

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

Eric Lorenzo Grant,)	Civil Action No. 8:16-00914-BHH
)	
)	
Plaintiff,)	
)	
vs.)	
)	ORDER
)	
Nancy A. Berryhill, Acting Commissioner)	
of the Social Security Administration, ¹)	
)	
Defendant.)	
_____)	

This matter is before the Court on Plaintiff’s motion for attorney’s fees (ECF No. 26) for the successful representation of Plaintiff Eric Lorenzo Grant (“Plaintiff”) by Attorney Beatrice E. Whitten, in the underlying Social Security benefits action. The Court may make such an award pursuant to the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412(d).

In his Motion for EAJA Fees, Plaintiff requests an award of \$3,356.79 in attorney’s fees, because she was the prevailing party and the position taken by Defendant was not substantially justified. (ECF No. 26.) Defendant filed a response stating that the Commissioner does not object to Plaintiff’s request for attorney’s fees but that the award of attorney’s fees should be paid directly to Plaintiff, and not his attorney. (ECF No. 27.) Defendant further states that the Commissioner will first determine whether Plaintiff has any outstanding federal debt to be offset from the attorney’s fees, and, if not, the Commissioner will honor Plaintiff’s assignment of

¹ Nancy A. Berryhill is now the Acting Commissioner of Social Security. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Nancy A. Berryhill should be substituted for Acting Commissioner Carolyn W. Colvin as the defendant in this suit. No further action need be taken to continue this suit by reason of the last sentence of section 205(g) of the Social Security Act, 42 U.S.C. § 405(g).

attorney's fees to her counsel by paying counsel directly. (*Id.*) If Plaintiff *does* have outstanding federal debt, Defendant represents that the Commissioner will, after subtracting the applicable amount, make the check payable to Plaintiff directly and deliver the check to the business address of Plaintiff's counsel. (*Id.*) Finally, Defendant states that if Plaintiff's outstanding federal debt exceeds the amount of attorney's fees approved pursuant to this Order, the amount of the attorney's fees will be used to offset Plaintiff's federal debt and no attorney's fees shall be paid. (*Id.*)

The EAJA provides attorney's fees in actions where the government's position is not substantially justified. The substantial justification test is one of reasonableness in law and fact. See *Pierce v. Underwood*, 487 U.S. 552, 565 (1988). The district court has broad discretion to set the attorney fee amount. "[A] district court will always retain substantial discretion in fixing the amount of an EAJA award. Exorbitant, unfounded, or procedurally defective fee applications . . . are matters that the district court can recognize." *Hyatt v. North Carolina Dep't of Human Res*, 315 F.3d 239, 254 (4th Cir. 2002) (citing *Comm'r v. Jean*, 496 U.S. 154, 163 (1990)). Moreover, the court should not only consider the "position taken by the United States in the civil action," but also the "action or failure to act by the agency upon which the civil action is based." 28 U.S.C. § 2412(d)(2)(D), as amended by P.L. 99-80, § 2(c)(2)(B). Based on a review of the entire record and Defendant's concession, the government's position was not substantially justified.

Accordingly, the Court grants the motion, and directs the Commissioner to pay directly to Plaintiff \$3,356.79 in attorney's fees.² Such payment shall constitute a complete release from and bar to any and all further claims that Plaintiff may have under the EAJA to fees, costs, and expenses incurred in connection with disputing the Commissioner's decision. This award is without prejudice to the rights of Plaintiff's counsel to seek attorney fees under section 206(b) of the Social Security Act, 42 U.S.C. § 406(b), subject to the offset provisions of the EAJA.

IT IS SO ORDERED.

s/ Bruce Howe Hendricks
United States District Judge

May 23, 2017
Greenville, South Carolina.

² In *Astrue v. Ratliff*, 560 U.S. 586, 598 (2010), the United States Supreme Court held that the EAJA requires attorneys' fees to be awarded directly to the litigant. *Id.* (holding that the plain text of the EAJA requires that attorneys' fees be awarded to the litigant, thus subjecting EAJA fees to offset of any pre-existing federal debts); see also *Stephens v. Astrue*, 565 F.3d 131, 139 (4th Cir. 2009) (same).