[DO NOT PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 24-11233

Non-Argument Calendar

AMANDA SMITH,

Plaintiff-Appellant,

versus

COMMISSIONER OF SOCIAL SECURITY,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 0:23-cv-60768-JG

No. 24-11241

Non-Argument Calendar

ERIC ACKERMAN,

Plaintiff-Appellant,

versus

COMMISSIONER OF SOCIAL SECURITY,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 0:23-cv-61822-JG

Before JORDAN, LUCK, and WILSON, Circuit Judges.

PER CURIAM:

In these consolidated appeals, Plaintiffs-Appellants Amanda Smith and Eric Akerman challenge the amount of attorney's fees the district court awarded them under the Equal Access to Justice

Act (EAJA), 28 U.S.C. § 2412. They argue that the district court abused its discretion by characterizing certain time entries as block billing and applying a 40% reduction on those entries. After careful review, we find that the district court abused its discretion in applying a 40% reduction arbitrarily, and we vacate and remand.

I.

Smith and Ackerman each filed claims for disability benefits with the Social Security Administration, which denied the claims. They appealed to the district court.[1] Smith successfully challenged the agency's ruling with the court granting Smith's motion for summary judgment and remanding Smith's case to the agency for further proceedings. The Commissioner of Social Security moved to remand Ackerman's case for further proceedings. As prevailing parties, both Smith and Ackerman moved for attorney's fees under the EAJA. Smith sought fees in the amount of $7,289.68 based on 29.8 hours of representation. Ackerman sought fees in the amount of $2,874.28 based on 12.5 hours. As support for their motions, counsel for Smith and Ackerman provided detailed timesheets for the hours sought. The Commissioner did not oppose the request for attorney's fees or the amount sought by counsel.

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[1] In the Southern District of Florida, Social Security cases are randomly assigned to magistrate judges without paired district judges. Any party can object and opt out of this system, which would then lead to the assignment of a district judge alongside the original magistrate judge. S.D. Fla. Admin. Order 2023-18. The parties here did not opt out, and United States Magistrate Judge Jonathan Goodman resolved both cases.

By separate orders, the court granted the fees motions in part. For both Smith and Ackerman, the court found that while the requested fees were reasonable, "some reductions were warranted" because of several "problematic entries" that related to block billing. For Smith, the court identified seven entries as block billing. The court explained that those entries would be reduced by 40% "because there is no way to determine the amount of time counsel spent on each of the specific tasks mentioned in the block-billed entries." The court awarded Smith $5,567.56 in attorney's fees. For Ackerman, the court identified four entries as block billing. The court explained that those entries will be reduced by 40% "because there is no way to determine the amount of time counsel spent on each of the specific tasks mentioned in the block-billed entries." The court awarded Ackerman $2,705.50 in attorney's fees. Smith and Ackerman timely appealed.

II.

We review the district court's award of attorney's fees and the amount of those fees under the EAJA for an abuse of discretion. *Meyer v. Sullivan*, 958 F.2d 1029, 1033 (11th Cir. 1992). An abuse of discretion occurs if the court "fails to apply the proper legal standard or to follow proper procedures in making the determination, or bases an award upon findings of fact that are clearly erroneous." *ACLU v. Barnes*, 168 F.3d 423, 427 (11th Cir. 1999) (quotation marks omitted).

Under the EAJA, a Social Security claimant who successfully challenges the agency's decision in federal court is eligible to

recover reasonable "fees and other expenses . . . incurred by that party" in maintaining the lawsuit. 28 U.S.C. § 2412(d)(1)(A); *see Meyer*, 958 F.2d at 1032–33. Three conditions must be satisfied before a district court can award EAJA attorney's fees: (1) the claimant must file an application for fees within thirty days of final judgment in the action; (2) assuming the fee application was timely filed, the claimant must qualify as a "prevailing party"; and (3) if the claimant is a prevailing party who timely filed an EAJA fee application, then the claimant is entitled to receive attorney's fees unless the government can establish that its positions were "substantially justified" or that there are "special circumstances" that countenance against the awarding of fees. 28 U.S.C. § 2412(d)(1)(A)-(B).

III.

Smith and Ackerman argue that the district court abused its discretion in its award of attorney's fees under the EAJA. First, Smith and Ackerman argue that the district court abused its discretion by characterizing certain entries as block billing. Second, even if those certain entries were block billing, Smith and Ackerman argue that the district court abused its discretion by reducing the amounts by 40% without explaining its reasoning.

We disagree with Smith and Ackerman that the district court abused its discretion in finding certain entries to be impermissible block billing. Block billing occurs when an attorney "often lump[s] together all the tasks performed by an attorney on a given day without breaking out the time spent on each task." *Barnes*, 168 F.3d at 429. The fee applicant "bears the burden of establishing

entitlement to an award and documenting the appropriate hours expended and hourly rates. The applicant . . . should maintain billing time records in a manner that will enable a reviewing court to identify distinct claims." *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983).

The district court correctly identified these entries as block billing. For example, Smith's entry dated October 26, 2023, contains the following description: "Continue reviewing administrative record, conduct research, continue drafting arguments." That entry does not identify the time spent reviewing the record, the time spent researching, or the time spent drafting the arguments. Other entries also fail to separate out the time spent on each individual task. But Smith and Ackerman argue that "[t]asks such as reviewing the administrative record, drafting a summary of the medical evidence or procedural history, drafting the arguments, and research on applicable regulations and case law generally occur simultaneously." The fundamental connection between reviewing, researching, and drafting exists not just in social security appeals, but in every type of case. Regardless, an attorney must provide "records in a manner that will enable a reviewing court to identify distinct claims." *Hensley*, 461 U.S. at 437. Counsel for Smith and Ackerman failed to do so here.

But we agree with Smith and Ackerman that the district court abused its discretion in attempting to solve the impermissible block billing by applying an arbitrary 40% reduction. We have affirmed district courts that applied across-the-board reductions in

block-billed hours to offset the effects of block billing. *See, e.g.*, *Ceres Env't Servs., Inc. v. Colonel McCrary Trucking, LLC*, 476 F. App'x 198, 203 (11th Cir. 2012) (per curiam). But we explained that "[a] district court 'must do more than eyeball the request and if it seems excessive cut it down by an arbitrary percentage.'" *Johnston v. Borders*, 36 F.4th 1254, 1287 (11th Cir. 2022) (per curiam) (quoting *Heiar v. Crawford Cnty.*, 746 F.2d 1190, 1204 (7th Cir. 1984)). The court is obligated to "articulate the decisions it made, give principled reasons for those decisions, and show its calculation." *Ne. Eng'rs Fed. Credit Union v. Home Depot, Inc.* (*In re Home Depot*), 931 F.3d 1065, 1089 (11th Cir. 2019) (quotation marks omitted).

The district court did not do that analysis here. Instead, the district court identified three cases to support its conclusion that the entries are block billing and then stated that a 40% reduction is appropriate. This is impermissible because the district court appeared to have chosen an "arbitrary percentage," *Johnston*, 36 F.4th at 1287, rather than provided the parties and this court with "principled reasons" for its reduction, *In re Home Depot*, 931 F.3d at 1089.[2]

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[2] Smith and Ackerman point to several recent orders in which the district court identified issues of block billing and applied reductions, ranging from 20% to 40%. *Compare Wheeler-McCorvey v. Kijakazi*, No. 22-62104-CIV, 2024 WL 3236765, at *3 (S.D. Fla. Mar. 19, 2024) (reducing attorney's fees by 40% without explanation), *report and recommendation adopted sub nom. Wheeler-McCorvey v. O'Malley*, No. 22-62104-CIV, 2024 WL 3225992 (S.D. Fla. June 28, 2024) *with Farrat v. O'Malley*, No. 22-22491-CIV, 2024 WL 3796983, at *3 (S.D. Fla. Aug. 2, 2024) (reducing attorney's fees by 20% with no explanation and citing to the same case law as in *Wheeler-McCorvey*), *report and recommendation adopted sub nom. Farrat v. Kijakazi*, No. 22-22491-CIV, 2024 WL 3792206 (S.D. Fla. Aug. 12,

Thus, we find that the district court abused its discretion in reducing the attorney's fees by 40%. We **VACATE** its judgment as to attorney's fees and **REMAND** the issue of attorney's fees for further proceedings.

2024). This inconsistency also highlights why we believe the reduction to be arbitrary. But in another case, the district court provided a thorough explanation about why it found a recommended 20% reduction for block billing "excessive" and only applied a smaller reduction (5%). *Molina v. Kijakazi*, No. 22-21480-CIV, 2024 WL 4501033, at *2–3 (S.D. Fla. Oct. 16, 2024) (declining the adopt the 20% recommended reduction because the "block billing in this matter is far less egregious than other cases where courts imposed a ten to twenty-percent reduction").