IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON

BELINDA GOULART.

Plaintiff,

v.

CAROLYN W. COLVIN,

Commissioner of Social Security,

Defendant.

Case No. 3:12-cv-0427-SI (Ninth Cir. No. 13-35754)

ORDER

Michael H. Simon, District Judge.

Before the Court is Plaintiff's unopposed application for attorney's fees pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412. Dkt. 45. The EAJA authorizes the payment of attorney's fees to a prevailing party in an action against the United States, unless the government shows that its position in the underlying litigation "was substantially justified." 28 U.S.C. § 2412(d)(1)(A). Although the EAJA creates a presumption that fees will be awarded to a prevailing party, Congress did not intend fee shifting to be mandatory. Flores v. Shalala, 49 F.3d 562, 567 (9th Cir. 1995). The decision to deny EAJA attorney's fees is within the discretion of

¹ This motion represents a settlement reached by the parties. Accordingly, Plaintiff's original motion, Dkt. 33, is denied as moot.

the court. Id.; Lewis v. Barnhart, 281 F.3d 1081, 1083 (9th Cir. 2002). A social security claimant

is the "prevailing party" following a sentence-four remand pursuant to 42 U.S.C. § 405(g) either

for further administrative proceedings or for the payment of benefits. Flores, 49 F.3d at 567-68

(citing Shalala v. Schaefer, 509 U.S. 292, 300 (1993)). Fee awards under the EAJA are paid to

the litigant, and not the litigant's attorney, unless the litigant has assigned his or her rights to

counsel to receive the fee award. Astrue v. Ratliff, 560 U.S. 586, 596-98 (2010).

Plaintiff seeks an award of attorney's fees in the amount of \$14,999. This represents a

settlement amount reached between the parties and Defendant does not oppose Plaintiff's

motion. The Court has reviewed Plaintiff's motion and agrees with the parties that the EAJA

petition is proper and the amount requested is reasonable.

Plaintiff's stipulated application for attorney's fees (Dkt. 45) is GRANTED. Plaintiff's

original application for attorney's fees (Dkt. 33) is DENIED AS MOOT. Plaintiff is

awarded \$14,999 for attorney's fees under 28 U.S.C. § 2412. EAJA fees are subject to any

offsets allowed under the Treasury Offset Program, as discussed in Ratliff, 560 U.S. at 593-94.

Because Plaintiff has filed with the Court an assignment of EAJA fees to counsel, if Plaintiff has

no debt subject to the Treasury Offset Program, then Defendant shall cause the check to be made

payable to Plaintiff's attorney and mailed to Plaintiff's attorney. If Plaintiff owes a debt subject

to the Treasury Offset Program, then the check for any remaining funds after offset of the debt

shall be payable to Plaintiff and mailed to Plaintiff's attorney.

IT IS SO ORDERED.

DATED this 20th day of November, 2015.

/s/ Michael H. Simon

Michael H. Simon

United States District Judge

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