

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF INDIANA
 NEW ALBANY DIVISION

BETH STALEY,)	
)	
Plaintiff,)	
)	
vs.)	No. 4:15-cv-00178-TAB-RLY
)	
NANCY A. BERRYHILL, Acting)	
Commissioner of the Social Security)	
Administration,)	
)	
Defendant.)	

AMENDED ORDER ON ATTORNEY’S FEES

On May 18, 2017, the Court granted Plaintiff Beth Staley’s petition for attorney’s fees under the Equal Access to Justice Act in the amount of \$15,846, paid directly to counsel. [\[Filing No. 48.\]](#) The Court afforded the Commissioner 70 days to exercise the right to offset that amount if the Commissioner discovered that Staley owed an outstanding debt to the government, by filing a statement along with supporting evidence. The Commissioner did so on June 2, 2017. Staley followed up with her own statement on June 8 and moved for an oral argument.¹ After considering the filings, the motion for an oral argument [\[Filing No. 51\]](#) is denied. This amended order changes the EAJA payee from Staley’s counsel to Staley and subjects the total amount to be offset by Staley’s debt to the government.

On June 2, 2017, the Commissioner filed a statement of her intent to exercise the right of offset. [\[Filing No. 49.\]](#) This followed a May 26, 2017, email from the United States Department

¹ Staley’s filings drew a motion from the Commissioner for leave to file a belated reply brief. The Commissioner seeks to clarify her position on offsetting the EAJA fees, however the Commissioner’s initial statement is made in accordance with the Court’s prior order. Clarification is unnecessary and the Commissioner’s motion [\[Filing No. 52\]](#) is therefore denied.

of the Treasury, informing the Commissioner that Staley owes a debt to the government. [\[Filing No. 49-1\]](#) As such, the Commissioner intends to send an invoice to the Treasury for payment of EAJA fees in Staley's name. In turn, the Treasury's Bureau of the Fiscal Service will collect the government debt by reducing the payment of EAJA fees to Staley. [\[Filing No. 49-2.\]](#) It is the Treasury's policy to not disclose the actual dollar amount of Staley's debt to the Commissioner, in large part because the final amount of the debt must be updated on the date the payment is disbursed, but also for privacy reasons. [\[Id.\]](#) If the EAJA fee award is not subsumed under the debt, the remainder will be issued to Staley and sent to her attorney's address.

Staley makes spirited arguments that the Treasury email is not sufficient evidence of the debt and that the attorney fee agreement should control the "EAJA fee judgment." While the email is underwhelming, it is certainly evidence that Staley owes a debt to the government. Furthermore, an EAJA fee award is not a judgment for attorney's fees. An EAJA fee award is considered the property of the prevailing party. [Astrue v. Ratliff, 560 U.S. 586, 603 \(2010\)](#); (citing [Stephens ex rel. R.E. v. Astrue, 565 F.3d 131, 135 \(4th Cir. 2009\)](#)). As property of Staley, the EAJA fee can be administratively offset. [31 U.S.C. § 3716\(c\)](#). The Commissioner's statement that Staley owes a debt to the government follows the directions provided in the Court's prior order. The Commissioner's statement is supported by evidence. Thus, as explained in the prior order, the Commissioner is entitled to the offset she now requests.

Accordingly, the Court amends its prior order [[Filing No. 48](#)] in part. The Commissioner is ordered to pay the \$15,846 EAJA fee award directly to Staley, offset by Staley's outstanding debt to the government. The motion for an oral argument [[Filing No. 51](#)] is denied, as is the motion for leave [[Filing No. 52](#)].

Date: 7/13/2017



Tim A. Baker
United States Magistrate Judge
Southern District of Indiana

Distribution:

Emily Skutch Cohn
SOCIAL SECURITY ADMINISTRATION
emily.s.cohn@ssa.gov

Mahesha P. Subbaraman
SUBBARAMAN PLLC
mps@subblaw.com

Adriana Maria de la Torre
THE DE LA TORRE LAW OFFICE LLC
adriana@dltlawoffice.com

Debra G. Richards
UNITED STATES ATTORNEY'S OFFICE
debra.richards@usdoj.gov

Kathryn E. Olivier
UNITED STATES ATTORNEY'S OFFICE
kathryn.olivier@usdoj.gov