

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

THERESA AMEY,)	
)	
Plaintiff,)	
)	Case No. 09 C 2712
v.)	
)	Magistrate Judge Susan E. Cox
MICHAEL J. ASTRUE,)	
Commissioner of Social Security,)	
)	
Defendant.)	

MEMORANDUM ORDER

Plaintiff, Theresa Amey, seeks recovery for her attorney's fees pursuant to the Equal Access to Justice Act ("EAJA").¹ The Commissioner of the Social Security Administration ("the Commissioner") opposes plaintiff's motion. For the reasons discussed below, the Court grants the motion in part and awards attorney's fees totaling \$4,975.

A. Background Facts

Magistrate Judge Ashman discussed the facts of this case in detail in his February 2, 2012 Opinion and Order,² so the Court only briefly restates them here. On February 15, 2005, plaintiff filed an application for Disability Insurance Benefits ("DIB") and Supplemental Security Income ("SSI") under Title II of the Social Security Act.³ Her claim was denied initially and on reconsideration, but after an Administrative Law Judge ("ALJ") found that she was not disabled, the Appeals Council remanded plaintiff's case to the ALJ for further consideration.⁴ A supplemental

¹28 U.S.C. § 2412(d).

² See *Amey v. Astrue*, No. 09 C 2712, 2012 WL 366522, at *1-6 (N.D. Ill. Feb. 2, 2012). The case was reassigned to this Court from Judge Ashman on June 12, 2012; dckt. 52.

³ See *id.* at *1.

⁴ See *id.* at *2.

from the statutory maximum to a rate of \$171.25 for work performed in 2009, \$178.75 for 2011 work, and \$176.25 for 2012. The Commissioner does not contest these calculations or argue that plaintiff's assumptions and methods for reaching these hourly rates are incorrect.

Even assuming that plaintiff's calculations are correct, however, they are insufficient under *Matthews-Sheets* to demonstrate that her counsel is entitled to an enhanced fee. Plaintiff has only shown that a figure of \$125 would increase over time if CPI numbers are applied to it. She has not shown that inflation, *in fact*, has affected the legal market or that attorney's fees in the Chicago area have increased due to inflation.²⁶ That is the point of *Matthews-Sheets*' analysis: a plaintiff is not entitled to an inflation adjustment unless she can show that "inflation has increased the cost of providing adequate legal service" in her relevant market.²⁷

Plaintiff's counsel tries to do this by pointing to general increases in his practice costs since 1996. These include: (1) a 75% increase in rent; (2) a 44% increase in utilities; (3) more than a 100% rise in health insurance costs; and (4) a variety of technology-related costs such as computers, fax machines, and software. The Commissioner argues that plaintiff has not shown that these increases are the result of inflation instead of independent factors such as changes counsel has chosen for some reason to make in his practice. The Court disagrees with this claim in part. Plaintiff's counsel represents as an officer of the Court that inflation was the cause for his increased costs. A similar representation by counsel was deemed to be sufficient to show the effect of inflation in *Claiborne, supra*,²⁸ and this Court also accepts counsel's statements as evidence that inflation has raised his cost of doing business in general. If plaintiff were required to produce

²⁶ *Matthews-Sheets*, 653 F.3d at 563.

²⁷ *Id* (noting that inflation can affect different markets in different ways).

²⁸ *Claiborne*, --- F. Supp.2d ---, 2012 WL 2680777, at *4.

receipts or detailed calculations to support each of the costs she cites, the burden of doing so would potentially impose even greater costs on the Government if plaintiff is successful. The Court does not believe that *Matthews-Sheets* requires such a complex showing.

That said, *Matthews-Sheets* requires more than this, at least standing alone. An enhanced EAJA fee request must be supported by "a general increase in attorney's fees in the relevant geographical area due to inflation[.]"²⁹ Courts have found that a plaintiff meets this requirement by producing affidavits of other social security practitioners concerning their fees and by showing how counsel's own billing rates have risen since 1996.³⁰ In this case, however, plaintiff has provided no evidence of this kind at all. Indeed, plaintiff did not even file a reply brief to counter the Commissioner's objections to the request for an enhanced fee. There is no evidence, for example, of how counsel's fees have changed since 1996, what rate he receives for social security or other cases, or what fees other social security attorneys receive in the Chicago area. Instead, plaintiff's counsel states only in broad terms that he could not represent clients for \$125 an hour and that no other attorney could do so. Conclusions are not evidence, and plaintiff must show what rates these other practitioners charge, or the rates his own services command in light of inflation. Without further evidence, therefore, plaintiff has shown neither that inflation has increased her counsel's rates to the figures she requests, or that no other attorney in the Chicago area could adequately represent her for the statutory rate of \$125 an hour.

The Court recognizes that the rates plaintiff seeks are well within the boundaries of the

²⁹ *Just*, 2012 WL 2780142, at *2.

³⁰ *Claiborne*, --- F. Supp.2d ---, 2012 WL 2680777, at *4; *Seabron*, 2012 WL 1985681, at *3

enhanced fees awarded in social security cases.³¹ But courts decide if an enhanced rate is justified "based on the factual record presented," not by taking judicial notice of other cases. A "plaintiff must show that the higher rate is justified in her particular case."³² Plaintiff overlooks that the EAJA itself does not even guarantee a minimum rate of \$125 an hour. *Matthews-Sheets* stresses that the statute only permits a prevailing hourly rate if it is *less* than \$125 and that "doesn't authorize an award of \$125 an hour, or even \$125 plus inflation."³³ The burden for showing such an enhancement falls on the plaintiff, not the Court.³⁴ In the absence of any evidence concerning counsel's hourly rates or the rates charged by other practitioners in the Chicago area, the Court finds that plaintiff has not show that the fee enhancement she seeks is justified. Counsel is limited to the EAJA maximum rate of \$125 an hour.

Finally, plaintiff requests that any fee awarded should be made payable to her attorney based on her fee agreement with her attorney. *Matthews-Sheets* states that when, as here, a plaintiff has agreed to such an arrangement, "the only ground for the district court's insisting on making the award to the plaintiff is that the plaintiff has debts that may be prior to what she owes her lawyer."³⁵ No evidence of such prior debts has been submitted, and the Court grant's plaintiff's request that the EAJA fees be made payable directly to her attorney pursuant to her fee agreement.

³¹ See, e.g., *Claiborne*, --- F. Supp.2d ---, 2012 WL 2680777, at *5 (granting a \$181.25 an hour rate); *Seabron*, 2012 WL 1985681, at *4 (allowing a \$176.25 rate); *Just*, 2012 WL 2780142, at *3 (permitting \$175 an hour).

³² *Muzarrelli*, 2012 WL 2921554, at * 4.

³³ *Matthews-Sheets*, 653 F.3d at 563.

³⁴ See *Hensley*, 461 U.S. at 437.

³⁵ *Matthews-Sheets*, 653 F.3d at 565 (citing *Astrue v. Ratliff*, --- U.S. ---, 130 S.Ct. 1521, 177 L.Ed.2d 91 (2010)).

C. Conclusion

For the foregoing reasons, the Court grants the motion for attorney's fees [dckt. 49]. Fees are awarded at the rate of \$125 an hour, for a total award of \$4,975 (39.8 hours x \$125 an hour).

IT IS SO ORDERED.

Entered: October 2, 2012



SUSAN E. COX

UNITED STATES MAGISTRATE JUDGE