the Court entered a Memorandum Order and Judgment reversing the Commissioner's decision and remanding this case for further administrative proceedings. *Docs. #12 and #13*. On April 2, 2013, the Court entered an Order awarding Plaintiff's counsel \$4,005.00 in attorney's fees under the Equal Access to Justice Act ("EAJA"). *Doc. #16*.

On remand, Plaintiff prevailed. On September 10, 2013, the Commissioner issued a Notice awarding Plaintiff \$69,840.00 in past-due disability benefits. *Doc. #17-2 at 1*. The Commissioner withheld 25% of that award, \$17,460.00, "in order to pay the approved [attorney's] fee." *Doc. #17-2 at 3*.

On October 1, 2013, Plaintiff's counsel filed a Motion requesting an award of attorney's fees under 42 U.S.C. § 406(b) for his work performed at the District

Court level. *Doc. #17*. Pursuant to his fee agreement with Plaintiff, he requests the full 25% contingency fee, \$17,460.00.¹

Plaintiff's counsel is silent, however, as to whether he requested an attorney's fee award from the Commissioner for his administrative-level work under 42 U.S.C. § 406(a). In a typical case where a claimant is successful at the administrative level, following a remand from District Court, the claimant's attorney will request an award of attorney's fees from the Commissioner for administrative-level work pursuant to § 406(a). This is important information for the Court to know, since the combined sum of any § 406(a) and § 406(b) attorney's fee awards should not exceed the 25% withheld by the Commissioner from a claimant's past-due benefits.

IT IS THEREFORE ORDERED THAT Plaintiff's counsel must file, within fourteen days of the entry of this Order, a Response indicating: (1) whether he requested an award of attorney's fees from the Commissioner for his administrative-level work pursuant to 42 U.S.C. § 406(a); and (2) if so, whether the Commissioner granted his § 406(a) attorney's fee request, and in what amount.

¹ Plaintiff's counsel acknowledges that, if he receives a § 406(b) attorney's fee award, he will refund to Plaintiff the \$4,005.00 awarded under the EAJA. *Doc. #17 at 2*.

Dated this 7th day of April, 2014.


UNITED STATES MAGISTRATE JUDGE