

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

LEAANN MCDONALD,

Plaintiff,

v.

Case No. 6:16-cv-1150-Orl-37JRK

NANCY A. BERRYHILL,¹

Defendant.

ORDER

In the instant appeal, Plaintiff sought judicial review of the Commissioner's denial of her claim for social security disability benefits. (Doc. 1.) On April 19, 2017, the Court entered judgment in Plaintiff's favor and reversed and remanded this case for further administrative proceedings. (Doc. 20.)

As the prevailing party, Plaintiff now seeks: (1) an award for attorney fees in the amount of \$3,217.48 ("**Award**") under the Equal Access to Justice Act ("**EAJA**"); and (2) to direct payment of the Award to her counsel if the U.S. Department of Treasury determines that she does not owe a debt to the government.² (Doc. 21 ("**Fees Motion**").) On referral, U.S. Magistrate Judge James R. Klindt issued a Report recommending that the Court grant the fees motion in its entirety. (Doc. 22 ("**R&R**").) In doing so, Magistrate

¹ On January 23, 2017, Nancy A. Berryhill became the Acting Commissioner of Social Security. (See Doc. 22, p. 1.)

² On June 16, 2016, Plaintiff assigned her right to any fees awarded under the EAJA to her counsel. (See Doc. 21-1 ("**Assignment**").)

Judge Klindt concludes that: (1) Plaintiff is entitled to the full amount of the Award; (2) the hourly rate underlying the Award is reasonable; (3) the applicable cost of living adjustment is warranted; (4) the number of hours spent by Plaintiff's counsel on the case is reasonable; and (5) the parties have agreed that the government will accept the Assignment and pay fees directly to counsel if the U.S. Department of Treasury determines that Plaintiff does not owe a federal debt. (*Id.* at 2-3.)

As the Fees Motion is unopposed and neither party has objected to the R&R, the Court has reviewed it only for clear error. *Wiand v. Wells Fargo Bank, N.A.*, No. 8:12-cv-557-T-27EAJ, 2016 WL 355490, at *1 (M.D. Fla. Jan. 28, 2016); *see also Marcort v. Prem, Inc.*, 208 F. App'x 781, 784 (11th Cir. 2006). In doing so, the Court takes issue with only one portion of the R&R – Magistrate Judge Klindt's recommendation that the final order contain language that the government *will* accept the Assignment if Plaintiff does not owe a federal debt ("**Assignment Recommendation**"). (Doc. 22, p. 3.) The decision to honor an assignment is left to the discretion of the Commissioner, *Astrue v. Ratliff*, 560 U.S. 586, 597 (2010), once the U.S. Department of Treasury determines that Plaintiff does not owe a debt to the U.S. Government, 31 U.S.C. § 3727(b). As such, the Court rejects the Assignment Recommendation. In the absence of any other clear error, the balance of the R&R is due to be adopted.


Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. U.S. Magistrate James R. Klindt's Report and Recommendation dated June 22, 2017 (Doc. 22) is **ADOPTED IN PART** and **REJECTED IN PART**.
 - a. The Assignment Recommendation is **REJECTED**.

- b. In all other respects, the R&R is **ADOPTED, CONFIRMED**, and made a part of this Order.
2. Plaintiff's Uncontested Motion for Attorney's Fees (Doc. 21) is **GRANTED IN PART AND DENIED IN PART**.
- a. The Motion is **GRANTED** to the extent that the Court awards Plaintiff attorney fees under the Equal Access to Justice Act in the amount of **\$3,217.48**.
- b. In all other respects, the Motion is **DENIED**.
3. Notwithstanding the Court's rejection of the Assignment Recommendation, the Commissioner may exercise her discretion to honor Plaintiff's assignment of fees to counsel if the U.S Department of Treasury determines that she does not owe a debt to the U.S. Government. *See Ratliff*, 560 U.S. at 597.

DONE AND ORDERED in Chambers in Orlando, Florida, on July 14, 2017.




ROY B. DALTON JR.
United States District Judge

Copies to:
Counsel of Record

