

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

STEVEN F.,¹

No. 3:17-CV-296-PK

Plaintiff,

ORDER

v.

NANCY BERRYHILL,

Defendant.

HERNÁNDEZ, District Judge:

Magistrate Judge Papak issued a Findings and Recommendation [31] on September 17, 2018, in which he recommends the Court grant Plaintiff's Unopposed Motion for Attorney Fees

¹ In the interest of privacy, this order uses only the first name and the initial of the last name of the non-governmental party or parties in this case.

per 42 U.S.C. § 406(b) [30] in the amount of \$698.74. The matter is now before the Court pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b).

Because no objections to the Magistrate Judge's Findings and Recommendation were timely filed, I am relieved of my obligation to review the record de novo. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc); see also *United States v. Bernhardt*, 840 F.2d 1441, 1444 (9th Cir. 1988) (de novo review required only for portions of the Magistrate Judge's report to which objections have been made). Having reviewed the legal principles de novo, I decline to adopt the Magistrate Judge's Findings and Recommendation.

Plaintiff seeks an award of fees pursuant to 42 U.S.C. § 406(b). Defendant has no objection to the request. I have reviewed the Findings and Recommendation, in which the Magistrate Judge assesses the record, the motion, and the supporting materials including the award of benefits, the fee agreement with counsel, and the recitation of counsel's hours and services.

The Magistrate Judge deducted \$235.89 from the award of fees on the basis of attorney attributable delay. I decline to adopt that reasoning. Applying the standards set by *Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002), I find the requested fees are reasonable and grant Plaintiff's motion in full.

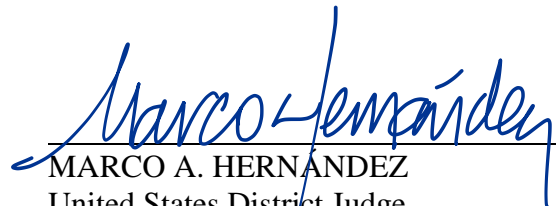
CONCLUSION

Plaintiff's motion [30] is granted, and Plaintiff's counsel is awarded \$7,901 in attorney's fees under 42 U.S.C. § 406(b). Previously, Judge Papak awarded Plaintiff attorney's fees in the amount of \$6,966.37 under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412. When issuing the section 406(b) check for payment to Plaintiff's attorney, the Commissioner is directed to subtract the amount previously awarded under EAJA and send Plaintiff's attorney the balance

of \$934.63, less any applicable processing or user fees prescribed by statute. Any amount withheld after all administrative and court attorney's fees are paid should be released to the claimant.

IT IS SO ORDERED.

DATED this 14 day of November, 2018.



MARCO A. HERNANDEZ
United States District Judge