

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHARMAINE MESA : CIVIL ACTION
 :
 v. :
 :
 KENNETH S. APFEL, :
 COMMISSIONER OF SOCIAL SECURITY : NO. 97-3094

MEMORANDUM ORDER

Plaintiff is a prevailing party in this Social Security disability benefits case. Presently before the court is plaintiff's motion for attorney's fees under the Equal Access to Justice Act ("EAJA"). See 28 U.S.C. § 2412.

Plaintiff requests attorney's fees in the amount of \$3437.50 for 27.5 hours of work at the statutory rate of \$125.00 per hour plus costs of \$190.00. Defendant does not contest plaintiff's entitlement to fees and costs, but seeks to eliminate four of the hours claimed by plaintiff and thus to reduce the requested award by \$500.

Defendant contests plaintiff's request for three hours of attorney time spent at oral argument in this case, including travel time between counsel's office and the federal courthouse. Defendant contends that "travel time is not compensable under the EAJA" and that one half hour is reasonable for an oral argument.

Defendant submits no affidavit from his attorney or other evidence to show that oral argument was in fact 30 minutes, and does not dispute that it takes almost one hour to travel from

Jenkintown to the courthouse. Defendant relies on Bollenbacher v. Secretary of Health and Human Services, 737 F. Supp. 874 (W.D. Pa. 1990) to argue that "travel time is not compensable under the EAJA." The Court in that case, however, merely declined to approve four and a half hours of compensation for a round-trip between Ambridge and Pittsburgh by an attorney to file a pleading. Id. at 877 & n.2. The Court in Bollenbacher did not hold that attorney travel time may never be compensated. A messenger, of course, can file a pleading. A messenger cannot present oral argument in a court proceeding.

Other courts have allow compensation of attorneys for travel time under the EAJA. See, e.g., Cooper v. United States Railroad Retirement Board, 24 F.3d 1414, 1417 (D.C. Cir. 1994); Peterson v. Shalala, 818 F. Supp. 241, 244 (S.D. Ill. 1993); Doucette v. Sullivan, 785 F. Supp. 1056, 1059 (D. Maine 1992) (approving plaintiff's claim for 4.2 hours of travel time for legal research); Rizzo v. Secretary of Health and Human Servs., 1989 WL 126554, *2 (W.D.N.Y. Oct. 16, 1989) (approving award which included travel time to courthouse); Eames v. Sullivan, 1989 WL 126542, *6 (W.D.N.Y. Oct. 20, 1989) (allowing compensation for five hours for oral argument which included travel time); Kennedy v. Heckler, 598 F. Supp. 124, 124-25 (D. Md. 1984) (permitting award for attorney's travel time). See also International Woodworkers of America v. Donovan, 792 F.2d 762,

767 (9th Cir. 1985) (items ordinarily billed to client generally recoverable under EAJA).

On the other hand, a few courts have disallowed compensation for travel time. See Crudele v. Chater, 1997 WL 198076, *5 (S.D.N.Y. April 23, 1997) (excluding time spent by attorney traveling to court conference); Pettyjohn v. Chater, 888 F. Supp. 1065, 1069 (D. Colo. 1995) (excluding time spent by attorney traveling to oral argument); Coup v. Heckler, 706 F. Supp. 405, 408 (W.D. Pa. 1989) (reducing award to exclude travel time for court appearance).

The court believes that it is fair and reasonable to compensate counsel for otherwise billable time he was required to spend traveling to attend a scheduled court argument on a dispositive motion.

Defendant also contests the request for two and a half hours of time dedicated to preparing the present motion and supporting brief. Defendant contends that two and a half hours is excessive and that one hour would adequately compensate plaintiff's attorney for this task.

It does not appear that two and a half hours was an unreasonable amount of time to prepare the petition and brief in question. The court also cannot agree with defendant that such work could have been done by a secretary or legal assistant,

