

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

JOHN CHRISTOPHER BLECHA,)	
)	
Plaintiff,)	
)	
v.)	No. 4:15-CV-1784 CAS
)	
NANCY BERRYHILL,)	
Acting Commissioner of Social Security,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

This matter is before the Court on plaintiff’s Application for Award of Attorney’s Fees pursuant to the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412(d)(1)(B). Plaintiff seeks attorney’s fees in the amount of \$6,380.80, which amount is based on multiplying 32.6 hours of attorney time by a rate of \$195.73 per hour. Defendant filed a response which states that it does not object to plaintiff’s request for attorney fees under the EAJA in the amount of \$6,380.80, which should be made payable directly to plaintiff pursuant to Astrue v. Ratliff, 130 S. Ct. 2521, 2552-53 (2010).

The Court has reviewed plaintiff’s application for an award of fees and expenses under the EAJA, and concludes the statutory requirements are met. By Order and Judgment of Remand dated March 8, 2017, this Court remanded this case to defendant Commissioner for further proceedings pursuant to sentence four of 42 U.S.C. § 405(g). A claimant seeking judicial review of a final decision denying Social Security disability benefits may recover attorney’s fees if he or she receives a “sentence four” remand. See Shalala v. Schaefer, 509 U.S. 292, 295-96 (1993).

Attorney’s fees may not be awarded in excess of \$125.00 per hour – the maximum statutory rate under § 2412(d)(2)(A) – unless the Court finds that an increase in the cost of living or a special factor such as the limited availability of qualified attorneys justifies a higher fee. 28 U.S.C. § 2412(d)(2)(A). The decision to increase the hourly rate is not automatic and remains at the discretion of the district court. McNulty v. Sullivan, 886 F.2d 1074 (8th Cir. 1989). The hourly rate

should be increased, however, where there is “uncontested proof of an increase in the cost of living sufficient to justify hourly attorney’s fees of more than [\$125] per hour,” such as the Consumer Price Index. Johnson v. Sullivan, 919 F.2d 503, 504, 505 (8th Cir. 1990). In this case, counsel has referenced the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index available at <http://www.bls.gov/news.release/cpi/> and presented uncontested evidence of an increase in the cost of living. The Court agrees with counsel that a cost of living increase is appropriate as requested.

Additionally, counsel has attached affidavits of attorneys Martin Carrow and Michael Ferry. Both attorneys represent social security claimants in similar matters. Mr. Carrow states that he charges a reasonable market rate of \$250.00 per hour for his work. He states that his hourly rate is common practice for this region. Mr. Ferry states that as the Executive Director of Gateway Legal Services, Inc., he represents social security claimants in both Missouri and Southern Illinois. He states that he charges a reasonable market rate of \$325.00 per hour or more for his work. Plaintiff’s attorney has produced sufficient evidence that the hourly rate she requests, \$195.73, is in line with or lower than those prevailing in this legal community for similar services by lawyers of comparable skill and expertise. The Court finds an hourly fee of \$195.73 to be a reasonable fee under 28 U.S.C. § 2412(d)(2)(A).

Because plaintiff prevailed and is not otherwise precluded from receiving attorney’s fees, the Court finds that he is entitled to attorney’s fees in the amount of \$6,380.80.

Accordingly,

IT IS HEREBY ORDERED that plaintiff’s application for attorney’s fees and costs under the Equal Access to Justice Act is **GRANTED**. [Doc. 30]

IT IS FURTHER ORDERED that defendant Commissioner of Social Security shall pay attorney's fees under the EAJA in the amount of Six Thousand Three Hundred Eighty Dollars and Eighty Cents (\$6,380.80), and that the award shall be made payable to plaintiff.

A handwritten signature in cursive script, reading "Charles A. Shaw". The signature is written in black ink and is positioned above a horizontal line.

CHARLES A. SHAW
UNITED STATES DISTRICT JUDGE

Dated this 31st day of August, 2017.