

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

ROBERT A LOVEDAY,

Plaintiff,

v.

CASE NO. 1:10-cv-00014-MP -WCS

MICHAEL J ASTRUE,

Defendant.

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ORDER

This matter is before the Court on Doc. 26, a Motion for Extension of Time to File an Attorney's Fee Request Pursuant to 42 U.S.C. § 406(b)(1). Previously, the Court entered a judgment directing the Commissioner to award benefits to the Plaintiff. Absent a court order stating otherwise, a successful Plaintiff's counsel has fourteen days after final judgment to file a motion with the District Court requesting an award of attorney fees. Fed. R. Civ. P. 54(d)(2)(B). This Rule has been interpreted by the Eleventh Circuit to even apply to a request for fees to be paid from Plaintiff's past due benefits pursuant to 42 U.S.C. § 406(b)(1). Bergen v. Commissioner, 454 F.3d 1273, 1277-78 (11th Cir. 2006). However, Plaintiff's counsel in such a case will not know the amount of benefits - and therefore fees - until after the Commissioner awards benefits, which typically takes longer than fourteen days after the entry of judgment. Therefore, an extension of time to seek such fees is warranted, and was recommended by the Bergen opinion. Id. Accordingly, it is hereby

ORDERED AND ADJUDGED:

Pursuant to Bergen, proceedings on attorney fees under the Social Security Act, 42 U.S.C. § 406(b) are stayed until the matter is fully adjudicated upon remand. The

Plaintiff shall file a motion to award fees under 406(b) within 30 days after counsel receives notice from the Defendant Commissioner as to Plaintiff's past due benefits.

This stay relates only to attorney fee proceedings under § 406(b) of the Social Security Act, not to attorney fee proceedings under the Equal Access to Justice Act, 28 U.S.C. § 2412, the latter of which may be adjudicated at this time.

DONE AND ORDERED this 16th day of December, 2010

s/Maurice M. Paul

Maurice M. Paul, Senior District Judge