

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

STEVEN DUANE TOBEY

PLAINTIFF

v.

CIVIL NO. 2:20-cv-2115-MEF

KILOLO KIJAKAZI¹, Acting Commissioner,
Social Security Administration

DEFENDANT

MEMORANDUM OPINION AND ORDER

Pending now before this Court is Plaintiff's Motion for Attorney Fees Under the Equal Access to Justice Act ("EAJA"). (ECF No. 26). The Defendant has filed a response, and the matter is now ripe for resolution. (ECF No. 27).

On November 29, 2021, Plaintiff filed a motion for attorney's fees and costs under 28 U.S.C. § 2412, the Equal Access to Justice Act (hereinafter "EAJA"), requesting \$8,688.35, representing a total of 5.16 attorney hours in 2020 at an hourly rate of \$200.00, 22.27 attorney hours in 2021 at an hourly rate of \$205.00, and 28.10 paralegal hours at an hourly rate of \$110.00. (ECF No. 26). On December 5, 2019, the Defendant filed a response voicing no objections to Plaintiff's request for fees. (ECF No. 21).

It is the opinion of the undersigned that the Plaintiff is entitled to a fee award in this case, as he is the prevailing party, the government's decision to deny benefits was not "substantially justified," the hourly rate requested for attorney hours does not exceed the CPI for either year in question, and the time asserted to have been spent in the representation of the Plaintiff before the district court is reasonable. *See Jackson v. Bowen*, 807 F.2d 127, 128 (8th Cir. 1986) (burden is

¹ Kilolo Kijakazi became Acting Commissioner of the Social Security Administration on July 9, 2021. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Kilolo Kijakazi should be substituted as the defendant in this suit.

on the Commissioner to show substantial justification for the government's denial of benefits); 28 U.S.C. § 2412(d)(2)(A) (statutory ceiling for an EAJA fee award is \$125.00 per hour); *Johnson v. Sullivan*, 919 F.2d 503, 504-505 (8th Cir. 1990) (court may determine that there has been an increase in the cost of living, and may thereby increase the attorney's rate per hour, based upon the United States Department of Labor's Consumer Price Index ("CPI")); and, *Hensley v. Eckerhart*, 461 U.S. 424, 430 (1983) (in determining reasonableness, court looks at time and labor required; the difficulty of questions involved; the skill required to handle the problems presented; the attorney's experience, ability, and reputation; the benefits resulting to the client from the services; the customary fee for similar services; the contingency or certainty of compensation; the results obtained; and, the amount involved). However, the hourly rate requested for paralegal services does exceed the approved rate for these services in this District, which is currently \$75.00 per hour. The Government does not object to this heightened rate because counsel is visually impaired and has special paralegal needs. While we agree that counsel has special needs, we have adequately compensated for these needs by awarding him the full 28.10 paralegal hours requested. As such, Plaintiff will be awarded \$75.00 per hour for paralegal services. Therefore, Plaintiff is entitled to an attorney's fee award under EAJA in the amount of \$7,704.85 (\$5,597.35 (attorney hours) + \$2,107.50 (paralegal hours)).

Pursuant to *Astrue v. Ratliff*, 560 U.S. 586, 596 (2010), the EAJA fee award should be made payable to Plaintiff. As a matter of practice, however, an EAJA fee made payable to Plaintiff may properly be mailed to Plaintiff's counsel.

The parties are reminded that, in order to prevent double recovery by counsel for the Plaintiff, the award herein under the EAJA will be taken into account at such time as a reasonable fee is determined pursuant to 42 U.S.C. § 406.

Accordingly, the Plaintiff is awarded the sum of **\$7,704.85** for attorney's fees pursuant to the EAJA, 28 U.S.C. § 2412.

DATED this 13th day of December 2021.

/s/ Mark E. Ford

HON. MARK E. FORD

CHIEF UNITED STATES MAGISTRATE JUDGE