Serini, Jr. v. Berryhill Doc. 32

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

CHARLES G. SERINI, JR.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 2:16-04230-CV-RK
	)	
	)	
NANCY A. BERRYHILL,	)	
	)	
	)	
Defendant.	)	

ORDER GRANTING PLAINTIFF'S APPLICATION FOR ATTORNEY
FEES UNDER THE EQUAL ACCESS TO JUSTICE ACT

Now pending before the Court is Plaintiff's Application for Attorney Fees under 42 U.S.C. § 406(b). (Doc. 29.) Defendant has no objection to Plaintiff's request for attorney fees (Doc. 31.)

Pursuant to 42 U.S.C. § 406(b), the Court may award attorney's fees to a successful claimant's counsel for worked performed before the Court in a "reasonable" amount, not to exceed twenty-five percent of the total past due benefits awarded to the claimant. These fees are awarded from the past due benefits awarded to the claimant and are withheld from the claimant by the Commissioner. *Id.* However, an attorney cannot collect fees under both 406(b) and the Equal Access to Justice Act ("EAJA"). Rather, upon receipt of 406(b) fees, counsel must refund the smaller of the two fees to Plaintiff. *See* Pub. L. No. 99-80, § 3, 99 Stat. 186. In this case, the Court awarded Plaintiff $4,083.42 in EAJA fees. (Doc. 28.)

Accordingly, it is ORDERED that Plaintiff is awarded attorney's fees in the amount of $11,674.25 pursuant to 42 U.S.C. § 406(b). However, it is further ORDERED that Plaintiff's counsel refund the entire EAJA fee to Plaintiff.

IT IS SO ORDERED.

s/ Roseann A. Ketchmark
ROSEANN A. KETCHMARK, JUDGE
UNITED STATES DISTRICT COURT

DATED: February 25, 2020

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