

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
NORTHERN DIVISION

GENA G. FULLER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 2:12CV56 SNLJ
	)	
CAROLYN W. COLVIN,	)	
Acting Commissioner of Social Security,	)	
	)	
Defendant.	)	

**MEMORANDUM AND ORDER**

This matter is before the Court on plaintiff’s motion for attorney’s fees pursuant to 42 U.S.C. § 406(b). As a result of a favorable decision, plaintiff was found to be entitled to retroactive benefits including attorney’s fees in the amount of \$15,075.00, which have been withheld from plaintiff’s retroactive benefits. Plaintiff’s attorney has been awarded a fee in the amount of \$10,000.00 and now seeks the remaining portion of the withheld benefits for attorney’s fees in the sum of \$5075.00. This Court previously awarded plaintiff’s attorney \$2695.74 in attorney’s fees under the Equal Access to Justice Act (EAJA).

Defendant has no objection to the award of attorney’s fees under 42 U.S.C. § 406(b) in the amount of \$5075.00, but requests that the Court order plaintiff’s attorney to reimburse plaintiff for the \$2695.74 previously awarded in EAJA fees. The Court agrees with defendant. Plaintiff’s counsel may not profit twice for the same work, he must refund to plaintiff the \$2695.74 received pursuant to the EAJA. “Attorneys are entitled to

fees under the EAJA, which provides that a party prevailing against the United States in court, including a successful Social Security benefits claimant, may be awarded fees payable by the United States if the Government's position in the litigation was not substantially justified." *Chatman v. Astrue*, 2:05CV11 TIA, 2009 WL 2382331, at \*1 (E.D.Mo. July 30, 2009) (quoting *Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002)) (internal quotation marks omitted). "An attorney may receive fees under both § 406(b) and the EAJA, but must refund the smaller of the two fees to the plaintiff." *Id.* Because plaintiff was previously awarded \$2695.74 in attorney's fees under the EAJA, he must refund that amount to plaintiff.

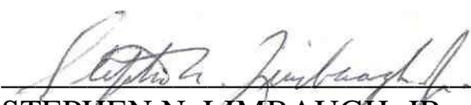
Accordingly,

**IT IS HEREBY ORDERED** that pursuant to 42 U.S.C. § 406(b), plaintiff's attorney is awarded attorney's fees in the amount of \$5075.00.

**IT IS FURTHER ORDERED** that defendant shall pay the attorney's fees in the amount of \$5075.00, paid directly to plaintiff's attorney, Frank T. Koch of Harlan, Harlan & Still. The payment shall be mailed to plaintiff's attorney, Frank T. Koch, Harlan, Harlan & Still, 515 Cherry Street, Suite 300, P.O. Box 933, Columbia, Missouri 65205.

**IT IS FINALLY ORDERED** that plaintiff's attorney shall reimburse plaintiff for the \$2695.74 previously awarded in EAJA fees.

Dated this 23rd day of May, 2016.

  
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STEPHEN N. LIMBAUGH, JR.  
UNITED STATES DISTRICT JUDGE