

ELECTRONIC ENDORSEMENT ON DKT. #15 IN MARTINEZ V. ASTRUE, 09 CV 1267 (JBA)

6/23/11 – On November 9, 2009, defendant filed a Motion for Entry of Judgment Under Sentence Four of 42 U.S.C. § 405(g) and Voluntary Remand of the Matter to the Commissioner of Social Security (Dkt. #8), which motion was granted three days later. (Dkt. #9; see also Dkts. ##10-11). Shortly thereafter, on December 15, 2009, the parties filed a Stipulation for Allowance of Fees and Costs Under the Equal Access to Justice Act (Dkt. #12), in the amount of \$2,328.21 in attorney's fees and \$350 in costs, to be paid directly to plaintiff's counsel under the EAJA. This Stipulation was "SO ORDERED" that next day. (Dkt. #13).

On June 2, 2011, plaintiff filed the pending Motion for Authorization of Attorney's Fees Pursuant to 42 U.S.C. § 406(b) (Dkt. #15), in which she seeks \$6,919.50, which is twenty-five percent of the past due Social Security disability benefits paid on plaintiff's account. In his Response, filed six days later (Dkt. #16), defendant indicates that he has no objection to an award of \$6,919.50 to plaintiff's counsel pursuant to 42 U.S.C. § 406(b), as long as she surrenders the \$2,328.21 she received under the EAJA to plaintiff. (At 3-4, citing Gisbrecht v. Barnhart, 535 U.S. 789, 796 (2002)(a fee award may be made pursuant to both § 406 and EAJA as long as plaintiff's counsel surrenders the smaller of the two awards to plaintiff)).

Accordingly, plaintiff's Motion for Authorization of Attorney's Fees Pursuant to 42 U.S.C. § 406(b) (Dkt. #15), is granted in the amount of \$6,919.50, provided that plaintiff's counsel surrenders the \$2,328.21 she previously received under the EAJA to plaintiff.