

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

CHARLES L. HARVEY,)
)
 Plaintiff,)
)
 v.)
)
 MICHAEL J. ASTRUE,)
 Commissioner of the Social)
 Security Administration,)
)
 Defendant.)

Case No. CIV-10-393-SPS

**OPINION AND ORDER AWARDING
ATTORNEY’S FEES TO THE PLAINTIFF UNDER THE EAJA**

Plaintiff Charles L. Harvey was the prevailing party in this action under the Social Security Act. Plaintiff seeks an award of attorney and paralegal fees in the amount of \$7,463.60, pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d). The Commissioner does not object to the fee award, but argues that the Plaintiff is only entitled to \$7,462.70 when properly calculating the hourly rate for 2012.¹


Upon review of the record herein, the Court finds that \$7,462.70 is reasonable and that the Commissioner should be ordered to pay it to the Plaintiff as the prevailing party herein. *See* 28 U.S.C. § 2412(d)(1)(A) (“Except as otherwise specifically provided by statute, a court shall award to a prevailing party other than the United States fees and other expenses, in addition to any costs awarded pursuant to subsection (a), incurred by

¹ The Commissioner’s Region IV Office of the General Counsel bases the updated hourly rate on the January 2012 CPI-U, which results in an hourly rate of \$182, rather than the February 2012 CPI-U that was used by the Plaintiff, which would result in an hourly rate of \$183. This results in a total difference of \$0.90 for the .9 hours Plaintiff’s counsel worked in 2012.

that party in any civil action (other than cases sounding in tort)[.]”); *see also Manning v. Astrue*, 510 F.3d 1246, 1251 (10th Cir. 2007) (“The EAJA therefore permits attorney’s fees reimbursement to financially eligible prevailing parties, who make a proper application, and not to their attorneys.”).

Accordingly, IT IS ORDERED that the Plaintiff’s Application for Award of Attorney’s Fees Pursuant to the Equal Access to Justice Act 28 U.S.C. § 2412 [Docket No. 23] is hereby granted and that the Government is hereby ordered to pay \$7,462.70 to the Plaintiff as the prevailing party herein. IT IS FURTHER ORDERED that if the Plaintiff’s attorney is subsequently awarded any fees pursuant to 42 U.S.C. § 406(b)(1), said attorney shall refund the smaller amount of such fees to the Plaintiff pursuant to *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986).

DATED this 4th day of May, 2012.



Steven P. Shreder
United States Magistrate Judge
Eastern District of Oklahoma