

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

GREGORY P. KRUSEC,

Plaintiff,

v.

OPINION and ORDER

ANDREW SAUL,
Commissioner of Social Security,

18-cv-120-jdp

Defendant.¹

Plaintiff Gregory P. Krusec appealed the decision of the commissioner of the Social Security Administration denying his application for disability insurance benefits. The court remanded the case to the agency for further proceedings and awarded Krusec's attorney, Barry A. Schultz, \$7,500 in attorney fees under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412. Dkt. 24 and Dkt. 37. On remand, the commissioner determined that Krusec was entitled to benefits beginning in November 2008. Dkt. 40-1, at 1. Schultz now moves for an attorney fee award of \$45,184.40 pursuant to 42 U.S.C. § 406(b), which he says will be divided between himself and another attorney, Jeffrey Rabin, who represented Krusec in a prior lawsuit regarding his claim for benefits. Dkt. 40. The commissioner does not oppose Schultz's fee request. Dkt. 41.

Section 406(b) allows the court to award a prevailing plaintiff's attorney a fee of up to 25 percent of past-due benefits. Schultz says that the commissioner awarded Krusec \$180,737.60 in past-due benefits, 25 percent of which would be the \$45,184.40 that Schultz

¹ The court has changed the caption in this case to reflect that Andrew Saul was confirmed as the Commissioner of the Social Security Administration after Krusec filed this lawsuit.

seeks in attorney fees. But the notice of award that Schultz has attached to his motion doesn't indicate the total amount of past-due benefits to which Krusec is entitled, nor does it contain any information from which the court can derive that figure. *See* Dkt. 40-1. The notice states that Krusec is entitled to benefits beginning November 2008 and provides Krusec's monthly benefit amounts for each year, then states that the agency will withhold Krusec's past-due benefits until it determines whether he received supplemental security income during that period. Dkt. 40-1, at 2. The notice then states that the agency will send Krusec another letter after it has determined whether it must reduce his past-due benefits. *Id.*

The court cannot assess whether Schultz is entitled to the fees he seeks if it cannot verify his calculations, so the court will deny his motion without prejudice. If Schultz wishes to receive further fees in this case, he should either submit documentation from the agency indicating the amount of Krusec's past-due benefits or explain in his renewed motion how he calculated that amount.

ORDER

IT IS ORDERED that Barry A. Schultz's motion for \$45,184.40 in attorney fees under 42 U.S.C. § 406(b), Dkt. 40, is DENIED without prejudice.

Entered October 13, 2020.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge