

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

|                            |   |                                     |
|----------------------------|---|-------------------------------------|
| TED ALLEN,                 | : | Case No. 3:16-cv-474                |
|                            | : |                                     |
| Plaintiff,                 | : | District Judge Walter H. Rice       |
|                            | : | Magistrate Judge Sharon L. Ovington |
| vs.                        | : |                                     |
|                            | : |                                     |
| COMMISSIONER OF THE SOCIAL | : |                                     |
| SECURITY ADMINISTRATION,   | : |                                     |
|                            | : |                                     |
| Defendant.                 | : |                                     |

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**DECISION AND ENTRY**

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This case is before the Court upon Plaintiff’s Motion for Allowance of Attorney Fees (Doc. #15). The Commissioner has neither responded to nor opposed this Motion.

The Motion seeks an award of attorney fees under 42 U.S.C. § 406(b)(1) in the total amount of \$11,962.50. 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 the Motion seeks.

In addition, the Court previously accepted the parties’ stipulation to an award of \$3,800.00 in attorney fees to Plaintiff’s counsel under the Equal Access to Justice Act (EAJA). (Doc. #s 13-14). The EAJA award, however, was subject to offset in the amount of any debt Plaintiff owed the Government. *See* Doc. #14. Plaintiff’s counsel indicates that her office received the EAJA fee on March 5, 2018. Counsel may not recover attorney fees under both the EAJA and 42 U.S.C. § 406(b) for the same work.

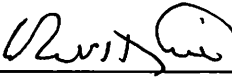
Plaintiff's counsel must therefore return to Plaintiff the amount of EAJA fees she has actually received. *See Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002).

**IT IS THEREFORE ORDERED THAT:**

1. The Motion for Allowance of Attorney Fees filed by Plaintiff's attorney (Doc. #15) is GRANTED;
2. The Commissioner shall pay Plaintiff's attorney fees pursuant to 42 U.S.C. § 406(b)(1) in the amount of \$11,962.50;
3. Plaintiff's counsel shall refund to Plaintiff the amount of attorney fees she has actually received under the Equal Access to Justice Act (Doc. #14); and
4. The case remains terminated on the docket of this Court.

**IT IS SO ORDERED.**

Date: 5.3.19

  
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Walter H. Rice  
United States District Judge