

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

JAMES R. WELLS,)	
)	
Plaintiff,)	
)	
vs.)	Civil No. 17-cv-1156-CJP
)	
COMMISSONER of SOCIAL SECURITY,)	
)	
Defendant.)	

ORDER for ATTORNEY'S FEES

Before the Court is plaintiff's Motion for Attorney's Fees. **(Doc. 40)**. Defendant has not filed a response, and the time for doing so has now expired.

Pursuant to the Equal Access to Justice Act, 28 U.S.C. §2412(d)(1)(A), the Court shall award attorney's fees and expenses to a prevailing party in a civil action against the United States, including proceedings for judicial review of agency action, unless the government's position was substantially justified. The hourly rate for attorney's fees is not to exceed \$125.00 per hour "unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee." §2412(d)(2)(A). See also, *Sprinkle v. Colvin*, 777 F.3d 421 (7th Cir. 2015).

This case was remanded to the Commissioner for further proceedings pursuant to sentence four of 42 U.S.C. §405(g). Plaintiff is, therefore, the prevailing party. See, *Shalala v. Schaefer*, 509 U.S. 292, 302 (1993).

Counsel seeks a fee of \$9,563.40, representing 48.3 hours at the rate of \$198.00 per hour. He does not seek any additional amount for expenses or costs.

The Commissioner has not argued that her position was substantially justified or challenged the appropriateness of the hourly rate or the number of hours claimed.

The Court deems the failure to respond to plaintiff's motion to be an admission of the merits thereof. SDIL-LR 7.1. Accordingly, the Court finds that plaintiff is entitled to an award of attorney's fees pursuant to the EAJA, and that the hourly rate and number of hours claimed are reasonable.

Plaintiff's Motion for Attorney's Fees (**Doc. 40**) is **GRANTED**. The Court awards plaintiff James R. Wells attorney's fees in the amount fee of \$9,563.40 (nine thousand, five hundred, sixty-three dollars and forty cents), with no additional amount for expenses or costs.

The amount awarded is payable to plaintiff and is subject to set-off for any debt owed by plaintiff to the United States, per *Astrue v. Ratliff*, 560 U.S. 586 (2010). However, any part of the award that is not subject to set-off to pay plaintiff's pre-existing debt to the United States shall be made payable to plaintiff's attorney pursuant to the EAJA assignment executed by plaintiff and counsel, Doc. 40, Ex. 2.

IT IS SO ORDERED.

DATED: November 13, 2018.

s/ Clifford J. Proud
CLIFFORD J. PROUD
U.S. MAGISTRATE JUDGE