

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

DAVID ELSBURY,

Plaintiff,

vs.

**CAROLYN W. COLVIN,
Commissioner of Social Security,**

Defendant

No. C14-0020

ORDER

This matter comes before the Court on the Motion for Authorization of Attorney Fees Pursuant to 42 U.S.C. § 406(b) (docket number 26) filed by Plaintiff on April 15, 2016, and the Amended Response to Plaintiff's Motion for Fees (docket number 28) filed by the Commissioner on April 18, 2016. Plaintiff's counsel asks that she be awarded attorney fees in the amount of \$4,505.

On February 17, 2014, Plaintiff filed a Complaint seeking review of the Commissioner's decision to deny her application for Title II disability insurance benefits. *See* docket number 1. On December 11, 2014, the Court entered a ruling reversing and remanding this matter to the Commissioner for further proceedings. *See* docket number 19. On March 10, 2015, the Court granted Plaintiff's application for attorney fees under the Equal Access to Justice Act ("EAJA"), in the amount of \$6,375.38. *See* docket number 23.

On March 8, 2016, the Social Security Administration awarded disability insurance benefits to Plaintiff, including \$67,520 in back benefits. *See* docket number 26-3. In the award letter, the agency withheld \$16,880 from the total of Plaintiff's past-due benefits award to pay her attorney fees. *See Id.* \$16,880 constitutes 25% of Plaintiff's past-due benefits award, which is the amount agreed to between Plaintiff and her attorney in their "Fee Agreement." *See* docket number 26-2. \$6,000.00 has already been paid to

Plaintiff's counsel for work performed before the Social Security Administration. *See* docket number 26 at 2; ¶ 5. Additionally Plaintiff's attorney was awarded attorney fees under the EAJA in the amount of \$6,375.38 in March 2015. Thus, Plaintiff's counsel seeks \$4,505 under her "Fee Agreement" with Plaintiff (\$16,880 - \$6000 (work performed before SSA) - \$6375 (attorney fees awarded under EAJA)).

Generally, when counsel for a Plaintiff in a social security appeal is awarded section 406(b) fees, he or she is required to refund the fees previously ordered under the EAJA. Here, however, Plaintiff's counsel has off-set her section 406(b) award by requesting an amount reduced by the previously awarded EAJA fee. *See* docket number 26 at 2; ¶ 7. In her response, the Commissioner states that she "has no objection to plaintiff's motion[.]" *See* docket number 28 at 1. Accordingly, the Court finds that the motion should be granted.

ORDER

IT IS THEREFORE ORDERED that the Motion for Authorization of Attorney Fees Pursuant to 42 U.S.C. § 406(b) (docket number 26) filed by Plaintiff on April 15, 2016 is hereby **GRANTED**. Attorney Mary K. Hoefer shall be paid attorney fees in the amount of Four Thousand Five Hundred Five Dollars (\$4,505) pursuant to 42 U.S.C. section 406(b).

DATED this 18th day of April, 2016.



JON STUART SCOLES
CHIEF MAGISTRATE JUDGE
NORTHERN DISTRICT OF IOWA