

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN DIVISION

JANICE FAYE GORE

PLAINTIFF

V.

CIVIL ACTION NO. 1:15CV-155-DAS

COMMISSIONER OF SOCIAL SECURITY

DEFENDANT

ORDER AWARDING ATTORNEY FEES

Before the court is the claimant's motion for payment of attorney's fees pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412. In these proceedings, the claimant sought judicial review of the final decision of the Commissioner of Social Security, denying a claim for benefits. The court remanded this case to the Commissioner for further proceedings. The claimant now seeks attorney fees under the EAJA as the prevailing party, asserting the Commissioner's position was not "substantially justified." By the motion and attached exhibits, the claimant requests an award of \$ 2,000.00 in attorney's fees. The claim is 16 hours of work at \$ 125.00 per hour. The Commissioner has not objected to the motion, except to specify that the fees are payable to the plaintiff, not counsel. *Astrue v. Ratliff*, 560 U.S. 586 (2010).

The EAJA was enacted to provide access to the courts for private parties in litigation with the government who had a valid claim or defense, and to provide that access on an economical basis for the taxpayers. *Commissioner, Immigration and Naturalization Service v. Jean*, 496 U.S. 154, 163, 164 n. 12-14 (2004). As enacted in March, 1996, the statute capped attorneys fees at \$125.00 per hour, unless the court determines that an increase in the cost of living... justifies a higher fee." 28 U.S.C. § 2412 (d)(2)(A) In the twenty-one years since its enactment

there have been substantial increases in the cost of living, such that courts routinely apply cost-of-living increases in establishing maximum rates. In the Fifth Circuit Court of Appeals, the trial courts may increase the maximum hourly rate, but must readjust it on at least an hourly rate. *Perales v. Cassilas*, 950 F.2d 1066, 1076 (5th Cir. 2010)([C]ost-of-living adjustments under the EAJA must be made to reflect the appropriate rate in the years in which the services were rendered *Id.*).

This court routinely grants attorneys fees to successful plaintiffs in Social Security appeals and routinely adjusts the hourly fees awarded to compensate for the increases in the cost of living since the statute's enactment. While the statute does not spell out the manner by which changes in the cost of living shall be calculated, this court uses the Consumer Price Index (CPI) applicable to the South region, which reflects a cost-of-living that is somewhat lower than the nationwide average CPI. The court uses the All Items factors for the All Urban Consumers South.. This index, as of this writing, is found at https://data.bls.gov/pdq/SurveyOutputServlet?series_id=CUUR0300SA0,CUUS0300SA0.

The plaintiff's application includes attorney work in the years 2015, 2016 and 2017. The maximum hourly rate for 2015 is \$ 188.77 per hour. The 2016 maximum hourly rate is \$ 190.86.¹ Because there is neither an annual, nor semi-annual rate currently available for 2017, the court uses the CPI South number for the applicable month, February.

After agreeing with the Commissioner that the itemization of hours is reasonable, the court calculates the fees due under EAJA as follows:

¹ This fee is determined by multiplying \$ 125.00(the 1996 maximum) by 230.147(the annual CPI for 2015), then dividing the product by 152.4, which is the CPI for March 1996, the month the current version EAJA became effective. The 2016 hourly rate is determined the same way, except that the annual CPI factor for that year was 232.692.

<u>Hours Work</u>	<u>Hourly Rate</u>	<u>Total</u>
3.0	\$ 188.77	\$ 566.31
8.5	\$ 190.86	\$ 1,622.31
4.5	\$ 193.61	<u>869.18</u>
Total Fees		\$ 3,057.80

IT IS ORDERED that the claimant's motion for payment of attorney's fees under the EAJA is granted and the defendant is hereby directed to pay \$ 3,057.80 for attorney's fees. While the funds must be made payable to the claimant, the payment shall be sent to the attorney's address.

SO ORDERED this the 23rd day of May , 2017.

s/ David A. Sanders
UNITED STATES MAGISTRATE JUDGE