

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION**

DANIEL D. THRELKELD,

Plaintiff,

v.

Case No: 5:16-cv-374-Oc-PRL

**COMMISSIONER OF SOCIAL
SECURITY**

Defendant.

ORDER

This matter is before the Court on Plaintiff's unopposed Motion for Attorney's Fees. (Doc. 26). Pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. §2412(d), Plaintiff requests an award of fees in the amount of \$5,290.10. Unfortunately, Plaintiff's motion is deficient in the following ways.

First, Plaintiff's motion fails to comply with Local Rule 3.01(g). Although counsel recites that "I conferred by email in Good Faith with Defendant's Counsel" regarding the motion, the motion fails to contain the required statement regarding "whether counsel agree on the resolution of the motion" as required by the Local Rule. Consequently, it is unclear whether Defendant opposes the relief requested.

Next, Plaintiff has failed to establish the prerequisites for an EAJA award. 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). Specifically, Plaintiff fails to recite whether his net worth was less than \$2 million at the time the complaint was filed.

Accordingly, upon due consideration, Plaintiff's motion (Doc. 26) is denied without prejudice to Plaintiff's right to file an amended motion for EAJA fees within 10 days of the entry date of this Order.

DONE and **ORDERED** in Ocala, Florida on October 24, 2017.



PHILIP R. LAMMENS
United States Magistrate Judge

Copies furnished to:

Counsel of Record
Unrepresented Parties