UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF INDIANA FORT WAYNE DIVISION

RICHARD W. MOTLEY,)
Plaintiff,)
v.) Case No. 1:15-CV-141-JD
CAROLYN W. COLVIN,)
Acting Commissioner of Social Security,)
)
Defendant.)

ORDER

This matter is before the Court on Plaintiff's unopposed motion to award attorney fees under the EAJA [DE 32], following the remand of this action to the Commissioner. In the motion, plaintiff's counsel seeks an award of \$6,124.25 for attorney fees, to which the government does not object. The EAJA provides that "a court may award reasonable fees and expenses of attorneys . . . to the prevailing party in any civil action brought by or against the United States or any agency." 28 U.S.C. § 2412(b). A party seeking an award of fees for a successful action against the government is entitled to recover his attorneys' fees if: (1) he was a prevailing party; (2) the government's position was not substantially justified; (3) there are no special circumstances that would make an award unjust; and (4) the application for fees is timely filed with the district court (that is, within thirty days after the judgment is final and not appealable). 28 U.S.C. § 2412(d)(1)(A), (B) and (d)(2)(G); Cunningham v. Barnhart, 440 F.3d 862, 863 (7th Cir. 2006); Golembiewski v. Barnhart, 382 F.3d 721, 723–24 (7th Cir. 2004).

Given the lack of objection to the request, the Court GRANTS the motion for attorney fees [DE 32], and AWARDS Plaintiff Richard Motley an EAJA fee in the amount of \$6,124.25. This award may be offset to satisfy any pre-existing debt Mr. Motley may owe to the United

States—although Plaintiff's counsel believes no such debt is owed. Thus, any portion of this

award that is not used to offset a pre-existing debt of the plaintiff to the government should be

made payable directly to lead counsel, Frederick J. Daley, Jr. of Daley Disability Law, P.C.,

pursuant to the EAJA assignment executed by the plaintiff and his counsel. Mathews-Sheets v.

Astrue, 653 F.3d 560, 565 (7th Cir. 2011) ("[I]f there is an assignment, 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.") (citing Astrue v. Ratliff, 130 S. Ct. 2521 (2010)

(holding that the EAJA prohibits payment of an award directly to a petitioner's attorney absent

contractual and other assignment-based rights)).

SO ORDERED.

ENTERED: January 4, 2017

/s/ JON E. DEGUILIO

Judge

United States District Court

2