

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Sami Holcombe Haire,)	Civil Action No.: 4:13-2725-BHH
)	
Plaintiff,)	
)	
v.)	<u>ORDER</u>
)	
Carolyn Colvin, Acting Commissioner of Social Security,)	
)	
Defendant.)	
_____)	

On April 22, 2016, Paul T. McChesney (“McChesney”), counsel for Plaintiff Sami Holcombe Haire (“Plaintiff”), filed a motion for attorney’s fees pursuant to 42 U.S.C. § 406(b). (ECF No. 35). In the motion, McChesney requests reimbursement for representation provided in the above-referenced case in the amount \$24,150.68. *Id.*

As required by 42 U.S.C. § 406(b), the amount requested by counsel is not greater than twenty-five percent (25%) of the past-due benefits recovered by Plaintiff. Counsel for the Acting Commissioner of Social Security (“Commissioner”) filed a Response to the Motion on May 13, 2016, in which he states that the Commissioner does not oppose an award of attorney’s fees under § 406(b) (ECF No. 37), provided that the Commissioner’s procedures regarding the recoupment of erroneously released funds are followed, and that Plaintiff’s counsel return to Plaintiff the fee of \$4,680.50, previously awarded under the Equal Access to Justice Act. The Court has reviewed the motion, counsel’s fee petition, and the accompanying fee agreement and finds that the request for fees is reasonable.

Conclusion

Accordingly, IT IS ORDERED that Plaintiff’s Motion for Attorney’s Fees (ECF No. 35) pursuant to the Social Security Act, 42 U.S.C. § 406(b), be and hereby is GRANTED in the

amount of \$24,150.68.¹ As the total award exceeds \$16,089.68, the parties shall engage in the process outlined in POMS § GN 03920.055 regarding recoupment of the amount erroneously released. Counsel will return to Plaintiff the fee of \$4,680.50 previously awarded under the EAJA.

IT IS SO ORDERED.

/s/Bruce Howe Hendricks
United States District Judge

June 7, 2016
Greenville, South Carolina

¹Plaintiff received \$4,685.50 in attorney fees under the Equal Access to Justice Act, 28 U.S.C. § 2412(d). (ECF No. 34). As Plaintiff's attorney concedes in his Memorandum in Support of his Motion for Attorney Fees under 42 U.S.C. § 406(b) (ECF No. 35-1 at 5-6), he must refund to Plaintiff the lesser of the two fees. See *Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002), *Astrue v. Ratliff*, 130 S.Ct. 2521, 2528 (2010).