

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

KURTIS NICKOLA,

Plaintiff,

OPINION AND ORDER

v.

03-C-622-C

JO ANNE B. BARNHART, Commissioner
of Social Security,

Defendant.

Plaintiff Kurtis Nickola has applied for an award of attorney fees under the Equal Access to Justice Act, 28 U.S.C. § 2412. Plaintiff contends that he is the prevailing party in an action in which he sought reversal or remand of a decision of defendant Commissioner of Social Security and that defendant's position in this litigation was not substantially justified. Plaintiff is seeking fees and costs in the amount of \$9,130.06. Although defendant commissioner concedes that her position was not substantially justified, she disputes the amount of the fees sought. 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.

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 requests compensation for 33.15 hours spent by her attorneys, Frederick J. Daley, Jr. and Marcie Goldbloom, at the hourly rate of \$148.75, and for 44.2 hours spent by paralegals and law clerks at Daley's firm at the hourly rate of \$95. Of the total hours requested, 11.35 were spent preparing and defending plaintiff's fee petition, with the remaining 66 hours spent on the merits of the case. Defendant does not contest the hourly rates but argues that the time spent on this case by the Daley firm is excessive.

Having reviewed the fee petition and its supplement, defendant's objections and the briefs submitted by plaintiff on the merits, I find that the amount of fees plaintiff requests is reasonable. Defendant argues that 40 and 19.75 hours was too much time for counsel to have spent on plaintiff's initial brief and reply brief, respectively. However, much of that time was expended by law clerks, who billed their time at a reduced hourly rate of \$95. Although it might have taken more time for a law clerk to draft a brief than had an attorney drafted it, overall the use of law clerks in this case appears to have been a money-saving measure because it reduced the amount of time the attorneys spent on the case.

Defendant argues that the use of law clerks resulted in a duplication of effort, noting, for example, that attorney Daley spent 3.75 hours reviewing the record and preparing notes, while law clerk Samuels spent 6 hours reading and dissecting the record. I agree that there appears to be some overlap in the work performed by the attorneys and law clerks. However, I do not find that to be a basis for reducing the fee award. Most reasonable attorneys would

want to become well-acquainted with a new case and to prepare a litigation strategy before delegating it to a law clerk. Conversely, a law clerk called upon to draft a brief in a social security case needs to know the record in detail. To the extent there was some duplication of effort, I find that it was offset by the lower rate charged by the law clerks.

In sum, the roughly 60 hours of combined law clerk and attorney time it took to produce plaintiff's briefs in this case was not excessive. The briefs were lengthy, detailed and well presented. Although the case did not present any complex legal issues, that is true of most social security cases. More often than not, plaintiffs who prevail do so by providing a thorough exegesis of the record, pointing out various pieces of evidence that the administrative law judge overlooked or misrepresented, and explaining why those oversights are material to the outcome. That is precisely what plaintiff's attorneys and law clerks did here. "Where a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee." Hensley, 461 U.S. at 435.

Apart from her objection to the amount of time expended on the briefs, defendant has not raised any other specific objections to plaintiff's fee request. Accordingly, I will award plaintiff the entire \$7,441.75 requested in his initial fee petition. Although defendant has not had the opportunity to review the supplement fee petition, I have reviewed it and find that the amount of hours sought by plaintiff in conjunction with his fee request are reasonable. Accordingly, plaintiff is entitled to fees totaling \$9,130.06.

ORDER

IT IS ORDERED that plaintiff Kurtis Nickola'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 \$9,130.06. Pursuant to the Assignment of EAJA Fee attached to the brief in support of the fee petition, this amount is to be paid directly to Frederick J. Daley, plaintiff's attorney. The clerk of court is directed to enter judgment in favor of plaintiff and close this case.

Entered this 24th day of November, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge