

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION**

**MARILYN Y. LEWIS,**

**Plaintiff,**

**vs.**

**Case No. 4:08cv441-RH/WCS**

**MICHAEL J. ASTRUE,  
Commissioner of Social Security,**

**Defendant.**

\_\_\_\_\_ /

**REPORT AND RECOMMENDATION**

Pending is Plaintiff's Motion for attorney's fees pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d) and the Social Security Act, 42 U.S.C. § 406(b), in the amount of \$5,154.43 representing attorney fees and \$350.00 representing the cost of the filing fee. Defendant has filed a response to the Motion advising the court that they have no objection to the amount requested by Plaintiff. Doc. 22.

Plaintiff seeks payment of this fee to counsel. In Reeves v. Astrue, 526 F.3d 732 (11th Cir. 2008), *cert. denied*, 77 U.S.L.W. 3344 (Dec. 8, 2008) (No. 08-5605), the court clarified that an EAJA award, such as the award in the instant case, shall be awarded to the "prevailing party," not to the prevailing party's attorney. Although Reeves did not address the payment of EAJA fees directly to counsel where the prevailing plaintiff has

assigned his or her interest to the attorney, the undersigned follows the common practice of other courts in this district and circuit by recommending payment to counsel when an assignment of benefits has been included with counsel's petition. See, e.g., Turner v. Astrue, Case No. 5:07cv9/RS/EMT (awarding EAJA fee to counsel for Plaintiff where valid EAJA assignment had been made); Buffin v. Astrue, 2008 WL 2605475, at \*2 (M.D. Fla. June 30, 2008) (same). This issue is currently pending before the Supreme Court. Ratliff v. Astrue, 540 F.3d 800 (8th Cir. 2008) (concluding that EAJA fees are properly awarded to the party's attorney and noting conflict among Circuits), *reh'g denied* (Dec. 5, 2008), *petition for cert. granted*, 130 S. Ct. 48, 174 L. Ed. 2d 631 (U.S. Sept. 30, 2009).

In light of the above, it is **RECOMMENDED** that:

Plaintiff's Motion for attorney's fees, doc. 19, be **GRANTED** and the court order that the Secretary certify and pay to Plaintiff's counsel \$5,154.433 as a reasonable attorney fee and reimburse Plaintiff's counsel \$350.00 for the filing fee.

**IN CHAMBERS** at Tallahassee, Florida, on January 4, 2010.

s/ William C. Sherrill, Jr.  
**WILLIAM C. SHERRILL, JR.**  
**UNITED STATES MAGISTRATE JUDGE**

### **NOTICE TO THE PARTIES**

**A party may file specific, written objections to the proposed findings and recommendations within 14 days after being served with a copy of this report and recommendation. A party may respond to another party's objections within 14 days after being served with a copy thereof. Failure to file specific objections limits the scope of review of proposed factual findings and recommendations.**