

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF OKLAHOMA

ELANE M. FIELDS, )
Plaintiff, )
v. ) No. CIV-07-395-FHS-KEW
MICHAEL ASTRUE, Commissioner )
Social Security Administration )
Defendant. )

OPINION AND ORDER

Before the Court for its consideration is Plaintiff's Counsel's Motion for Relief Pursuant to Fed.R.Civ.P. 60(b)(6)(Dkt. No. 22) filed on May 11, 2011. Plaintiff's counsel seeks relief which would allow him to file his motion for attorney fees under 42 U.S.C. § 406(b)(1) within sixty days following his receipt of a Notice of Award issued by the Social Security Administration. The Court finds Plaintiff's counsel is entitled to the requested relief.

Attorney fees are awardable under 42 U.S.C. § 406(b)(1) when a social security claimant is awarded disability benefits following a remand from a federal district court. McGraw v. Barnhart, 450 F.3d 493, 496 (10th Cir. 2006). In such circumstances, the fourteen-day period running from the date of judgment under Fed.R.Civ.P. 54(d)(2)(B)(i) will have expired and claimants, such as Plaintiff and her counsel herein, rely on Fed.R.Civ.P. 60(b)(6) to seek such fees well after the expiration of the fourteen-day period. Id. at 505. The McGraw Court noted,

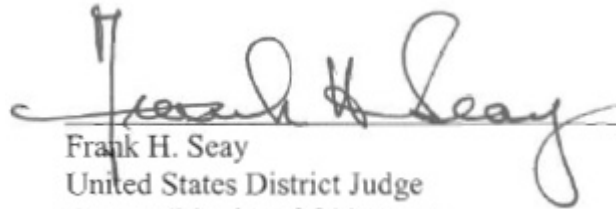
however, that “[a] motion for an award of fees under § 406(b)(1) should be filed within a reasonable time of the Commissioner’s decision awarding benefits.” Id.

On February 10, 2009, this Court remanded this action to the Commissioner for further administrative action pursuant to sentence four of 42 U.S.C. § 405(g). On or about May 3, 2011, Plaintiff and her counsel received notification of a favorable decision from the Administrative Law Judge determining her to be disabled since February 24, 2004. Plaintiff’s counsel filed the instant motion seeking relief under Fed.R.Civ.P. 60(b)(6) eight days later on May 11, 2011. According to Plaintiff’s counsel, the amount of retroactive benefits awardable to Plaintiff has not been calculated and a Notice of Award has not been issued by the Commissioner. Under these circumstances, the Court finds it appropriate to authorize Plaintiff’s counsel to file his § 406(b)(1) motion for attorney fees following his receipt of a Notice of Award containing the calculation of past-due benefits. The “decision awarding benefits” language referenced by the McGraw Court necessarily includes not only the favorable decision on disability, but the actual award of past-due benefits. Thus, Plaintiff’s counsel is entitled to file his motion for attorney fees within a reasonable time of the receipt of the Notice of Award.

Plaintiff’s Counsel’s Motion for Relief Pursuant to Fed.R.Civ.P. 60(b)(6) (Dkt. No. 22) is granted and Plaintiff’s counsel is authorized to file his motion for attorney fees under § 406(b)(1) within sixty days of his receipt of the Notice of

Award containing the calculation of Plaintiff's past-due benefits.

It is so ordered this 26th day of May, 2011.



Frank H. Seay  
United States District Judge  
Eastern District of Oklahoma