

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-22542-CIV-SEITZ/DUBÉ

MAGALY PINEDA,

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 Motion for Leave to File Motion for Attorney's Fees under the Social Security Act 42 U.S.C. §406(b) filed by the Plaintiff (D.E. #15); and the Petition for Attorney's Fees Pursuant to 28 U.S.C. Section 2412(d) filed by the Plaintiff (D.E. #16) pursuant to an Order of Reference entered by the Honorable Patricia A. Seitz, United States District Judge. This Court has reviewed the motions, which indicate no objection by the Government, and the file in this cause.

On January 21, 2010, an Order was entered by Judge Seitz affirming and adopting a Report and Recommendation by this Court and reversing and remanding this cause for further proceedings. (D.E. #14).

The present motions seek an award of fees pursuant to the Equal Access to Justice Act. The affidavits filed by counsel for the Plaintiff indicate that 11.54 hours were spent on this case, at the rate of \$173.37 per hour, totaling \$2,000.69.

This Court has reviewed the affidavit of counsel for the Plaintiff and finds that both the amount of time expended and the hourly rate requested are reasonable, and that the total amount sought by the Plaintiff for fees should be awarded.

Accordingly, it is the recommendation of this Court that the Petition for Attorney's Fees (D.E. #16) be **GRANTED** and that the Plaintiff should be entitled to recover for **11.54** hours of work performed in this case at the rate of \$173.37 per hour, resulting in a total recovery of **\$2,000.69** as attorney's fees. In accordance with the agreement of counsel, the fees should be payable to Plaintiff's attorney, Lilli W. Marder.

Additionally, it is recommended that the Motion for Leave to File Motion for Attorney's Fees under the Social Security Act 42 U.S.C. §406(b) (D.E. #15); be **GRANTED** and that the Plaintiff be allowed 30 days after the date of Notice of Award for past due disability benefits to file a Motion for Attorney's Fees pursuant to 42 U.S.C. §406(b).

Pursuant to Local Magistrate Rule 4(b), the parties have fourteen (14) days from service of this Report and Recommendation to serve and file written objections, if any, with the Honorable Patricia A. Seitz, 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 28 day of January, 2010.

  
ROBERT L. DUBÉ  
UNITED STATES MAGISTRATE JUDGE