

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

LINDA GARCIA SANCHEZ,

Plaintiff,

vs.

Civil No. 16-1126 KRS

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

Defendant.

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

THIS MATTER is before the Court on Motion for Attorney Fees and Costs Pursuant to the Equal Access to Justice Act filed on September 25, 2017. [Doc. 29]. Defendant does not object to Plaintiff's request for fees and costs. 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 \$7,089.20 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). Plaintiff is also awarded \$400.00 in costs, pursuant to 28 U.S.C. § 2412(a)(1),¹ which are paid from the Judgment Fund.

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 42 U.S.C. § 406(b), subject to the offset provisions of the EAJA. *See*

¹ The Court notes that 28 U.S.C. § 2412 authorizes costs, not 28 U.S.C. § 1920 as Plaintiff suggests. For purposes of EAJA, Section 1920 serves only to enumerate the types of allowable costs.

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).



KEVIN R. SWEAZEA
UNITED STATES MAGISTRATE JUDGE