

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION

JERRY W. SHEPARD

PLAINTIFF

V.

Case No. 5:13CV00069 JTK

CAROLYN COLVIN,
Commissioner, Social
Security Administration
DEFENDANT

ORDER

Pending is Plaintiff's Motion for Attorney's Fees under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412 (DE #19). In the motion, Plaintiff requests \$2,281.65 in fees for 7.95 hours of work. The Commissioner does not object to the number of hours claimed but does object to the proposed hourly rate of \$287.00. After careful consideration, the Court hereby finds that the motion should be granted but that Plaintiff's award of reasonable attorney's fees be reduced to \$1,478.70.

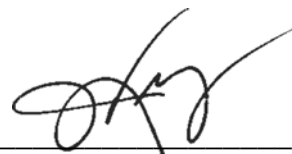
The Plaintiff requests fees in the amount of \$2,281.65, calculated on the basis of 7.95 hours multiplied by \$287.00 per hour. Attorney's fees may not be awarded in excess of \$125 per hour—the maximum statutory rate under the EAJA—unless the Court finds that an increase in the cost of living or a special factor justifies a higher fee. 28 U.S.C. § 2412(d)(2)(A). The decision to increase the hourly rate is not automatic and remains at the discretion of the district court. *McNulty v. Sullivan*, 886 F.2d 1074 (8th Cir. 1989). When "an EAJA petitioner presents uncontested proof of an increase in the cost of living sufficient to justify hourly attorney's fees of more than \$75 per hour, enhanced fees should be awarded." *Johnson v. Sullivan*, 919 F.2d 503, 505 (8th Cir. 1990).

While the Plaintiff has offered proof of an increase in the cost of living in the Eastern District of Arkansas sufficient to justify an hourly rate in excess of \$125 per hour, the calculated fee of \$287 per hour is excessive. According to Defendant, Plaintiff concedes that his calculation was in error for hourly rates allowable for years 2013 and 2014. Taking into account the Consumer Price Index, as well as the EAJA fee awards from past cases within Arkansas, the Court believes that an hourly rate of \$186.00 will reasonably compensate the Plaintiff's attorney for the work performed in this case. *See, e.g. Hull v. Colvin*, No. 4:13CV16 DPM, 2014 WL 1987907 (E.D. Ark. Jan. 15, 2014) (awarding attorney's fees at an hourly rate of \$186). Accordingly, Plaintiff is awarded fees in the amount of \$1,478.70.

EAJA fees are payable to Plaintiff, not Plaintiff's attorney, and such fees are subject to an offset when the Plaintiff has outstanding federal debts. *See Astrue v. Ratliff*, 130 S. Ct. 2521 (2010). Therefore, subject to any offset, payment by check to the order of the Plaintiff, in care of his attorney, will issue to Plaintiff's attorney.

Accordingly, the Motion for Attorney's Fees (DE #19) is GRANTED. Plaintiff is awarded \$1,478.70.

IT IS SO ORDERED this 2nd day of April, 2014.



UNITED STATES MAGISTRATE JUDGE