

**UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
ARKANSAS, FORT SMITH DIVISION**

**Joseph F. Born, II v. Frank Bisignano, Commissioner, Social Security
Administration**

Born · No. 2:24-cv-02128-MEF · Decided December 4, 2025

OPINION

IN THE UNITED STATES DISTRICT COURT WESTERN DISTRICT OF ARKANSAS FORT SMITH DIVISION JOSEPH F. BORN, II PLAINTIFF v. CIVIL NO. 2:24-cv-02128-MEF FRANK BISIGNANO, Commissioner Social Security Administration DEFENDANT MEMORANDUM OPINION AND ORDER Pending now before this Court is Plaintiff's Motion for Attorney Fees Under the Equal Access to Justice Act. (ECF Nos. 17, 18).

The parties have consented to the jurisdiction of a Magistrate Judge to conduct all proceedings in this case, and pursuant to said authority, the Court issues this Order. (ECF No. 5). On October 28, 2025, Plaintiff filed a motion for attorney's fees and costs under 28 U.S.C. § 2412, the Equal Access to Justice Act (hereinafter "EAJA"), requesting \$4,253.30, representing a total of 19.30 attorney hours for work performed in 2024 and 2025 at an hourly rate of \$206.00 and 3.70 paralegal hours at an hourly rate of \$75.00.

(ECF No. 18-2). Despite the passage of more than 30 days, the Defendant has not filed a response. It is the opinion of the undersigned that the Plaintiff is entitled to a fee award in this case, as he is the prevailing party, the government's decision to deny benefits was not substantially justified, the hourly rate requested for attorney hours does not exceed the CPI for either year in question, and the time asserted to have been spent in the representation of the Plaintiff before the district court is reasonable.

See *Jackson v. Bowen*, 807 F.2d 127, 128 (8th Cir. 1986) (burden is on the Commissioner to show substantial justification for the government's denial of benefits); 28 U.S.C. § 2412(d)(2)(A) (statutory ceiling for an EAJA fee award is \$125.00 per hour); *Johnson v. Sullivan*, 919 F.2d 503, 504-505 (8th Cir. 1990) (court may determine that there has been an increase in the cost of living, and may thereby increase the attorney's rate per hour, based upon the United States Department of Labor's Consumer Price Index ("CPI")); and, *Hensley v. Eckerhart*, 461 U.S. 424, 430 (1983) (in determining reasonableness, court looks at time and labor required; the difficulty of questions involved; the skill required to handle the problems presented; the attorney's experience, ability, and reputation; the benefits resulting to the client from the services; the customary fee for similar services; the contingency or certainty of compensation; the results obtained; and, the amount involved).

Accordingly, Plaintiff is entitled to an attorney's fee award under EAJA in the amount of \$4,253.30. Pursuant to *Astrue v. Ratliff*, 560 U.S. 586, 596 (2010), the EAJA fee award should be made payable to Plaintiff; however, if the Plaintiff has executed a valid assignment to Plaintiff's attorney of all rights in a fee award and Plaintiff owes no outstanding debt to the federal government, the attorney's fee may be awarded directly to Plaintiff's attorney.

The parties are reminded that, to prevent double recovery by counsel for the Plaintiff, the award herein under the EAJA will be considered at such time as a reasonable fee is determined pursuant to 42 U.S.C. § 406. Based upon the foregoing, Plaintiff is awarded the sum of \$4,253.30 for attorney's fees pursuant to the EAJA, 28 U.S.C. § 2412. Dated this 4th day of December 2025.

Mark E. Ford /s/ HONORABLE MARK E. FORD UNITED STATES MAGISTRATE JUDGE