## UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF OHIO WESTERN DIVISION AT DAYTON

JULIE L. VORWERCK, : Case No. 3:15-cv-345

:

Plaintiff, : Magistrate Judge Sharon L. Ovington

: (by full consent of the parties)

VS.

:

COMMISSIONER OF THE SOCIAL

SECURITY ADMINISTRATION,

:

Defendant. :

## **DECISION AND ENTRY**

This case is before the Court upon Plaintiff's Motion for Attorney Fees Pursuant to 42 U.S.C. § 406(b)(1) (Doc. #19) and Defendant's Response (Doc. #20).

The Motion seeks an award of attorney fees under 42 U.S.C. § 406(b)(1) in the total amount of \$22,580.75. The Commissioner does not object to this amount. In the absence of opposition by the Commissioner, the Motion and supporting Exhibits establish that an award of attorney fees is reasonable and warranted under 42 U.S.C. § 406(b)(1) in the amount Plaintiff's counsel seeks.

In addition, the Court previously accepted the parties' stipulation to an award of \$6,000.00 in attorney fees to Plaintiff's counsel under the Equal Access to Justice Act (EAJA).<sup>1</sup> (Doc. #18). In Plaintiff's previous case, the Court likewise accepted the parties' stipulation to an EAJA award of \$4,350.00 in attorney fees to Plaintiff's counsel

<sup>&</sup>lt;sup>1</sup> The parties also stipulated to \$400.00 in costs.

under the EAJA. See Vorwerck v. Comm'r of Soc. Sec., case no. 3:11-cv-375, Notation

Order approving Doc. #20 (S.D. Ohio July 8, 2013). Both EAJA awards, however, were

subject to offset in the amount of any debt Plaintiff owed the Government. See id.; Doc.

#18. The current record indicates that Plaintiff's attorney received EAJA fees in the total

amount of \$10,350.00. (Doc. #19-4). Counsel may not recover attorney fees under both

the EAJA and 42 U.S.C. § 406(b) for the same work. Therefore, Plaintiff's counsel must

return to Plaintiff the previously awarded EAJA fees in the amount of \$10,350.00. See

Gisbrecht v. Barnhart, 535 U.S. 789, 796 (2002).

IT IS THEREFORE ORDERED THAT:

1. The Motion for Attorney Fees filed by Plaintiff's attorney (Doc.

#19) is GRANTED;

2. The Commissioner shall pay Plaintiff's attorney fees pursuant to 42

U.S.C. § 406(b)(1) in the amount of \$22,580.75;

3. Plaintiff's counsel shall refund to Plaintiff the amount of attorney

fees, if any, he has actually received under the Equal Access to

Justice Act; and

4. The case remains terminated on the docket of this Court.

IT IS SO ORDERED.

Date: 10/22/2018 s/Sharon L. Ovington

Sharon L. Ovington

United States Magistrate Judge

2