

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

ANTHONY MCENTEER,

Plaintiff,

v.

Case No: 2:15-cv-288-FtM-CM

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

ORDER

This matter comes before the Court upon review of Plaintiff's Unopposed Application for Attorneys Fees Under the Equal Access to Justice Act (Doc. 23) filed on February 11, 2016. Plaintiff moves pursuant to the Equal Justice Act ("EAJA"), 28 U.S.C. § 2412(d), for an award of attorney's fees in the amount of \$5,079.94. Plaintiff attaches a retainer agreement and an exhibit of total compensable time by his attorneys, confirming a total of 26.80 hours at the rate of \$189.55 per hour. Doc. 23 at 8-10. The commissioner does not oppose the relief requested. For the reasons stated herein, the Motion is due to be granted.

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, on December 14, 2015, the Court entered an Order reversing and remanding this case to the Commissioner for further proceedings pursuant to sentence four of 42 U.S.C. § 405(g). Doc. 21. A judgment was entered the following day. Doc. 22. Plaintiff also asserts that the Commissioner's position in the underlying action was not substantially justified (Doc. 23 at 3-4) and that his net worth at the time this proceeding was filed was less than two million dollars. Doc. 23 at 1-2. The Commissioner does not contest that Plaintiff meets the requirements under the EAJA, and the Court finds that all conditions have been met.

EAJA fees are "based upon prevailing market rates for the kind and quality of services furnished," not to exceed \$125.00 per hour unless the Court determines that an increase in the cost of living or a special factor justifies a higher fee. 28 U.S.C. § 2412(d)(2)(A). Determination of the appropriate hourly rate is thus a two-step process. The Court first determines the prevailing market rate; then, if the prevailing rate exceeds \$125.00, the Court determines whether to adjust the hourly rate. *Meyer v. Sullivan*, 958 F.2d 1029, 1033-34 (11th Cir. 1992). The prevailing market rates must be determined according to rates customarily charged for similarly complex litigation, and are not limited to rates specifically for social security cases. *Watford v. Heckler*, 765 F.2d 1562, 1568 (11th Cir. 1985).

Plaintiff's counsel is requesting an adjusted hourly rate that is authorized by applying the cost-of-living adjustment to the \$125.00 ceiling for work performed in 2015. Doc. 23 at 4-6. Because the Commissioner does not object to the adjusted hourly rate sought, and the adjusted hourly rate sought is within the rates permitted

by the EAJA, the Court finds that \$189.55 per hour is an appropriate and reasonable hourly rate for attorney time. Plaintiff's counsel also has included an exhibit of total compensable time spent by attorneys, confirming a total of for 26.80 hours. Docs. 23 at 8-9. After reviewing the description of the services provided, the Court also concludes that the time is reasonable and properly compensable.

ACCORDINGLY, it is hereby

ORDERED:

1. Unopposed Application for Attorneys Fees Under the Equal Access to Justice Act (Doc. 23) is **GRANTED**. Attorney's fees in the amount of \$5,079.94 shall be awarded to Plaintiff pursuant to the 28 U.S.C. § 2412(d). If the United States Department of the Treasury determines that Plaintiff does not owe a federal debt, the Government will accept Plaintiff's assignment of EAJA fees and pay fees directly to Plaintiff's counsel.

2. The Clerk is directed to enter judgment for Plaintiff as to attorney's fees in the amount of \$5,079.94 under the Equal Access to Justice Act, 28 U.S.C. § 2412(d).

DONE and **ORDERED** in Fort Myers, Florida on this 16th day of February, 2016.


CAROL MIRANDO
United States Magistrate Judge

Copies:
Counsel of record