

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LISA MARIE ZIELKE,)
Plaintiff,)
) No. 1:13-cv-1123
-v-)
) Honorable Paul L. Maloney
COMMISSIONER OF SOCIAL SECURITY,)
Defendant.)
)

**ORDER ADOPTING REPORT AND RECOMMENDATION AND GRANTING IN
PART MOTION FOR FEES**

Plaintiff Lisa Marie Zielke filed this action to contest a decision denying her Social Security Disability Benefits. The Court reversed and remanded the matter to the Commissioner under Sentence Four of 42 U.S.C. § 405(g). Counsel was subsequently awarded fees under the Equal Access to Justice Act.

On remand, Zielke was awarded benefits. Counsel then filed a second motion for attorney fees, which is currently pending. (ECF No. 29.) The motion itself is two pages and the brief is one and a half pages. The magistrate judge issued a report recommending the motion be granted in part. (ECF No. 34.) The report and recommendation identified a number of deficiencies in the motion for attorney fees. The report and recommendation directed counsel to do two things: (1) supplement the record with information about fees awarded for work performed by counsel at the administrative agency and (2) serve a copy of the motion and attachments on his client. On the assumption that counsel would follow these directives, the magistrate judge recommended awarding counsel \$8,195.25 in fees (25% of the award of past due benefits to the plaintiff, offset by the \$3,760.00 previously awarded).

The magistrate judge also recommended denying counsel's request for \$4,222.50 (25% of the award of past due benefits for the plaintiff's children). The magistrate judge explained that "counsel has provided no explanation, documentation, or authority for his entitlement to 25% of this award." (ECF No. 34 R&R at 8 PageID.759.)

I.

Counsel filed a lengthy supplement (ECF No. 35), which was mailed to the plaintiff (PageID.778). The supplement fulfills the two directives contained in the report and recommendation. The supplement contains a brief statement indicating that counsel is not requesting fees for work before the administrative agency. (PageID.766.) The supplement functionally reargues, in much greater detail and with developed legal analysis, the original motion for fees. Although counsel did not mail the original motion to the plaintiff--at least counsel has not informed the Court that he did so--by mailing the supplement, counsel accomplished the purpose of the second directive.

II.

The report and recommendation is ripe for consideration by this Court. After being served with a report and recommendation (R&R) issued by a magistrate judge, a party has fourteen days to file written objections to the proposed findings and recommendations. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). A district court judge reviews de novo the portions of the R&R to which objections have been filed. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Only those objections that are specific are entitled to a de novo review under the statute. *Mira v. Marshall*, 806 F.2d 636, 637 (6th Cir. 1986) (per curiam) (holding the district court need not provide de novo review where the objections are frivolous, conclusive or too general

because the burden is on the parties to “pinpoint those portions of the magistrate’s report that the district court must specifically consider”).

The R&R was filed on August 10, 2017. The supplement was mailed to the plaintiff on August 22, 2017. To date this Court has not received any objections from the plaintiff. To date, this Court has not received any objections from plaintiff’s counsel. Should counsel have intended the supplement to serve as an objection, it does not. The supplement did not specifically identify and contest any proposed finding of fact or law contained in the R&R. The supplement does not even mention the R&R. And, like the original motion, the supplement does not provide any “explanation, documentation, or authority” for counsel’s entitlement to 25% of the award for past benefits for the plaintiff’s children.

Accordingly, the Report and Recommendation (ECF No. 34) is **ADOPTED** as the Opinion of this Court. The motion for an award of attorney fees (ECF No. 29) is **GRANTED IN PART**. Counsel is awarded \$8,195.25 in fees.

IT IS SO ORDERED.

Date: October 17, 2017

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge