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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT TACOMA

8 MICHAEL GUY MCCUNE,

9 Plaintiff,

10 v.

11 CAROLYN W. COLVIN, Acting  
Commissioner of Social Security,

12 Defendant.  
13

CASE NO. C15-00950 BHS

ORDER GRANTING  
PLAINTIFF'S MOTION FOR  
ATTORNEY'S FEES

14 **I. INTRODUCTION**

15 This matter comes before the court on the motion by Michael Guy McCune  
16 (“McCune”) for attorney’s fees pursuant to the Equal Access to Justice Act, 28 U.S.C.  
17 § 2412 (“EAJA”). Dkt. 12. The Commissioner of the Social Security Administration  
18 (“Commissioner”) challenges McCune’s request for statutory attorney’s fees on the  
19 grounds that the Commissioner’s position in this matter was substantially justified and  
20 had a reasonable basis in fact and law. *See* Dkt. 13. The Court disagrees and because the  
21 requested fees are reasonable **GRANTS** McCune’s motion for statutory fees.  
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1 **II. BACKGROUND**

2 On January 6, 2016, this Court issued an order reversing and remanding the  
3 Commissioner’s decision to deny benefits for further administrative proceedings. *See*  
4 Dkt. 10. The Court found that (1) the ALJ erred at step two of the sequential evaluation  
5 process by finding that McCune did not have a severe mental impairment, and (2) the  
6 error was harmful because the resulting RFC and step-four finding that McCune could  
7 perform past work were not supported by substantial evidence. *See id.* at 5-13. The  
8 Court reversed the Commissioner’s decision pursuant to sentence four of 42 U.S.C.  
9 § 405(g) for further administrative proceedings due to the harmful error. *See id.* at 13-14.

10 **III. DISCUSSION**

11 In any action brought by or against the United States, the EAJA requires that “a  
12 court shall award to a prevailing party other than the United States fees and other  
13 expenses . . . unless the court finds that the position of the United States was substantially  
14 justified or that special circumstances make an award unjust.” 28 U.S.C.  
15 § 2412(d)(1)(A). When determining the issue of substantial justification, the court  
16 reviews only the “issues that led to remand” in determining if an award of fees is  
17 appropriate. *See Toebler v. Colvin*, 749 F.3d 830, 834 (9th Cir. 2014).

18 McCune was the prevailing party because the Court reversed and remanded the  
19 Commissioner’s decision to deny benefits for further administrative proceedings. *See*  
20 Dkt. 10. The ALJ’s failure to find that McCune had a severe mental impairment led to  
21 the remand. *See id.* at 5-13.  
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1 **A. Substantial Justification**

2 The Commissioner argues that the ALJ’s step-two finding was substantially  
3 justified. *See* Dkt. 13. The Commissioner has the burden of proving that her position  
4 was substantially justified. *See Hardisty v. Astrue*, 592 F.3d 1072, 1076 n.2 (9th Cir.  
5 2010). In addition, a “substantially justified position must have a reasonable basis both in  
6 law and fact.” *Gutierrez v. Barnhart*, 274 F.3d 1255, 1258 (9th Cir. 2001) (citations  
7 omitted). The fact that the Commissioner did not prevail on the merits does not compel  
8 the conclusion that her position was not substantially justified. *See Kali v. Bowen*, 854  
9 F.2d 329, 334 (9th Cir. 1988) (citing *Oregon Env’tl. Council v. Kunzman*, 817 F.2d 484,  
10 498 (9th Cir. 1987)). However, a determination by the Court that the administrative  
11 decision was not supported by substantial evidence is a “strong indication” that the  
12 Commissioner’s position was not substantially justified. *Thangaraja v. Gonzales*, 428  
13 F.3d 870, 874 (9th Cir. 2005).

14 Here, the Commissioner simply reiterates her position from the original litigation,  
15 arguing that the ALJ reasonably found McCune not to have a severe mental impairment  
16 based on the ALJ’s interpretation of the medical evidence. *See* Dkt. 13 at 2-3. However,  
17 this Court found the ALJ’s interpretation of the medical evidence not to be supported by  
18 substantial evidence. *See* Dkt. 10 at 5. First, the Court found that while James Moore,  
19 Ph.D., deferred other independent Axis I diagnoses, he clearly diagnosed McCune with  
20 Psychological Factors Affecting a Medical Condition. *See id.* at 7. The Court also found  
21 that McCune provided sufficient medical evidence to show that while other providers did  
22 not diagnose him with a mental impairment until after the date last insured, those

1 providers found that limitations stemming from his impairment existed before the date  
2 last insured. *See id.* at 7-9.

3 Substantial evidence is that which a reasonable mind might accept as adequate to  
4 support a conclusion. *See Richardson v. Perales*, 402 U.S. 389, 401 (1971). Having  
5 found that the ALJ's step-two finding did not meet the substantial evidence standard, the  
6 Court now finds no reason that the Commissioner's position was otherwise substantially  
7 justified. The Court also concludes that there are no special circumstances that render an  
8 EAJA award in this matter unjust. Accordingly, the Court will award McCune attorney's  
9 fees under the EAJA.

#### 10 **B. Amount of Fees**

11 According to the United States Supreme Court, "the fee applicant bears the burden  
12 of establishing entitlement to an award and documenting the appropriate hours  
13 expended." *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983). The Court has an  
14 independent duty to review the submitted itemized log of hours to determine the  
15 reasonableness of hours requested in each case. *See id.* at 433, 436-37.

16 Once the Court determines that a plaintiff is entitled to a reasonable fee, "the  
17 amount of the fee, of course, must be determined on the facts of each case." *Id.* at 429,  
18 433 n.7. "[T]he most useful starting point for determining the amount of a reasonable fee  
19 is the number of hours reasonably expended on the litigation multiplied by a reasonable  
20 hourly rate." *Id.* at 433.

21 Here, McCune prevailed on the single claim of whether or not the denial of his  
22 social security application was based on substantial evidence in the record as a whole and

1 not based on harmful legal error. When the case involves a “common core of facts or  
2 will be based on related legal theories . . . the district court should focus on the  
3 significance of the overall relief obtained by the plaintiff in relation to the hours  
4 reasonably expended on the litigation.” *See id.* at 435. The Supreme Court concluded  
5 that where a plaintiff “has obtained excellent results, his attorney should recover a fully  
6 compensatory fee.” *Id.*

7 The Court concludes based on a review of the relevant evidence that McCune here  
8 obtained excellent results. Therefore, the Court looks to “the hours reasonably expended  
9 on the litigation,” which, when combined with the reasonable hourly rate, encompass the  
10 lodestar. *See id.* Given the facts and circumstances of the matter herein, and based on  
11 the briefing, declarations, and attorney time sheet, the Court concludes that the amount of  
12 time incurred by McCune’s attorney in this matter is reasonable. The Commissioner  
13 provides no argument against the amount of the fees requested. *See* Dkt. 13. The Court  
14 finds reasonable the request for attorney’s fees in the amount of \$4,054.09 and expenses  
15 in the amount of \$406.15.

#### 16 IV. CONCLUSION

17 McCune is awarded \$4,054.09 in attorney’s fees and \$406.15 in expenses pursuant  
18 to the EAJA and consistent with *Astrue v. Ratliff*, 130 S. Ct. 2521, 2524 (2010).  
19 McCune’s award is subject to any offset allowed pursuant to the Department of  
20 Treasury’s Offset Program. *See id.* at 2528. The check for EAJA fees shall be mailed to  
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1 McCune's counsel: Victoria B. Chhagan; Douglas, Drachler, McKee, & Gilbrough; 1904  
2 Third Avenue; Seattle, WA 98101.

3 Dated this 26th day of April, 2016.

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6 BENJAMIN H. SETTLE  
7 United States District Judge  
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