

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

MARYLU GROSKREUTZ,

Plaintiff,

OPINION AND ORDER

v.

02-C-454-C

JO ANNE B. BARNHART, Commissioner
of Social Security,

Defendant.

This is a social security appeal. In August 2002, plaintiff Marylu Groskreutz filed a civil action pursuant to 42 U.S.C. § 405(g) seeking judicial review of a final decision of the Commissioner of Social Security denying her application for Disability Insurance Benefits under the Social Security Act, 42 U.S.C. §§ 416(i) and 423. On August 7, 2003, this court entered an order adopting the magistrate judge's report and recommendation and affirming the commissioner's final decision. On August 26, 2004, the Court of Appeals for the Seventh Circuit issued a decision vacating this court's decision and remanding the case with instructions to remand the case to the commissioner for further proceedings.

Plaintiff has now filed an application for an award of attorney fees under the Equal Access to Justice Act, 28 U.S.C. § 2412. (Plaintiff also filed a motion for entry of final judgment. I have granted that motion in a separate order.) In support of her fee petition, plaintiff contends that she is the prevailing party in an action in which she sought reversal or remand of a decision of defendant and that defendant's position in this litigation was not

substantially justified. Plaintiff is seeking fees and costs in the amount of \$17,253.48. Defendant does not dispute that plaintiff is entitled to an award of costs and fees but contends that the amount sought by plaintiff is unreasonable. Because I find that defendant's position was unjustified and the fees sought by plaintiff are reasonable, I will grant the petition for an award of fees and costs, with one minor reduction that I discuss below.

OPINION

In INS v. Jean, 496 U.S. 154 (1990), the Supreme Court indicated that the district court's task of determining what fee is reasonable under the EAJA is essentially the same as that described in Hensley v. Eckerhart, 461 U.S. 424 (1983). Jean, 496 U.S. at 161. Under Hensley, the starting point for determining the amount of a reasonable fee is to multiply the number of hours reasonably expended by counsel by a reasonable hourly rate. Hensley, 461 U.S. at 433. Plaintiff bears the burden of proving that her fee request is reasonable and providing adequate documentation of her fee request. Id. at 437.

Plaintiff requests compensation for 113.55 hours spent by her attorney, Marcie Goldbloom, at the hourly rates of \$146.25 for the year 2002, \$148.75 for the year 2003 and \$151.86 for the year 2004. She also requests compensation for 2.6 hours spent by a law clerk/paralegal at the hourly rate of \$100. Of the 116.15 total hours requested, 3.9 were spent preparing and defending plaintiff's fee petition, with the remaining hours spent on the

merits of the case. Defendant does not contest the hourly rates but argues that this court should reduce the fee award in two areas. First, she argues that it was unreasonable for plaintiff's attorney to have spent 19.75 hours on her reply brief on appeal to the Seventh Circuit. Defendant points out that the reply brief was only 10 and a half pages in length and that by that stage of the proceedings, counsel was well-acquainted with the case, issues and law. Second, defendant argues that it was unreasonable for plaintiff's attorney to charge a paralegal rate for simple clerical tasks such as serving documents and mailing documents to the court.

I agree with defendant's second objection. I infer that defendant's objection refers to the .9 hours spent by the paralegal serving and mailing the summons and complaint because the remaining 1.7 hours of her time appears to have been expended on activities requiring, or at least warranting, paralegal skills. Plaintiff argues that it was necessary to utilize a paralegal to serve and file the complaint because the clerical staff who usually perform this function were out of the office on that date. However, plaintiff does not explain why she is entitled to recover paralegal fees for such service. That office constraints might have made it necessary to use a paralegal (or an attorney, for that matter) to perform clerical work does not make it reasonable to ask the government to pick up that cost. Accordingly, I am reducing the fee petition by \$90, which reflects the time spent by the paralegal to serve and file the summons and complaint.

As for defendant's first objection, I am not persuaded that 19.75 hours was too long for attorney Goldbloom to have spent preparing the appellate reply brief. Although I agree that nearly 20 hours for a 10-page reply brief covering well-known territory is on the high side, this court is loathe to second-guess the reasonableness of time expended by counsel preparing briefs in social security cases. Plaintiffs in such cases typically have no other method by which to present their case to the court and must attack every potentially reversible aspect of the commissioner's decision in a single brief. As this court has noted in previous cases, a brief's ultimate length offers only an imprecise measure of the amount of research, thought, writing, revising and proofreading that went into it. Although I recognize that a reply brief is more focused than an opening brief, I nonetheless conclude that the time expended by counsel preparing the appellate reply brief in this case is not so patently unreasonable as to warrant a reduction. It is worth noting that plaintiff ultimately prevailed in obtaining a remand of her case to the commissioner. "Where a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee." Hensley, 461 U.S. at 435.

Defendant has not raised any other specific objections to plaintiff's fee request. Accordingly, I will award plaintiff the entire \$16,889.02 requested in her initial fee petition, less \$90 for the time expended by the paralegal on clerical tasks. Although defendant has not had the opportunity to review the supplemental fee petition, I have reviewed it and find

that the amount of hours sought by plaintiff in conjunction with defending her fee request (2.4 hours) are reasonable. Accordingly, plaintiff is entitled to fees totaling \$17,163.48.

ORDER

IT IS ORDERED that plaintiff Marylu Groskreutz's application for an award of attorney's fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, is GRANTED. Plaintiff is awarded attorney fees and costs in the amount of \$17,163.48. Pursuant to the Assignment of EAJA Fee attached to the fee petition, this amount is to be paid directly to the law firm of Frederick J. Daley, Ltd.

Entered this 28th day of February, 2005.

BY THE COURT:

BARBARA B. CRABB
District Judge