

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

RIXEY M. MARTINEZ,

Plaintiff,

v.

No. CIV-15-0645 LAM

**NANCY A. BERRYHILL, Acting Commissioner
of the Social Security Administration,**

Defendant.

**ORDER GRANTING UNOPPOSED MOTION FOR ATTORNEY FEES
UNDER THE EQUAL ACCESS TO JUSTICE ACT**

THIS MATTER is before the Court on Plaintiff's *Unopposed Motion for Attorney Fees Pursuant to the Equal Access to Justice Act* (Doc. 32), filed on March 3, 2017, wherein Plaintiff asks for an award of **\$5,088.84** in attorney fees. Having considered the motion, the record in this case, and relevant law, the Court **FINDS** that the motion shall be **GRANTED**.

IT IS THEREFORE ORDERED that Plaintiff's *Unopposed Motion for Attorney Fees Pursuant to the Equal Access to Justice Act* (Doc. 32) is **GRANTED**, and Plaintiff is authorized to receive **\$5,088.84** in attorney fees for payment to Plaintiff's attorney for services before this Court, as permitted by the Equal Access to Justice Act, 28 U.S.C. § 2412, and in accordance with *Manning v. Astrue*, 510 F.3d 1246, 1255 (10th Cir. 2007).

IT IS FURTHER ORDERED that, if Plaintiff's counsel is ultimately granted attorney fees pursuant to 42 U.S.C. § 406(b) of the Social Security Act, Plaintiff's attorney shall refund the smaller award to Plaintiff pursuant to *Astrue v. Ratliff*, 560 U.S. 586, 596 n.4 (2010) (explaining that, if a claimant's counsel is ultimately granted attorney fees under § 406(b) out of

the claimant's benefit award, the claimant's attorney must refund to the claimant the amount of the smaller fee).

IT IS SO ORDERED.

Lourdes A. Martinez
LOURDES A. MARTÍNEZ
UNITED STATES MAGISTRATE JUDGE
Presiding by Consent