

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

JAMES LEE STULL,

Plaintiff,

v.

**Civil Action No. 1:13CV211
(The Honorable Irene M. Keeley)**

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

REPORT AND RECOMMENDATION/OPINION

On September 18, 2013, James Lee Stull (“Plaintiff”), through counsel, filed a Complaint seeking judicial review, pursuant to 42 U.S.C. § 405(g), of an adverse decision by Defendant, the Commissioner of Social Security (“Defendant”). (Docket No. 1.) The Court referred the matter to the undersigned United States Magistrate Judge, who, on April 21, 2014, issued a Report and Recommendation recommending that Plaintiff’s motion for summary judgment be granted in part and that the matter be remanded to the Commissioner. (Docket No. 14.) Neither party filed objections to the Report and Recommendation. Accordingly, on May 29, 2014, the District Court adopted the undersigned’s Report and Recommendation, granting Plaintiff’s motion for summary judgment in part and remanding the action to the Commissioner for further proceedings pursuant to the fourth sentence of 42 U.S.C. § 405(g). (Docket No. 15.)

On July 2, 2014, Plaintiff filed a “Motion for Attorney Fees,” seeking attorney fees in the amount of \$7,470.63, representing 40.1 hours of work by Plaintiff’s counsel, Brian D. Bailey. (Docket No. 17.) Defendant filed an “Opposition to Plaintiff’s Motion for Attorney Fees Pursuant to the Equal Access to Justice Act” on July 14, 2014. (Docket No. 18.) This matter was referred to the undersigned for Report and Recommendation by United States District Judge Irene M. Keeley

on July 14, 2014. (Docket No. 19.) The undersigned scheduled a telephonic conference regarding Plaintiff's motion to occur on Monday, July 21, 2014, at 11:00 a.m.

On July 17, 2014, Defendant filed a Stipulation, stating that the parties had agreed that Plaintiff's "previously filed Equal Access to Justice Act ("EAJA") petition" should be withdrawn. (Docket No. 21.) This document further stipulates that Plaintiff shall be awarded \$4,870.69 in attorney's fees, and that such fees shall be made payable to Plaintiff and be delivered to the business address of Plaintiff's counsel. (Id. at 1) The Stipulation further provides that after the stipulated amount is approved, the Commissioner "will determine whether Plaintiff has any outstanding federal debt to be offset from the attorney fees." (Id.) Accordingly, "[t]he amount of attorney fees payable to Plaintiff will be the balance of stipulated attorney fees remaining after subtracting the amount of Plaintiff's outstanding federal debt." (Id. at 1-2.) "Payment of the aforementioned attorney fees shall constitute a complete release from and bar to any and all claims Plaintiff may have relating to attorney fees under the EAJA in connection with this action." (Id. at 2.)

Given the parties' Stipulation, the undersigned Magistrate Judge recommends that the District Court enter the Order attached to the parties' Stipulation, awarding Plaintiff \$4,870.69 in attorney fees. The undersigned further recommends that if the District Court enter such Order, that Plaintiff's "Motion for Attorney Fees" (Docket No. 17) be **DENIED AS MOOT**.

Any party may, within fourteen (14) days after being served with a copy of this Report and Recommendation, file with the Clerk of the Court written objections identifying the portions of the Report and Recommendation to which objection is made, and the basis for such objection. A copy of such objections should also be submitted to the Honorable Irene M. Keeley, United States District Judge. Failure to timely file objections to the Report and Recommendation set forth above will

result in waiver of the right to appeal from a judgment of this Court based upon such Report and Recommendation. 28 U.S.C. § 636(b)(1); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); Thomas v. Arn, 474 U.S. 140 (1985).

The telephone hearing currently scheduled to take place before the undersigned on Monday, July 21, 2014, at 11:00 a.m., is hereby **CANCELLED**.

The Clerk of the Court is directed to transmit a copy of this Report and Recommendation to counsel of record.

Respectfully submitted this 17 day of July, 2014.

John S. Kaul

JOHN S. KAULL
UNITED STATES MAGISTRATE JUDGE