

**FILED**  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION**

SEP 22 2003

JAMES W. McCOORMACK, CLERK  
By: *[Signature]*  
CLERK

PLAINTIFF

**TESSA G., A MINOR, BY AND THROUGH  
HER FATHER AND NATURAL GUARDIAN,  
MARK G.**

**VS. CASE NO. 4:03-CV-00493 GTE**

**ARKANSAS DEPARTMENT OF HUMAN  
SERVICES, et al.**

**DEFENDANTS**

**ORDER AWARDING ATTORNEY'S FEES & COSTS**

Before the Court is Plaintiff's Motion for Costs and Attorney's Fees. Counsel for Plaintiff seeks an award of costs in the amount of \$564.18 and attorney's fees in the amount of \$26,493.00. Defendants object to the requested costs and claim the attorney's fee request is excessive. For the reasons stated below, the Court awards attorney's fees in the amount of \$16,500.00 and costs in the amount of \$150.00.

**ATTORNEY'S FEES**

Attached to Plaintiff's motion is a billing statement supporting the fee request of \$26,493.00. Plaintiff was represented in this litigation by the Little Rock office of the law firm of Armstrong Allen, PLLC, a regional law firm which also has offices in Memphis and Jackson, Tennessee, and Jackson, Mississippi. The case file was opened in November of 2002. The lawsuit was filed in June 25, 2003. A motion for preliminary injunction was filed with the complaint. After substantial briefing on the issues presented, including a reply brief and a sur-

reply brief, the case came before the Court for a hearing on August 14, 2003.

During the hearing, Defendants agreed to provide Plaintiff Tessa G. with an application for ACS Waiver services. As the Court noted during the hearing, this was the primary relief sought in the complaint and motion for preliminary relief. For that reason, the Court considered Plaintiff a prevailing party.

Defendants contend that it is unreasonable to permit a recovery for 177 lawyer hours. For cause, Defendants point to the short lifespan of this case. Plaintiff counters that the case presented a complex and novel legal situation and that the time spent investigating the claim, researching the law, and preparing the case was necessary.

Despite the short duration of the case, it was not a simple case. Defendant raised in the briefing – and lost – substantial questions concerning standing and whether Plaintiff had enforceable rights under § 1983. Plaintiff filed a thirty-page reply brief in further support of her position.

Plaintiff's counsel, Martin Bowen, was very prepared during the hearing. He demonstrated a mastery of the applicable law and relevant facts and was able to answer questions put forth by the Court. His advocacy greatly assisted the Court in understanding the issues presented and likely contributed to the Defendants' last minute determination not to challenge the case on the merits. Moreover, Plaintiff was prepared to present the testimony of Cynthia Alberding, an ACS specialist, as an expert witness. The Court appreciates Plaintiff's counsel thorough preparedness in presenting the case.

Some of the fee request consists of research done in anticipation of filing the lawsuit, which began some seven months prior to its filing. The Court cannot fault counsel for

conducting a full and thorough inquiry before filing a complaint. The Court further acknowledges that this area of the law is complex. Defendant's argument that the action hinged on "only 43 words found in 42 U.S.C. § 1396(a)(8)," greatly oversimplifies the issue, the effective presentation of which required an understanding of the complex and bureaucratic interplay between the federal and state governments in the area of Medicaid services.

The Court is required to assess the reasonableness of the fee in relation to the result obtained. Although the Complaint sought broader relief than that which was ultimately obtained, Plaintiff's claims involved a common core of facts, making it difficult to view the lawsuit as a series of discrete claims. In such cases, the Supreme Court has instructed that, in awarding fees, the court "must focus on the significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended on the litigation." *Hensley v. Eckerhart*, 461 U.S. 424, 435 (1983). The Court is further guided by the principle that legal "services that were redundant, inefficient, or simply unnecessary are not compensable." *Jenkins by Jenkins v. State of Mo.*, 127 F.3d 709, 716 (8<sup>th</sup> Cir. 1997).

Thus, the Court is called upon to determine the amount of attorney's fees which would reasonably compensate Plaintiff's counsel for prevailing in this matter. The overall fee request does appear excessive in view of the narrowness of the issue ultimately decided. After considering the fee petition, supporting affidavits and all relevant factors, the Court finds \$16,500.00 to be a reasonable attorney's fee in this case.

#### **COSTS**

Plaintiff seeks the sum of \$564.18. This sum reflects the cost of filing the Complaint (\$150.00), long distance telephone charges, fax and copy charges, postage, and \$74.50 in

Westlaw research. Defendants object that this amount is "comprised entirely of non-compensable items included within office overhead." (Def.'s brief at p. 5).

The Court agrees that the filing fee of \$150.00 is recoverable, but denies the other claimed costs. The Court does not award costs for long distance charges, faxes, postage or Westlaw research. With regard to the photocopying charges, those costs are denied without prejudice for the following reason.

Expenses for photocopies "necessarily obtained for use in the case" are recoverable by the prevailing party as costs. 28 U.S.C. § 1920 (2000). Not all copying costs are recoverable. *See Brewer-Georgio*, 985 F.Supp. 1485, 1485 (N.D. Ga. 1997)(Copies made for "convenience, preparation, research, or for records of counsel are not recoverable."); *Independence Tube Corp. v. Copperweld Corp.*, 543 F.Supp. 706, 722 (D. Ill. 1982) (Copying costs for correspondence and copies of cases are not taxable.). Moreover, the burden is on the party seeking reimbursement for photocopying costs to show that the photocopied items were necessary; if that party fails to meet the burden, the court should not award costs for those items. *Tirapelli v. Advanced Equities, Inc.*, 222 F.Supp.2d 1081, 1085 -1086 (N.D.Ill.,2002). Because the Court has no way to determine the purpose for which copies were made and whether they were in fact necessarily obtained for use in the case, this item of cost is denied without prejudice. Plaintiff may, at her election, resubmit for the Court's reconsideration this item of costs with additional explanation.

#### CONCLUSION

Pursuant to 42 U.S.C. § 1988 for the reasons herein stated,

IT IS THEREFORE ORDERED that Plaintiff's Motion for Costs and Attorney's Fees (Docket No. 11) be, and it is hereby, GRANTED IN PART AND DENIED IN PART. Plaintiff

is hereby awarded costs in the amount of One Hundred Fifty Dollars (\$150.00) and attorneys' fees in the amount of Sixteen Thousand Five Hundred Dollars (\$16,500).

IT IS SO ORDERED this 21 day of September, 2003.

*Sarnett Thomas Cook*  
UNITED STATES DISTRICT COURT

THIS DOCUMENT ENTERED ON  
DOCKET SHEET IN COMPLIANCE  
WITH RULE 58 AND/OR 79(a) FRCP  
ON 9-23-03 BY *[Signature]*

jh

UNITED STATES DISTRICT COURT  
Eastern District of Arkansas  
U.S. Court House  
600 West Capitol, Suite 402  
Little Rock, Arkansas 72201-3325

September 23, 2003

\* \* MAILING CERTIFICATE OF CLERK \* \*

Re: 4:03-cv-00493.

True and correct copies of the attached were mailed by the clerk to the following:

Mark Arnold Hagemeyer, Esq.  
Arkansas Attorney General's Office  
Catlett-Prien Tower Building  
323 Center Street  
Suite 200  
Little Rock, AR 72201-2610

Breck G. Hopkins, Esq.  
Arkansas Department of Human Services  
Office of Chief Counsel  
700 Main Street  
Post Office Box 1437  
Little Rock, AR 72203-1437

Martin Wayne Bowen, Esq.  
Armstrong Allen, PLLC  
Post Office Box 251310  
Little Rock, AR 72225-1310

press, post, ALJ

James W. McCormack, Clerk

Date: 9/23/03

BY: 