

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

**JINA YVONNE MCDANIEL,**

**Plaintiff,**

vs.

**Civil No.**

**16-496 KRS**

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

**Defendant.**

**ORDER FOR THE AWARD OF ATTORNEY FEES  
PURSUANT TO THE EQUAL ACCESS TO JUSTICE ACT, 28 U.S.C. § 2412(d)**

**THIS MATTER** is before the Court on Plaintiff's Motion for Attorney Fees Pursuant to the Equal Access to Justice Act, with Memorandum in Support [Doc. 32], filed on August 31, 2017. Defendant does not object to the amount of EAJA fees requested. [Doc. 33] The Court being otherwise fully advised in the premises, **FINDS** that the motion is well-taken and will be **GRANTED**.

**IT IS THEREFORE ORDERED** that the motion is **GRANTED**, and **Plaintiff is awarded \$6,523.30 in attorney fees** pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d). See Astrue v. Ratliff, 560 U.S. 586, 591-93 (2010) (EAJA fees are paid to the prevailing party, not the attorney).

Payment of this amount shall constitute a complete release from and bar to any and all claims Plaintiff may have relating to EAJA fees in connection with this action. The parties further agree that the EAJA award is without prejudice to Plaintiff's attorney's right to seek attorney fees pursuant to Social Security Act § 206(b), 42 U.S.C. § 406(b), subject to the offset provisions of the EAJA. See 28 U.S.C. § 2412(c)(1) (2006).

**IT IS FURTHER ORDERED** that, if Plaintiff's counsel receives attorney fees under both the EAJA and 42 U.S.C. § 406(b) of the Social Security Act, Plaintiff's counsel shall refund the smaller award to Plaintiff pursuant to Weakley v. Bowen, 803 F.2d 575, 580 (10th Cir. 1986).



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KEVIN R. SWEAZEA  
UNITED STATES MAGISTRATE JUDGE