

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

NANCY PECHA,

Plaintiff,

OPINION AND
ORDER

v.

05-C-0099-C

JO ANNE B. BARNHART, Commissioner
of Social Security,

Defendant.

This is a social security appeal. After plaintiff Nancy Pecha filed her brief in support of her request for reversal of the commissioner's decision denying her application for social security benefits, defendant agreed that the case should be remanded. On October 18, 2005, pursuant to the parties' joint motion, I entered judgment in favor of plaintiff and remanded the case to defendant for the purpose of issuing a fully favorable decision. Plaintiff has now filed an application for an award of attorney fees under the Equal Access to Justice Act, 28 U.S.C. § 2412. 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 \$5,547.36.

Because it is undisputed that defendant's position was unjustified, I will grant the petition for an award of fees and costs. However, I am reducing the fee award to \$3,572.75

to reflect what I conclude is a reasonable fee in light of the difficulty of the issues presented and other factors explained 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, 96 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. 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. Plaintiff bears the burden of proving that her fee request is reasonable and providing adequate documentation of her fee request. Id. at 437.

In this case, plaintiff requests compensation for 34 hours of work spent by her attorney, James Dolenga, at the hourly rate of \$155. Defendant does not object to the hourly rate but contends that 34 hours was too much time for counsel to have spent on this case, which settled before plaintiff had to prepare a reply brief. First, defendant argues that

8.7 hours was too much time for Dolenga to have spent performing legal research on what defendant describes as a routine social security case that did not involve any complex or novel issues. Defendant points out that the transcript in this case was relatively short (292 pages), Dolenga spent another 5 hours on “medical research” and plaintiff’s brief in support of her request for remand was only nine pages in length.

I agree that plaintiff has not met her burden to establish that 13.7 hours of combined medical and legal research was reasonable for an attorney as experienced as Dolenga, who avers that he has represented hundreds of claimants in social security cases. A review of plaintiff’s brief indicates that her case did not present any complex medical or legal issues. She did not cite any medical authorities and her impairment (irritable bowel syndrome) is not one that presents any unique medical concerns, such as the diagnostic difficulties that often occur in fibromyalgia or chronic fatigue syndrome cases. With respect to the legal research, although counsel is an out-of-circuit practitioner who had to familiarize himself with the law of this circuit, plaintiff’s brief cited very few circuit cases and focused mostly on regulations with which plaintiff’s counsel is presumably very familiar. The possibility exists that some of Dolenga’s time was reasonably spent researching issues that he ultimately decided not to raise in plaintiff’s brief; however, counsel’s failure to specify the subject matter of the medical and legal research makes it impossible to make that determination. Moreover, even allowing for the fact that some of counsel’s research is not reflected in the final product, 13.7 hours of medical and legal research still was excessive in a case in which

the primary claim was that the administrative law judge's finding that plaintiff could return to her past relevant work was not supported by the vocational expert's testimony. In a case of this nature, a lawyer with Dolenga's experience should have been able to perform his research in half the time. Accordingly, I will reduce the fees requested in this category by 6.85 hours.

A further reduction is warranted for time spent by Dolenga performing purely clerical tasks, including 0.7 hours serving the defendant by certified mail, 0.4 hours for filing a proof of service and 0.4 hours filing the brief. In addition to these entries, the time log reflects that Dolenga spent a portion of 1.5 hours on February 16, 2005 filing the complaint. On the basis of the other entries devoted to filing tasks, I will assume that 0.4 hours of this time was devoted to filing the complaint. "[P]urely clerical or secretarial tasks should not be billed at a paralegal [or attorney] rate regardless of who performs them." Missouri v. Jenkins, 491 U.S. 274, 288 n. 10 (1989). Dolenga's status as a sole practitioner who has opted to forgo support staff does not entitle him to an enhanced fee for the clerical work he performs as a result. In total, 1.9 hours will be deducted for work not reasonably performed by an attorney.

Finally, defendant objects to 3.2 hours that Dolenga spent on February 12, 2005 on "Legal Research-admission and filing," which presumably relates to Dolenga's motion to appear in this case *pro hac vice* and to learning this court's local rules and procedures. Although I disagree with defendant's contention that it was not proper for Dolenga to charge

the government for any time he spent obtaining admission to the bar of this court, 3.2 hours was excessive. Most of the information he required is available on the internet or could have been obtained by a brief phone call to the clerk of court. No more than one hour was reasonably necessary for this task. Accordingly, 2.2 hours shall be excised from plaintiff's fee request.

In sum, although I recognize that Dolenga obtained excellent results for his client, I conclude that 10.95 of the 34 hours reflected on Dolenga's time log were not reasonably expended in doing so. Plaintiff is entitled to a fee award of \$3,572.75, which reflects the product of 23.05 hours multiplied by the hourly rate of \$155.

ORDER

IT IS ORDERED that plaintiff Nancy Pecha's motion for an award of costs and attorney fees under the Equal Access to Justice Act is GRANTED IN PART AND DENIED IN PART. Plaintiff is awarded fees in the amount of \$3,572.75, payable to plaintiff's attorney, James M. Dolenga.

Entered this 8th day of March, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge