

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

ADRIAN C. RANEY,)
SSN:XXX-XX-7472)
Plaintiff,)
v.) No. CIV-10-399-FHS-SPS
CAROLYN W. COLVIN, 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. 26) filed on April 9, 2013. 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

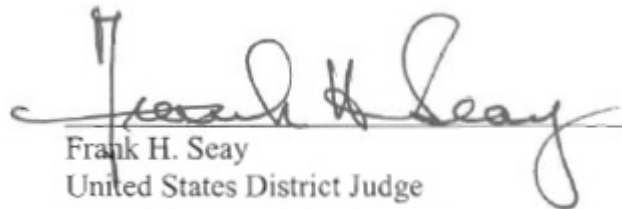
of the fourteen-day period. Id. at 505. The McGraw Court noted, however, that “[a] motion for an award of fees under § 406(b)(1) should be filed within a reasonable time of the Commissioner’s decision awarding benefits.” Id.

On March 28, 2012, 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 March 4, 2013, Plaintiff and her counsel received notification of a partially favorable decision from the Administrative Law Judge. Plaintiff’s counsel filed the first motion seeking relief under Fed.R.Civ.P. 60(b)(6) 24 days later on March 28, 2013.¹ 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.

¹Plaintiff filed its first Motion for Relief Pursuant to Fed.R.Civ.P. 60 (b)(6) on March 28, 2013. Plaintiff had to file an Amended version of this motion on April 9, 2013 because plaintiff had erroneously attached the wrong ALJ decision.

Plaintiff's Counsel's Motion for Relief Pursuant to Fed.R.Civ.P. 60(b)(6) (Dkt. No. 26) 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 23th day of April 2013.



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