

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
GREENVILLE DIVISION

Sheila Rivers,

Plaintiff,

v.

Michael J. Astrue,  
Commissioner of Social Security,

Defendant.

C/A No. 6:08-cv-0016-GRA

**ORDER**

(Written Opinion)

Plaintiff's attorney, Beatrice E. Whitten, petitions this Court pursuant to the Social Security Act, 42 U.S.C. § 406(b) for authorization of attorney's fees for federal court representation in the total amount of \$20,701.75. This amount represents twenty-five percent of the past-due benefits withheld by the Social Security Administration for attorney's fees, taking into account any award of attorney's fees previously granted pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d).

The government has no objections to a reasonable attorney fees amount. In the 1985 amendments to the EAJA, Congress specified that, if a claimant's attorney received attorney's fees under both the EAJA and section 406(b), the claimant's attorney must "refun[d] to the claimant the amount of the smaller fee." *Gisbrecht v. Barnhart*, 535 U.S. 789, 795-98 (2002) (citing Pub.L. 99-80 § 3, 99 Stat. 186 (Aug. 5, 1985)). Here, Plaintiff's attorney was twice awarded fees under the EAJA by court order. On December 22, 2006, pursuant to docket number 0:05-cv-01961, Plaintiff's

attorney was awarded \$4,584.83. Subsequently, on May 21, 2009, pursuant to the above referenced case, Plaintiff's attorney was awarded \$3,382.79. These fees were not paid out of the Plaintiff's award, but go to reduce the amount of fees paid by the Plaintiff.

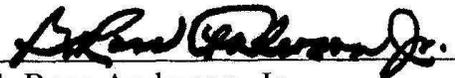
Plaintiff's attorney now requests fees in the amount of \$20,701.75. In turn, she will return \$7,967.62 (\$3,382.79 plus \$4,584.83) to the Plaintiff, which was previously awarded under the EAJA, resulting in a net fee of \$12,734.13 for the Plaintiff's attorney.

The government filed a response on April 14, 2010, indicating there is no opposition to the award. The government agrees that it is reasonable in light of the contingency fee agreement between Plaintiff and her attorney.

After a review of the record, Plaintiff's attorney's petition, and Defendant's Response this Court finds that an award of attorney's fees in the amount requested is appropriate and reasonable.

IT IS THEREFORE ORDERED that Defendant certify the amount of twenty thousand, seven hundred and one dollars and seventy-five cents (\$20,701.75) to be paid to Plaintiff's attorney out of Plaintiff's award.

IT IS SO ORDERED.

  
G. Ross Anderson, Jr.  
Senior United States District Judge

Anderson, South Carolina  
April 26, 2010