

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 07-10089-CIV-KING/DUBÉ

EDWARD P. TORTOLANO,

Plaintiff,

v.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

REPORT AND RECOMMENDATION

THIS CAUSE is before this Court on the Application for Attorney's Fees filed by the Plaintiff (D.E. #23) pursuant to an Order of Reference entered by the Honorable James Lawrence King, United States District Judge. This Court has reviewed the motion, the response by the Government and the file in this cause.

On September 11, 2008, an Order was entered by Judge King adopting a Report and Recommendation by this Court and remanding this cause for further proceedings. (D.E. #19, #20).

The present motion seeks an award of fees pursuant to the Equal Access to Justice Act. The motion indicates that 2.25 hours were spent on this case at the rate of \$167.27, and 24.2 hours were spent on this case at the rate of \$175.67 for a total fee recovery sought of \$4,627.58. A filing fee of \$350.00 is also sought by the Plaintiff. 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).

Accordingly, it is the recommendation of this Court that the Application for Attorney's Fees (D.E. #23) be **GRANTED** and that the Plaintiff should be entitled to recover for **26.45** hours of work performed in this case, resulting in a total recovery of **\$4,627.58** as attorney's fees, the fees should be **payable to the Plaintiff**. Additionally, the Plaintiff should be awarded the sum of **\$350.00** for the filing fee to be paid out of the Judgment Fund.

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 James Lawrence King, 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 20 day of January, 2009.



ROBERT L. DUBÉ
UNITED STATES MAGISTRATE JUDGE