

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-20556-CIV-LENARD/DUBÉ

MIGUEL A. RIVERA-RODRIGUEZ,

Plaintiff,

v.

MICHAEL J. ASTRUE,  
Commissioner of Social Security,

Defendant.

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**REPORT AND RECOMMENDATION**

THIS CAUSE is before this Court on the Petition for Attorney's Fees filed by the Plaintiff (D.E. #29) pursuant to an Order of Reference entered by the Honorable Joan A. Lenard, United States District Judge. This Court has reviewed the motion, the response by the Government and the file in this cause.

On September 23, 2008, an Order was entered by Judge Lenard adopting a Report and Recommendation by this Court and remanding this cause for further proceedings. (D.E. #27).

The present motion seeks an award of fees pursuant to the Equal Access to Justice Act. The motion indicates that 11.0 hours were spent on this case at the rate of \$168.67, for a total fee recovery sought of \$1,855.37. The only objection raised by the Government in its response is to the request that payment under the EAJA be made directly to counsel for the Plaintiff.

The Eleventh Circuit has ruled that an award of attorney's fees granted under 28 U.S.C. §2412(d)(1)(A) belongs, in the first instance, to the prevailing party, and not to the party's attorney. Reeves v. Astrue, 526 F.3d 732 (11th Cir.2008). However, in the present case, the parties have

entered into a Fee Agreement. (D.E. #29-2). In accordance with the agreement of counsel, the fees should be payable to Plaintiff's attorney, Lilli W. Marder.

Accordingly, it is the recommendation of this Court that the Petition for Attorney's Fees (D.E. #29) be **GRANTED** and that the Plaintiff should be entitled to recover for **11.0** hours of work performed in this case, resulting in a total recovery of **\$1,855.37** as attorney's fees, the fees should be payable to the Plaintiff's attorney, Lilli W. Marder.

Pursuant to Local Magistrate Rule 4(b), the parties have ten (10) days from service of this Report and Recommendation to serve and file written objections, if any, with the Honorable Joan A. Lenard, United States District Judge. Failure to file timely objections shall bar the parties from attacking on appeal the factual findings contained herein. Loconte v. Dugger, 847 F.2d 745 (11th Cir. 1988), cert. denied, 488 U.S. 958 (1988); R.T.C. v. Hallmark Builders, Inc., 996 F.2d 1144, 1149 (11th Cir. 1993).

**DONE AND ORDERED** this 19 day of December, 2008.



ROBERT L. DUBÉ  
UNITED STATES MAGISTRATE JUDGE