

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

DENISE F. CLARK,

Plaintiff,

OPINION AND ORDER

v.

10-cv-185-bbc

MICHAEL ASTRUE,
Commissioner of Social Security,

Defendant.

On September 14, 2010, I remanded this case to the commissioner for further proceedings pursuant to sentence four of 42 U.S.C. § 405(g), on the ground that the administrative law judge erred in determining both plaintiff's physical and mental residual functional capacity. Now before the court is plaintiff's application for an award of attorney fees under the Equal Access to Justice Act, 28 U.S.C. § 2412. Plaintiff is seeking fees in the amount of \$12,148 for 69.4 hours of work, together with \$1,105 for 6.5 hours of work in preparing the reply to this motion, all at the rate of \$170 an hour. Defendant disputes the reasonableness of the amount of the fees sought, arguing that plaintiff is requesting fees for non-compensable time, impermissibly vague entries and excessive time spent on some

matters. After some reductions, I will award plaintiff attorney fees in the total amount of \$13,083.

OPINION

In INS v. Jean, 496 U.S. 154, 161 (1990), the Supreme Court held that the district court's task of determining a reasonable fee under the Equal Access to Justice Act is essentially the same as that described in Hensley v. Eckerhart, 461 U.S. 424 (1983). Under Hensley, the starting point for determining a reasonable fee is to multiply the number of hours reasonably expended by a reasonable hourly rate. Hensley, 461 U.S. at 433. The court should exclude from this initial fee calculation hours that were not "reasonably expended," such as those that are excessive, redundant or otherwise unnecessary, considering factors such as the novelty and difficulty of the questions, the skill required to perform the legal service properly, the customary fee and other factors. Id. at 434 n.9. Whether the hours would be properly billed to a client guides the inquiry. Id. at 434.

Defendant does not object to the hourly rate of plaintiff's counsel but objects to most of the requested fees. First, he objects to the fees requested for a 1.6 hour entry on April 5, 2010. The entry states:

Reviewed materials provided by client. Prepared complaint and related documents to begin action. Obtained case number and filed same.

Defendant argues that this entry lumps together different activities and does not contain sufficient detail. However, these activities all concern beginning the action in federal court and the 1.6 hours expended for these tasks is reasonable. Defendant makes the same argument for the December 12, 2010 entry requesting 1.6 hours of for the preparation of this fee petition. I find that plaintiff's request is reasonable.

Next, defendant objects to the April 7 and May 4 entries requesting fees for the .4 hours plaintiff's lawyer expended in preparing and filing service. Plaintiff's lawyer responds that these fees are reasonable because he does not have a secretary. However, I agree with defendant that a reduction is warranted for time spent by plaintiff's lawyer performing clerical tasks. Spegon v. Catholic Bishop of Chicago, 175 F.3d 544, 553 (7th Cir. 1999) (court should disallow time spent on what are essentially "clerical" or secretarial tasks). It is not reasonable to bill a lawyer's rate for secretarial tasks. I will reduce plaintiff's request by the .4 hours requested for these tasks.

Also, defendant objects to the May 19 and September entries for .4 hours reviewing transcript and updating computer and calendars and .6 hours for reviewing favorable decision and updating calendars and computer. I agree with defendant that .2 hours of the May 19 time and .4 hours of the September 17 time were spent on secretarial tasks. Therefore, I will disallow .6 hours of the time plaintiff requests.

The remainder of the defendant's objections concern the amount plaintiff's counsel requests for 62.6 hours expended on briefing. I agree that the "briefing" entry is vague, but I am persuaded by plaintiff's counsel's arguments that the requested fees for briefing are reasonable in light of the complexity of this case. The administrative transcript was 529 pages, plaintiff's support brief was 35 pages and the reply brief was 26 pages. Also, as plaintiff's counsel points out, his briefing accomplished excellent results for plaintiff.

The request for 62.6 hours falls at the top of the range of hours that this court has found reasonable in other social security appeals, but it is not so far out of line as to require a reduction on that ground alone. E.g., Gritzmacher v. Astrue, 07-C-700-C, Order, January 26, 2009 (awarding fees for 48.70 hours); Seamon v. Barnhart, 05-C-0013-C, Opin. and Order, Feb. 23, 2006 (combined 50 hours on initial brief and reply brief not unreasonable); Groskreutz v. Barnhart, 02-C-0454-C, Opin. and Order, Feb. 28, 2005 (34.5 hours for work in district court not excessive); Nickola v. Barnhart, 03-C-622-C, Opin. and Order, November 26, 2004 (roughly 60 hours of combined law clerk and attorney time spent producing plaintiff's briefs not excessive); Kleinhans v. Barnhart, 99-C-328-C, Opin. and Order, Apr. 25, 2002 (awarding fees for 70 hours, including post-remand work).

With the total reduction of 1 hour, the fee award would be \$11,978. Adding \$1,105 for the additional fees requested for the fee petition reply brief, I will award plaintiff attorney fees in the amount of \$13,083.

ORDER

IT IS ORDERED that the petition of plaintiff for an award of attorney fees and expenses under the Equal Access to Justice Act is GRANTED. Plaintiff is awarded fees and costs in the amount of \$13,083.

Entered this 31st day of January, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge

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