

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
NO. 1:16-cv-386-GCM**

FRANKLIN ANTHONY OLIVER,

Plaintiff,

v.

NANCY A. BERRYHILL,
Acting Commissioner of Social Security,

Defendant.

ORDER

THIS MATTER is before the Court on the Motion for Attorney Fees filed by Plaintiff on July 17, 2018. (Doc. No. 12). Defendant has advised that it has no objection to this Motion.

Pursuant to the Equal Access to Justice Act, a prevailing party may be awarded a judgment for costs. 28 U.S.C. § 2412(a)(1). Further, a prevailing party is entitled to fees and other expenses “unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.” 28 U.S.C. § 2412(d)(1)(A). “[A]ttorney fees shall not be awarded in excess of \$125 per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee.” 28 U.S.C. § 2412(d)(2)(A).

Here, the Court finds, and the Government does not dispute, that the position of the United States was not substantially justified in this matter. The Court further finds that the living expenses and particular qualifications of Plaintiff’s attorney justify an increase in the hourly rate of attorney fees.

IT IS THEREFORE ORDERED that the Plaintiff's Motion for Attorney Fees (Doc. No. 12) is **GRANTED**, to the extent that the Court will award attorney fees in the amount of \$3,825.74, and that pursuant to *Astrue v. Ratliff*, 560 U.S. 586 (2010), the fee award will first be subject to offset of any debt Plaintiff may owe to the United States. The Commissioner will determine whether Plaintiff owes a debt to the United States. If so, the debt will be satisfied first, and if any funds remain, they will be made payable to Plaintiff and mailed to Plaintiff's counsel. If the Commissioner determines that the Plaintiff does not owe a federal debt, the full amount will be made payable to Plaintiff's counsel consistent with Plaintiff's assignment of said fee to his attorney. Plaintiff shall also be paid \$400.00 in costs from the U.S. Department of the Treasury pursuant to 28 U.S.C. § 2412(a)(1).

SO ORDERED.

Signed: August 27, 2018



Graham C. Mullen
United States District Judge

