

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

JAMES A. WILBUR,

Plaintiff,

versus

CAROLYN W. COLVIN,
Acting Commissioner of
Social Security,

Defendant.

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CIVIL ACTION NO. 5:13-110

**ORDER AWARDING ATTORNEY’S FEES UNDER THE
EQUAL ACCESS TO JUSTICE ACT, 28 U.S.C. § 2412(d)**

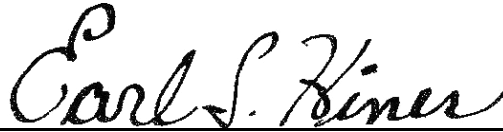
Before the court is plaintiff’s request for attorney’s fees under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d), in the amount of \$8,106.47. (Dkt. No. 18). The Commissioner stipulated that such amount represents a reasonable award for fees, costs, and other expenses (Dkt. No. 18), but recently submitted a letter (Dkt. No. 24) stating that plaintiff’s counsel’s time records may not have been created and maintained contemporaneously. The Commissioner further cites cases involving *contested* EAJA fee applications wherein courts concluded that contemporaneous time records are prerequisites. (Dkt. No. 24).

EAJA authorizes courts to award *reasonable* attorney fees and expenses to successful litigants against the United States. *See* 28 U.S.C. §§ 2412(d)(1)(A), 2412(d)(2)(A). When, as here, the government stipulates that a requested fee award is reasonable, and the requested fee is not conspicuously excessive in relation to typical awards in similar cases, lack of proof of contemporaneous time records is not fatal to the application. It is, therefore,

ORDERED that the Consent Order for Payment of Attorney Fees Under EAJA (Dkt. No. 18) is **GRANTED**, and Plaintiff is awarded EAJA fees in the amount of \$8,106.47, in full satisfaction of all claims.

It further **ORDERED** that Defendant shall make plaintiff the payee on the check. *See Astrue v. Ratliff*, 560 U.S. 586, 593 (2010). Defendant shall, however, transmit the check to plaintiff's attorney, Howard D. Olinsky, Esq., to enable his enforcement of nonstatutory (contractual and other assignment-based) rights that confer upon him entitlement to payment of such fee.

SIGNED this 5 day of June , 2015.

A handwritten signature in black ink that reads "Earl S. Hines". The signature is written in a cursive style with a large initial "E".

Earl S. Hines
United States Magistrate Judge