

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
No. 7:09-CV-187-D

NATIVE ANGELS HOME CARE)
AGENCY, INC.,)
)
Plaintiff,)
)
v.)
)
KATHLEEN SEBELIUS,)
)
Defendant.)

ORDER

On May 25, 2011, Native Angels Homecare Agency, Inc., (“Native Angels”) filed a motion for an award of attorneys’ fees and costs pursuant to the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412(d) [D.E. 34]. On August 29, 2011, this court referred the motion to Magistrate Judge Webb for a memorandum and recommendation [D.E. 40]. On September 22, 2011, Magistrate Judge Webb entered his memorandum and recommendation (“M&R”) [D.E. 41] and recommended that the court grant Native Angels’ motion for attorney’s fees and award Native Angels \$61,326.25 in attorney’s fees and \$9,981.41 in costs. Magistrate Judge Webb also directed the parties to submit evidence of the prevailing hourly rate for paralegal services so that he could recommend an additional award for 80.9 hours of paralegal services.

The parties complied with Magistrate Judge Webb’s order and submitted additional evidence on the prevailing hourly rate for paralegal services [D.E. 42, D.E. 43, D.E. 44]. On October 26, 2011, Magistrate Judge Webb amended the M&R to recommend an additional award in the amount of \$8,933.79 for the 80.9 hours of paralegal services performed [D.E. 47].

On October 6, 2011, defendant filed an objection “limited to a single sentence” in the September 21, 2011 M&R relating to defendant’s request to offset any attorney fee award against debts Native Angels may have with defendant [D.E.45]. Defendant’s objection focuses on the following

sentence in the M&R: “The undersigned moreover rejects the Secretary’s contention that any award of attorney fees should be withheld to offset Native Angels’ outstanding federal debt.” M&R 13. The Secretary objects to this sentence to the extent that it seeks to enjoin offset by the United States. See Def.’s Obj. to M&R 7.

“The Federal Magistrates Act requires a district court to make a de novo determination of those portions of the [magistrate judge’s] report or specified proposed findings or recommendations to which objection is made.” Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005) (alteration in original) (emphasis removed) (quotation omitted). Absent a timely objection, “a district court need not conduct a de novo review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Id. (quotation omitted).

The court has reviewed the M&R and the record. As for those portions of the M&R to which defendant did not object, the court is satisfied that there is no clear error on the face of the record and the court adopts the M&R. As for the objection, the court has reviewed the objection and the M&R de novo.

In defendant’s response to Native Angels’s motion for attorney’s fees and costs, defendant intimated that the court should offset any EAJA award against any debt owed by Native Angels to the federal government. See Def.’s Resp. 11–12 [D.E. 37]. However, defendant now appears to concede that this court need not determine any offset. See Def.’s Obj. to M&R [D.E. 45]. After reviewing the record and governing law, the court concludes that any purported offset is not germane to this court’s decision to award attorneys’ fees and costs in this case to Native Angels under the EAJA.

Accordingly, the court overrules defendant’s objection [D.E. 45] and adopts the M&R (as amended) [D.E. 41, 47]. In accordance with the M&R (as amended), Native Angels is awarded \$61,326.25 in attorney’s fees, \$8,933.79 in attorney’s fees based on paralegal services, and \$9,981.41 in costs. Thus, the total award is \$80,241.45

SO ORDERED. This 29 day of November 2011.



JAMES C. DEVER III
Chief United States District Judge