

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

WILLIAM DREFAHL,

Plaintiff,

v.

MICHAEL J. ASTRUE,
Commissioner, Social Security
Administration,

Defendant.

ORDER

11-cv-271-bbc

After defendant Commissioner, Social Security Administration, denied plaintiff William Drefahl application for Social Security disability benefits, plaintiff appealed, seeking disability benefits or a remand to the commissioner for a new hearing in compliance with the law. In addition, plaintiff asked for an award of attorney fees under the Equal Access to Justice Act, 28 U.S.C. § 2412, on the ground that the commissioner's action in this case was not substantially justified.

After defendant filed an answer and a copy of the administrative record, plaintiff's counsel moved for summary judgment and filed a brief in support of the motion. Dkts. ##4 & 5. After the motion was fully briefed, I entered an order on October 25, 2011, reversing

the commissioner's decision and remanding the case pursuant to sentence four of 42 U.S.C. § 405(g).

On January 22, 2012, plaintiff filed a motion and supporting brief, asking for attorney fees in the amount of \$7112.75 under the EAJA, representing 38.10 hours at an hourly rate of \$177.50. Defendant raised no objection to an award of fees, but disputed the amount sought on the ground that the hourly rate sought by plaintiff was above the ceiling set in the Act, 28 U.S.C. § 2412(d)(2)(A), and plaintiff had not shown that the resulting fee was reasonable. On March 23, 2010, plaintiff filed a motion to amend his earlier fee motion to add 7.3 hours for preparation of his responsive brief, at an hourly rate of \$177.50.

Congress set a ceiling of \$125.00 an hour for legal work eligible for EAJA reimbursement, but it left some leeway in the statute to award fees above this statutory ceiling. The court could set a higher rate if it determined that doing so was justified by increases in the cost of living or by the limited availability of qualified attorneys for the proceedings involved. Mathews-Sheets v. Astrue, 653 F.3d 560, 562 (7th Cir. 2011). In this case, an increase in the statutory rate is justified on both grounds.

In affidavits attached to his briefs, plaintiff's counsel has made a compelling showing that increases in the cost of living over the past 16 years, modest as they have been in recent years, warrant a hourly rate of \$177.50. Dkt. #20-2. As for available lawyers experienced in social security appeals, counsel has submitted an affidavit signed by plaintiff to the effect

that he shopped for the best available attorney for the most reasonable fee before choosing his counsel. Dkt. #20-3. Although this affidavit might be boilerplate, there is no reason to think that it overstates the situation. I am aware from my own experience that in the last year in particular, social security claimants have had difficulty finding counsel who are able to take their cases. In part, this is attributable to a major effort by the Social Security Administration to resolve the backlog of cases in this district that have been awaiting administrative hearings for many years. The result of this effort is that an unusually large number of claimants have been filing appeals at the same time, which make it harder than ever to find capable counsel.

Defendant has not objected to the number of hours that plaintiff's counsel expended in this case. Thirty-eight hours expended to meet with a new client, file a complaint and file and brief a motion for summary judgment is by no means excessive. Only an experienced lawyer could accomplish this much for his client in such a short time. The additional request for 7.3 hours is reasonable, given the government's objections to the fee request and the two briefs that plaintiff filed on this subject.

ORDER

IT IS ORDERED that plaintiff William Drefahl's request under the Equal Access to Justice Act for a fee award of \$7112.75 for the work done on his case, dkt. #17, plus

\$1295.75 for work done in connection with the request for the fee award, for a total of award of \$8,408.75, is GRANTED.

Entered this 1st day of May, 2012.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge