

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

JOSEPH MCCARTY,

Plaintiff,

vs.

Case No. 07-4041-SAC

MICHAEL J. ASTRUE,  
COMMISSIONER OF  
SOCIAL SECURITY,

Defendant.

MEMORANDUM AND ORDER

This case comes before the court on plaintiff's unresolved application for fees under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412. The government has not filed any response. The court understands that the amount of the fee award is not in dispute, and that the sole dispute is to whom the fees should be paid - to the plaintiff or to plaintiff's counsel.

The Tenth Circuit, this court, and others in this jurisdiction have previously ruled on this issue, finding that the fees and expenses awarded under the EAJA statute properly belong to a "prevailing party," as opposed

to the prevailing party's attorney. See 28 U.S.C. § 2412(d)(1)(A); *McGraw v. Barnhart*, 450 F.3d 493, 497 (10th Cir.2006); *Brown v. Astrue*, 2008 WL 822267 (10th Cir. Mar. 27, 2008); *Phillips v. General Servs. Admin.*, 924 F.2d 1577, 1582 (Fed.Cir.1991); *Simoneau v. Astrue*, 2007 WL 2994062 (D.Kan. Oct.11, 2007); *Williams v. Astrue*, 2007 WL 2582177 (D.Kan. Aug.28, 2007); *Dewey v. Astrue*, 2007 WL 2013599, \*1 (D.Kan. July 9, 2007). The court makes the same ruling here.

IT IS THEREFORE ORDERED that the plaintiff's Motion for Fees (Dk. 23) is granted in that the defendant shall pay an award of attorney fees in the amount of \$5,284.29<sup>1</sup> to plaintiff; the request for payment directly to counsel is denied.

Dated this 2<sup>nd</sup> day of July, 2008.

s/ Sam A. Crow

Sam A. Crow, U.S. District Senior Judge

---

<sup>1</sup>Plaintiff's motion seeks the amount of \$5,284.29 in one place, but seeks \$5,124.16 in another - a difference of \$160.13, which equates to one hour's time. Dk. 23, p. 2. The court believes from the hourly rate and hours stated, that the larger amount is the actual amount sought by plaintiff's counsel.