

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

KAREN UPPERTON,

Plaintiff,

ORDER

v.

02-C-0534-C

JO ANNE B. BARNHART, Commissioner
of Social Security,

Defendant.

This is an appeal of a decision of the Commissioner of Social Security brought pursuant to 42 U.S.C. § 405(g). On September 22, 2003, pursuant to a stipulation reached by plaintiff Karen Upperton and defendant Commissioner of Social Security, this court entered an order reversing the decision of the Commissioner and remanding the case for further proceedings pursuant to the fourth sentence of § 405(g). Plaintiff now seeks an award of attorney fees and costs in the amount of \$7,150.25 under the Equal Access to Justice Act, 28 U.S.C. § 2412. Defendant does not deny that plaintiff is entitled to fees as a “prevailing party” under the EAJA, but contends that the amount of fees she seeks is unreasonable. It suggests a fee reduction of 40 to 55 percent. Because I find that the fees requested by plaintiff are reasonable, I decline to reduce the request and will grant the petition as submitted.

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 has the burden of proving that her fee request is reasonable and to support it with documentation. Id. at 437. Plaintiff has provided detailed timesheets for the work of attorneys Barry A. Schultz and Claudia Travis, paralegal Judith Gayles and legal assistant Rebecca Maltzman. Plaintiff seeks fees for 33.4 hours of work by Schultz, 14.7 hours of work by Travis, .7 hours of work by Gayles and .2 hours of work by Maltzman. In addition, plaintiff seeks fees for 2.1 hours of time for preparing the reply brief in support of her EAJA petition, plus \$150 in costs.

Defendant does not dispute the hourly rates or costs sought by plaintiff. However, she argues that counsel spent an excessive amount of time on this case. First, defendant argues generally that 49 hours was too much time for counsel to spend on a case that defendant had agreed to remand at an early stage of the litigation. Defendant suggests that 20-40 hours is the average amount of time for litigating Social Security disability claims. However, the cases she cites are from other jurisdictions and many were decided more than 10 years ago. Furthermore, because each case has unique facts and circumstances, it is not useful to try to determine what is “reasonable” on the basis of the so-called “average” case.

Second, defendant argues that it was unreasonable for plaintiff’s attorneys, Schultz and Travis, to have spent a total of 37.1 hours drafting and revising the brief in support of

plaintiff's complaint. In particular, defendant points out that Travis expended 11.1 hours drafting only the facts section of the brief and that Schultz and Travis spent another 10 hours together reviewing and revising the brief. Defendant argues that the timesheets suggest that Schultz duplicated time spent by Travis on the brief.

Having reviewed plaintiff's brief and the administrative record, I find that it was not unreasonable for plaintiff's lawyers to have spent 37.1 hours on the brief. The administrative record consists of 499 pages and the brief is 32 pages. Counsel raised seven different arguments in support of reversal of the ALJ's decision, each requiring factual development and legal research. Furthermore, plaintiff's lawyers did not represent her at the administrative level; presumably, they had to spend some of their time mastering the lengthy record. By expending so much effort on the initial brief, counsel may actually have saved time and money by convincing the government to remand the case without further briefing. Finally, the fact that the brief may have undergone substantial revisions is not unexpected or unusual and does not suggest unnecessary duplication of efforts.

Defendant also objects to the one hour spent by plaintiff's lawyer in connection with seeking a modification of the briefing schedule. A review of the time sheet shows that this one hour was spent reviewing the briefing schedule, attempting to contact opposing counsel, drafting the motion and communicating with plaintiff regarding the changes to the briefing schedule. Counsel spent half an hour drafting the motion, which included the names and case numbers of several other cases that counsel was working on, as well as other detailed

reasons why counsel was requesting more time to file his brief. Without picking nits, I cannot say that any of the time spent by counsel on this matter was unreasonable.

Finally, defendant argues that plaintiff should not be compensated for work performed by legal assistants. The timesheets show that on September 20, 2002, paralegal Gayles spent .7 hours preparing the complaint and other documents and submitting them to the court for filing. Because this work is more like that typically performed by a lawyer rather than a clerk, it is compensable. The same can be said for the .2 hours spent by legal assistant Maltzman on November 6, 2002. Reporting to the client about the status of her case can be characterized as work traditionally performed by an attorney.

In sum, I find that the fees sought by plaintiff are reasonable. Accordingly, I will grant the petition for an award of fees and costs.

ORDER

IT IS ORDERED that plaintiff Karen Upperton'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 \$7,150.25. Pursuant to the Retainer and Fee Agreement attached to the brief in support of the fee petition, this amount is to be paid directly to Barry A. Schultz, plaintiff's attorney. The clerk of court is directed to enter judgment in favor of plaintiff and close this case.

Entered this 13th day of November, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge