

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE MIDDLE DISTRICT OF ALABAMA  
SOUTHERN DIVISION

|  |   |                                |
|--|---|--------------------------------|
| MERITA DIANE BAREFOOT,                               | ) |                                |
|  | ) |                                |
| Plaintiff,   | ) |                                |
|  | ) |                                |
| v.   | ) | CIVIL ACTION NO. 1:13cv841-CSC |
|  | ) | (WO)                           |
| CAROLYN W. CAROLYN W. COLVIN,                        | ) |                                |
| Acting Commissioner of Social Security, <sup>1</sup> | ) |                                |
|  | ) |                                |
| Defendant.   | ) |                                |

**MEMORANDUM OPINION and ORDER**

On March 18, 2015, the plaintiff filed a motion for attorney fees pursuant to the Equal Justice Act, 28 U.S.C. § 2412(d). (Doc. # 16). The Commissioner objects to an award of fees because her “position was substantially justified.” (Doc. # 19).

Plaintiff Merita Barefoot (“Barefoot”) applied for and was denied disability insurance benefits by the Commissioner. After her application was denied, she sought judicial review in this court. Pursuant to 28 U.S.C. § 636(c)(1) and M.D. Ala. LR 73.1, the parties consented to a United States Magistrate Judge conducting all proceedings in this case and ordering the entry of final judgment. On January 7, 2015, the court concluded that the ALJ erred as a matter of law and remanded the case for an award of benefits. (Doc. # 14 at 13 & 24).

A Social Security disability claimant is a prevailing party entitled to seek EAJA fees when the claimant obtains a remand for reconsideration of her case or an award of benefits. *See Shala v. Schaefer*, 509 U.S. 292, 300-01 (1993). Clearly, the plaintiff is a prevailing party.

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<sup>1</sup> Carolyn W. Colvin became the Acting Commissioner of Social Security on February 14, 2013.

Under the EAJA, the court “shall award” attorney’s fees “unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.” 28 U.S.C. § 2412(d)(1)(A). *See also* *Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002). “The government’s position is substantially justified under the EAJA when it is justified to a degree that would satisfy a reasonable person - i.e. when it has a reasonable basis in both law and fact. The government bears the burden of showing that its position was substantially justified.” *United States v. Douglas*, 55 F.3d 584, 588 (11th Cir. 1995) (quoting *Pierce v. Underwood*, 487 U.S. 552, 565 (1988)).

The court concluded that a remand for an award of benefits was necessary because the decision of the ALJ was “not supported by substantial evidence and [was] not consistent with applicable legal principles.” (Doc. # 14 at 13). In fact, the court concluded that “[t]he ALJ’s representation of the record and her factual findings are fundamentally flawed, totally unsupported by the record, and inconsistent with the governing legal principles.” (*Id.* at 14) Thus, the Commissioner’s position in this litigation did not have a reasonable basis in *fact or law*. *Pierce* requires that the government’s position be reasonable *both* in fact and law to be substantially justified.

The Commissioner argues that the plaintiff is not entitled to fees because “[g]iven that the issue is whether the ALJ’s decision was arguably supported by substantial evidence, the Commissioner’s position was substantially justified.” (Doc. # 19 at 3). Beyond this conclusory statement, the Commissioner points the court to no evidence and makes no other argument that her position was substantially justified. Consequently, the court concludes that the

