

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
BOWLING GREEN DIVISION
CIVIL ACTION NO. 1:13CV-00167-HBB**

CARSON GODBEY

PLAINTIFF

VS.

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

DEFENDANT

**MEMORANDUM OPINION
AND ORDER**

BACKGROUND

Before the Court is Plaintiff's motion for an award of attorney's fees, pursuant to the Equal Access to Justice Act (the "EAJA") (DN 22). Plaintiff seeks approval of attorney's fees in the amount of \$2,212.50 for the time his counsel spent litigating his claim before the Court (DN 22). Plaintiff asks that the payment be directed to his counsel, M. Gail Wilson ("Ms. Wilson") (DN 22). Defendant does not oppose the request for attorney's fees or the amount sought (DN 23).

Pursuant to 28 U.S.C. § 636(c) and Fed.R.Civ.P. 73, the parties have consented to the undersigned United States Magistrate Judge conducting all further proceedings in this case, including issuance of a memorandum opinion and entry of judgment, with direct review by the Sixth Circuit Court of Appeals in the event an appeal is filed (DN 11). This matter is ripe for determination.

FINDINGS OF FACT

On October 2, 2013, Plaintiff filed his complaint seeking judicial review of the final decision of the Commissioner pursuant to 42 U.S.C. § 405(g) (DN 1). Plaintiff filed a fact and law summary (DN 17). Defendant responded by filing a fact and law summary (DN 19). In a memorandum opinion and order, the undersigned reversed the final decision of the Commissioner and, pursuant to sentence four of 42 U.S.C. § 405(g), ordered the case be remanded to allow the Commissioner to conduct further proceedings (DN 20). The final judgment, in favor of Plaintiff, was entered on September 9, 2014 (DN 21).

On October 6, 2014, Plaintiff filed his motion for attorney's fees with the Court (DN 22). He seeks approval of attorney's fees in the amount of \$2,212.50 (DN 22). Plaintiff has submitted an itemization of the services Ms. Wilson provided in the judicial proceedings (DN 22, Attachments 1, 3). Additionally, Plaintiff has submitted an affidavit assigning to Ms. Wilson any right or interest he may have in the award of attorney's fees (DN 21, Attachment 2).

CONCLUSIONS OF LAW

The EAJA allows the award of attorney's fees and other expenses against the government provided that:

- (1) The party seeking such fees is the "prevailing party" in a civil action brought by or against the United States;
- (2) An application for such fees, including an itemized justification for the amount requested, is timely filed within thirty days of final judgment in the action;

(3) The position of the government is not substantially justified;

(4) The party seeking such fees is an individual whose net worth did not exceed \$2,000,000.00 at the time the civil action was filed; and

(5) No special circumstances make an award unjust.

28 U.S.C. §§ 2412(d)(1), (2). The absence of any one of the above factors precludes an award of fees. 28 U.S.C. §§ 2412(d)(1), (2). Here, the Commissioner acknowledges that an award of attorney's fees under § 2412(d) is appropriate (DN 23). The undersigned has reviewed the record and agrees.

Plaintiff seeks an award of attorney's fees in the amount of \$2,212.50 (17.7 hours of work by counsel multiplied by \$125.00 per hour) (DN 22). The Commissioner has not challenged this amount (DN 23). The undersigned has reviewed the supporting documentation submitted by Plaintiff (DN 21, Attachments 1, 3) and concludes that an award of attorney's fees in the amount of \$2,212.50 is appropriate.

ORDER

For the foregoing reasons, **IT IS HEREBY ORDERED** that Plaintiff's motion for attorney's fees (DN 22) is **GRANTED**.

IT IS FURTHER ORDERED that Plaintiff is awarded attorney's fees in the amount of \$2,212.50 (17.7 hours multiplied by \$125.00 per hour).

IT IS FURTHER ORDERED that the Clerk of the Court shall enter the separate judgment in favor of Plaintiff and against the Commissioner in the amount of \$2,212.50 in attorney's fees.



H. Brent Brennenstuhl
United States Magistrate Judge

November 19, 2014

Copies: Counsel