

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF
FLORIDA

Danielle Witner v. Frank Bisignano, Commissioner of the Social
Security Administration

Witner · No. 8:24-cv-1751-CPT · Decided December 9, 2025

SUMMARY

The United States District Court for the Middle District of Florida grants Danielle Witner’s unopposed motion for attorney’s fees under the Equal Access to Justice Act. The court finds that Witner was the prevailing party, that the statutory conditions for an award were satisfied, and that the requested \$8,000 fee based on approximately 31.77 hours at an hourly rate of \$251.84 was reasonable. The court directs that payment be made to Witner, subject to the government’s ability to honor an assignment to her attorney if Witner owes no federal debt.

CASE DETAILS

COURT	United States District Court for the Middle District of Florida
WRITING FOR THE COURT	Christopher P. Tuite
JURISDICTION	United States District Court for the Middle District of Florida, Tampa Division
DECIDED	December 9, 2025
DOCKET	8:24-cv-1751-CPT
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved unopposed for attorney's fees under the Equal Access to Justice Act after obtaining reversal of the Commissioner's decision and a remand for further proceedings.
STANDARD OF REVIEW	The court assessed entitlement to EAJA fees under 28 U.S.C. § 2412(d) and reviewed the requested hours and hourly rate for reasonableness and adequate support.
PRECEDENTIAL VALUE	Unreported federal district-court order; precedential status not identified in the source.
PARTIES	Danielle Witner v. Frank Bisignano, Commissioner of the Social Security Administration

TOPICS

attorney fees judicial review of agency action administrative law remedies civil procedure

PRACTICE AREAS

Social Security administrative law attorney fees civil procedure

QUESTIONS PRESENTED

1. Whether Witner satisfied the statutory requirements for an award of attorney's fees under the Equal Access to Justice Act.
2. Whether the requested attorney hours and hourly rate were reasonable and whether the statutory \$125 hourly cap should be adjusted for increases in the cost of living.
3. Whether the EAJA award should be made payable to Witner, subject to possible payment to her attorney if the government determines that Witner owes no federal debt.

HOLDINGS

1. Witner was entitled to attorney's fees because she timely sought fees, qualified as the prevailing party, satisfied the net-worth requirement, and the government's position was not substantially justified; no special circumstances made an award unjust.
2. The court could adjust the EAJA hourly rate upward to account for increases in the cost of living because competent attorneys in the relevant market had rates exceeding the statutory \$125 base rate.
3. The requested 31.77 hours at an hourly rate of \$251.84, resulting in an award of \$8,000, were reasonable and adequately supported.
4. The \$8,000 EAJA award must be made payable to Witner, although the Commissioner may honor an assignment of the fees to her attorney if the government determines that Witner owes no federal debt.

KEY QUOTATIONS

"To warrant the issuance of fees under the Act, three conditions must be met: (1) a party must file a fee application within thirty days of the final judgment; (2) a party must qualify as the prevailing party and her net worth must not have been more than \$2,000,000 at the time she commenced the action; and (3) the government's position must not have been substantially justified and there must be no other special circumstances that would render such an award unjust." (at 2)

"As this statutory language reflects, an analysis of the proper hourly rate under the Act consists of two steps. First, a court must ascertain the market rate for similar services provided by lawyers of comparable skill, experience, and reputation. Second, if the prevailing market rate is more than \$125 per hour, a court must decide whether to adjust the hourly rate to account for an increase in the cost of living or some special factor." (at 3)

"The Commissioner's remittance of this sum shall be made payable to the Plaintiff." (at 5)

FACTUAL BACKGROUND

Witner sought judicial review of the Commissioner's denial of her application for Supplemental Security Income. The court previously reversed the Commissioner's decision and remanded the matter for further proceedings, making Witner the prevailing party. Her counsel sought \$8,000 in EAJA fees for approximately 31.77 hours of work performed in 2024 and 2025 at an hourly rate of \$251.84, and the Commissioner did not oppose the request.

PROCEDURAL HISTORY

Witner filed an action in July 2024 seeking judicial review of the denial of Supplemental Security Income. In September 2025, the court reversed the Commissioner's decision and remanded for further proceedings, and judgment was entered for Witner. Witner then moved for EAJA fees; the Commissioner did not oppose the motion, and the court granted it.

DISPOSITION

other

CASES CITED

- Patton v. Berryhill, 2017 WL 6520474, at *1 (M.D. Fla. Dec. 18, 2017)
- Myers v. Sullivan, 916 F.2d 659, 666-67 (11th Cir. 1990)
- Meyer v. Sullivan, 958 F.2d 1029, 1033-34 (11th Cir. 1992)
- Norman v. Housing Auth. of Montgomery, 836 F.2d 1292, 1299, 1303 (11th Cir. 1988)
- Roman v. Commissioner of Social Security, 2024 WL 3046249, at *1 (M.D. Fla. June 18, 2024)
- Goldstein v. Commissioner of Social Security, 2024 WL 2019866, at *1 (M.D. Fla. May 7, 2024)
- Burke v. Commissioner of Social Security, No. 8:21-cv-1267-MSS-SPF, Doc. 25 (M.D. Fla. Apr. 25, 2022), report and recommendation adopted, Doc. 26 (M.D. Fla. May 23, 2022)
- Chartier v. Commissioner of Social Security, 2022 WL 1289335, at *2 (M.D. Fla. Apr. 29, 2022)
- Britt v. Commissioner of Social Security, 2022 WL 358674, at *2 (M.D. Fla. Jan. 27, 2022), report and recommendation adopted, 2022 WL 356218 (M.D. Fla. Feb. 7, 2022)
- Wilborn v. Commissioner of Social Security, 2013 WL 1760259, at *1 (M.D. Fla. Apr. 24, 2013)
- Rodgers v. Astrue, 657 F. Supp. 2d 1275, 1277 (M.D. Fla. 2009)
- Morrison v. Astrue, 2010 WL 547775, at *2 (S.D. Fla. Feb. 12, 2010)
- Sprinkle v. Colvin, 777 F.3d 421, 428 (7th Cir. 2015)
- Sensat v. Berryhill, 2018 WL 5257143, at *6 n.12 (S.D. Fla. Oct. 22, 2018)
- Barreras v. Commissioner of Social Security, 2021 WL 3934269, at *3 (M.D. Fla. Aug. 2, 2021), report and recommendation adopted, 2021 WL 3930507 (M.D. Fla. Sept. 2, 2021)
- Astrue v. Ratliff, 560 U.S. 586, 598 (2010)

OPINION

UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF FLORIDA TAMPA DIVISION
DANIELLE WITNER, Plaintiff, v. Case No. 8:24-cv-1751-CPT FRANK BISIGNANO,
COMMISSIONER OF THE SOCIAL SECURITY ADMINISTRATION,¹ Defendant.
_____/ O R D E R Before the Court is the Plaintiff's unopposed
motion for attorney's fees pursuant to the Equal Access to Justice Act (EAJA or the Act).

(Doc. 33). For the reasons discussed below, the Plaintiff's motion is granted. I. The Plaintiff initiated this action in July 2024, seeking judicial review of the Commissioner's decision denying her application for Supplemental Security Income. (Doc. 1).

In September 2025, the Court reversed the Commissioner's decision and remanded the case for further proceedings. (Doc. 30). The Clerk of Court entered 1 Mr. Bisignano became the Commissioner of Social Security on May 6, 2025. Pursuant to Federal Rule of Civil Procedure 25(d), Mr. Bisignano is substituted for the former Acting Commissioner, Mr. Leland Dudek, as the Defendant in this suit.

Judgment for the Plaintiff shortly thereafter. (Doc. 31). The instant fee motion, uncontested by the Commissioner, followed. (Doc. 33). II. The EAJA authorizes a court to grant attorney's fees to any party prevailing in litigation against the United States (including proceedings for judicial review of agency action), unless the court determines that the government's position was "substantially justified" or that special circumstances exist which make such an award unjust.

28 U.S.C. § 2412(d). To warrant the issuance of fees under the Act, three conditions must be met: (1) a party must file a fee application within thirty days of the final judgment; (2) a party must qualify as the prevailing party and her net worth must not have been more than \$2,000,000 at the time she commenced the action; and (3) the government's position must not have been substantially justified and there must be no other special circumstances that would render such an award unjust.

Id.; Patton v. Berryhill, 2017 WL 6520474, at *1 (M.D. Fla. Dec. 18, 2017) (citing Myers v. Sullivan, 916 F.2d 659, 666–67 (11th Cir. 1990)). Each of these conditions has been satisfied here, as the Commissioner effectively acknowledges by his lack of opposition.

Thus, it is appropriate to grant attorney's fees pursuant to the EAJA in this case. In assessing the fees to be authorized, courts look to subsection 2412(d)(2)(A), which provides, in pertinent part: 2 The amount of fees [to be] awarded [to the prevailing party in any civil action brought against any agency or any official of the United States] shall be based upon [the] prevailing market rates for the kind and quality of the services furnished, except that... attorney[']s fees shall not be awarded in excess of \$125 per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee.

28 U.S.C. § 2412(d)(2)(A). As this statutory language reflects, an analysis of the proper hourly rate under the Act consists of two steps. First, a court must ascertain the market rate for similar services provided by lawyers of comparable skill, experience, and reputation. *Meyer v. Sullivan*, 958 F.2d 1029, 1033 (11th Cir. 1992) (quoting *Norman v. Housing Auth. of Montgomery*, 836 F.2d 1292, 1299 (11th Cir.

1988)). Second, if the prevailing market rate is more than \$125 per hour, a court must decide whether to adjust the hourly rate to account for an increase in the cost of living or some special factor. *Id.* at 1033–34.

The market rate during the relevant period for the type of work at issue in this lawsuit is not subject to precise calculation. In the Court’s experience, counsel submitting EAJA fee petitions for services performed since 2020 have typically sought hourly rates exceeding \$200.

As a result, the hourly rate charged by competent attorneys in this market has, for some time, well surpassed the statutory cap of \$125. The Court is not alone in this observation. See, e.g., *Roman v. Comm’r of Soc. Sec.*, 2024 WL 3046249, at *1 (M.D. Fla. June 18, 2024); *Goldstein v. Comm’r of Soc. Sec.*, 2024 WL 2019866, at *1 (M.D. Fla. May 7, 2024); *Burke v. Comm’r of Soc.*

Sec., No. 8:21-cv- 3 1267-MSS-SPF, (Doc. 25) (M.D. Fla. Apr. 25, 2022), report and recommendation adopted, (Doc. 26) (M.D. Fla. May 23, 2022); *Chartier v. Comm’r of Soc. Sec.*, 2022 WL 1289335, at *2 (M.D. Fla. Apr. 29, 2022); *Britt v. Comm’r of Soc. Sec.*, 2022 WL 358674, at *2 (M.D. Fla. Jan. 27, 2022), report and recommendation adopted, 2022 WL 356218 (M.D.

Fla. Feb. 7, 2022). The Court therefore finds that there is a sufficient basis to deviate upwardly from the EAJA’s base fee rate to account for increases in the cost of living. Courts in this district and elsewhere routinely compute cost of living adjustments under the Act by using the Bureau of Labor Statistics’ Consumer Price Index (CPI). See, e.g., *Wilborn v. Comm’r of Soc.*

Sec., 2013 WL 1760259, at *1 (M.D. Fla. Apr. 24, 2013); *Rodgers v. Astrue*, 657 F. Supp. 2d 1275, 1277 (M.D. Fla. 2009); *Morrison v. Astrue*, 2010 WL 547775, at *2 (S.D. Fla. Feb. 12, 2010); see also *Sprinkle v. Colvin*, 777 F.3d 421, 428 (7th Cir. 2015) (collecting various circuit opinions using the CPI to determine hourly rate adjustments).² Given this case authority, the Court finds it reasonable to employ the CPI as a guide for determining cost of living increases under the EAJA.

See U.S. DEP’T OF LABOR, BUREAU OF LABOR STATISTICS, <https://data.bls.gov/toppicks?survey=bls> (last visited December 6, 2025). ² For a discussion of the CPI data employed by many courts in this Circuit, as well as an explanation of the cost-of-living adjustment calculation, see *Sensat v. Berryhill*, 2018 WL 5257143, at *6 n.12 (S.D. Fla. Oct. 22, 2018). ⁴ Here, the Plaintiff seeks \$8,000 in attorney’s fees predicated upon a total of approximately 31.77 hours expended in

this action in 2024 and 2025 by her lawyer, Jeanette A. Kelley, at the hourly rate of \$251.84.3 See (Doc.

33 at 3). To buttress her fee request, the Plaintiff submits, inter alia, an itemized schedule of the services Ms. Kelley rendered in the case. (Docs. 33-1, 33-2). The Commissioner does not dispute the Plaintiff's \$8,000 figure. (Doc. 33 at 1).

In light of the Commissioner's lack of opposition, as well as the Court's own knowledge and experience in addressing fee matters, the Court finds that the total number of hours and the hourly rate claimed by counsel are reasonable and adequately supported. See *Norman v. Hous. Auth. of City of Montgomery*, 836 F.2d 1292, 1303 (11th Cir. 1988); *Barreras v. Comm'r of Soc.*

Sec., 2021 WL 3934269, at *3 (M.D. Fla. Aug. 2, 2021), report and recommendation adopted, 2021 WL 3930507 (M.D. Fla. Sept. 2, 2021). The Plaintiff is thus entitled to \$8,000 in attorney's fees. III. Based upon the foregoing, it is hereby ORDERED: 1.

The Plaintiff's unopposed motion for attorney's fees (Doc. 33) is granted. 2. The Plaintiff shall be awarded attorney's fees in the amount of \$8,000. 3 The Plaintiff originally asked for \$8,184.80 in fees but agreed to lower that figure to \$8,000 to secure the Commissioner's consent. (Doc. 35 at 1).

To effectuate this compromise, the Plaintiff reduced her billable hours by a slight amount. *Id.* at 2. 5 3. In accordance with *Astrue v. Ratliff*, 560 U.S. 586, 598 (2010), the Commissioner's remittance of this sum shall be made payable to the Plaintiff. If the government concludes that the Plaintiff does not owe any debt to the government, the Commissioner may honor an assignment of fees to the Plaintiff's lawyer.

SO ORDERED in Tampa, Florida this 9th day of December 2025. Onscstwehay At
HONORABLE CHRISTOPHER P. TUIITE United States Magistrate Judge Copies to: Counsel of
record