Supreme Court Rules Attorneys' Fees Under EAJA May Be Used to Offset Client's Debt to U.S. Government; Three Justices Call Ruling Unwise

A unanimous U.S. Supreme Court, with three justices concurring, ruled that the United States may offset an attorneys' fee award to a prevailing plaintiff under the Equal Access to Justice Act, 28 U.S.C. §2412(d)(1)(A)—which applies to Social Security disability and Veterans benefits—to pay a debt owed to the federal government, because the fee award is owed to the litigant, and not the litigant's attorney. *Astrue v. Ratliff, No. 08-1322 (U.S. Sup. Ct. June 14, 2010).*

The respondent was an attorney representing a plaintiff in a successful suit against the Social Security Administration (SSA) for Social Security benefits. A federal district court granted the plaintiff's unopposed motion for attorneys' fees under the EAJA as the prevailing party. However, instead of paying the award, the government sought an administrative offset against under 31 U.S.C. §3716 for "delinquent federal debts." The plaintiff's lawyer intervened to challenge the offset, arguing that the attorneys' fees belong to her and could not be used to satisfy her client's federal debts. The lower federal court ruled that the lawyer lacked standing to challenge the offset. The Eighth Circuit reversed, finding that, based on its own precedent, EAJA attorneys' fees belong to the prevailing attorneys.

The Supreme Court, in an opinion written by Justice Thomas, unanimously concluded that attorneys' fees under the EAJA are payable to the prevailing litigant—not

the litigant's attorney—and therefore are subject to an offset to satisfy the litigant's preexisting debt to the federal government. The Court reasoned that nothing in the EAJA itself "contradicts" its "longstanding view" that "'prevailing party'" is a "'term of art,'" which means the prevailing litigant. *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res.*, 532 U.S. 598, 603 (2001), 25 MPDLR 532. The EAJA and other similar attorneys' fee provisions make a clear distinction between the plaintiffs who receive the award and the lawyers who perform the work for which the awards are generated. That a lawyer has a "beneficial interest or contractual right" in those fees does not alter the conclusion as to who is entitled to the fees under the statute.

The Court specifically rejected the argument that other EAJA provisions, combined with language in the Social Security Act and the federal government's practice of paying some EAJA fee awards directly to attorneys in Social Security cases, created an ambiguity that should be resolved in favor of recognizing an entitlement to those fees for the lawyer representing the litigant. Even if there were such an ambiguity, which the Court did not concede, subsection (d)(1)(B) and other provisions of the EAJA clearly differentiate between prevailing litigants and their lawyers. Moreover, SSA's practice of awarding these fees and costs directly to the lawyer representing the prevailing litigant demonstrates that, when Congress wants to ensure that lawyers receive the fees directly, it knows how to do so without ambiguity.

Also, there is a "stark contrast" in the language used in the EAJA and the Social Security Act's attorneys' fee provisions. That the federal government frequently paid EAJA fee awards directly to the lawyers until 2006, even when there was a debt, did not change the Court's interpretation that the litigants are entitled to those fees, and the

federal government is entitled to offset those fees to collect a federal debt. Today, under the Social Security Act, the federal government only makes a direct payment to the lawyer if the plaintiff does not owe a federal debt and has assigned those fees to the lawyer. This is the same conclusion that the Court reached in *Evans v. Jeff D.*, 475 U.S. 717 (1986), a decision that governs federal attorneys' fees to prevailing parties in civil rights cases under 42 U.S.C. §1988(b).

Justice Sotomayor, joined by Stevens and Ginsburg, concurred, but wrote separately. They emphasized that "it is likely that Congress did not consider that question and that, had it done so, it would not have wanted EAJA fee awards to be subject to offset." These "offsets undercut the effectiveness of the EAJA."

Moreover, "[i]t seems probable that Congress would have made, and perhaps will in the future make, the opposite choice." Doing so would be consistent with the "'specific purpose of the EAJA [which] is to eliminate for the average person the financial disincentive to challenge unreasonable governmental actions. . . .' EAJA fee awards . . . have proved to be a remarkably efficient way of improvising access to the courts for the statute's intended beneficiaries, including thousands of recipients of Social Security and veteran's benefits each year." Unfortunately, our "decision 'severely undermines the [EAJA's] estimable aim . . . [T]he Legislature has just cause to clarify beyond debate' whether this effect is one it actually intends."