

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Chief Judge Wiley Y. Daniel

Civil Action No. 09-cv-00770-WYD

MICHAEL G. RODMAN,

Plaintiff,

v.

MICHAEL J. ASTRUE, Commissioner of the Social Security Administration,

Defendant.

ORDER

THIS MATTER is before the Court on Plaintiff's Application for a Supplemental Award of Attorney Fees under the Equal Access to Justice Act, 28 U.S.C. § 2412, filed February 8, 2012. The motion seeks an additional \$1,194,91 in attorney's fees for attorney time incurred in litigating the EAJA fee application that was opposed by Defendant. Plaintiff requests in the motion that the check for the fees be made out to Plaintiff's counsel.

The Commissioner filed a Response to Plaintiff's Application on February 13, 2012. He does not oppose the request for fees or the amount of fees requested. The Commissioner's only substantive response to the motion is that the check for fees should be made out to Plaintiff, not Plaintiff's counsel.

I find that Plaintiff's Application should be granted as to the request for an award of an additional \$1,194.81 in attorney fees. However, I agree with the Commissioner that the check must be made out to Plaintiff, not Plaintiff's counsel. See 28 U.S.C.

§ 2412(d)(1)(A) (“[A] court *shall award to a prevailing party . . . fees and other expenses . . . in any civil action . . . brought by or against the United States . . . unless the court finds the position of the United States was substantially justified*” (emphasis added)); *Astrue v. Ratliff*, 130 S. Ct. 2521, 2529-30 (2010) (Sotomayor, J., concurring) (“I agree that the text of the Equal Access to Justice Act (EAJA) and our precedents compel the conclusion that an attorney’s fee award under 28 U.S.C. § 2412(d) is *payable to the prevailing litigant rather than the attorney.*” (emphasis added)); *Brown v. Astrue*, 271 F. App’x 741, 743 (10th Cir. 2008) (unpublished) (discussing *Manning v. Astrue*, 510 F.3d 1246 (10th Cir. 2007)); see also 31 U.S.C. § 3727. Accordingly, it is

ORDERED that Plaintiff’s Supplemental Application for an Award of Attorney Fees under the Equal Access to Justice Act, 28 U.S.C. § 2412, filed February 8, 2012, is **GRANTED**. Plaintiff is awarded additional fees in the amount of **\$1,194.91**. The check for fees shall be made out to Plaintiff and sent to Plaintiff’s counsel’s office.

Dated: February 13, 2012

BY THE COURT:

s/ Wiley Y. Daniel
Wiley Y. Daniel
Chief United States District Judge