

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

NELSON DIAZ,

Plaintiff,

v.

Case No: 2:14-cv-609-FtM-CM

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

ORDER

Before the Court is Plaintiff's Unopposed Motion for Attorney's Fees Pursuant to the Equal Access to Justice Act ("Motion", Doc. 25), filed on July 2, 2015. Plaintiff moves pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d), for an award of attorney's fees in the amount of \$5,115.00, and attaches a timesheet confirming a total of 27.5 hours worked on this matter at a rate of \$186.00 per hour. Docs. 25, 25-1 at 3. Plaintiff represents that the Commissioner has no objection to the Motion or relief requested. Doc. 25 at 3. For the reasons stated herein, the Motion is denied.

Under the EAJA, a claimant is eligible for an attorney fee award where: (1) the claimant is a prevailing party in a non-tort suit involving the United States; (2) the Government's position was not substantially justified; (3) the claimant filed a timely application for attorney's fees; (4) the claimant had a net worth of less than \$2 million at the time the complaint was filed; and (5) there are no special circumstances which would make the award of fees unjust. 28 U.S.C. § 2412(d).

In this case, there has been no judgment entered against either party. Therefore, there is no prevailing party at this time. Plaintiff asserts that the Court entered an Order remanding this case for a new hearing. Doc. 30 at 1. The Court, however, has not entered such an Order. The last order entered by the Court granted Defendant an extension to file its memorandum of law. Doc. 24. The parties have not requested a remand, nor has the Court determined that remand is appropriate in this case. Accordingly, Plaintiff's motion is denied as it is premature.

ACCORDINGLY, it is hereby

ORDERED:

Plaintiff's Unopposed Motion for Attorney's Fees Pursuant to the Equal Access to Justice Act (Doc. 25) is **DENIED**.

DONE and **ORDERED** in Fort Myers, Florida on this 6th day of July, 2015.


CAROL MIRANDO
United States Magistrate Judge

Copies:
Counsel of record