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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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Elaine Sandoval,

No. CV-09-01931-PHX-NVW

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Plaintiff,

ORDER

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vs.

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Michael J. Astrue, Commissioner of Social Security,

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Defendant.

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Before the Court is “Plaintiff’s Application for Attorney’s Fees Pursuant to the Equal Access to Justice Act 28 U.S.C. § 2412(d)(1)(A).” (Doc. 20.) The Court will grant the motion but order payment of attorneys fees and costs directly to Plaintiff Elaine Sandoval.

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I. Legal Standard

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On a motion for attorney’s fees and costs pursuant to the Equal Access to Justice Act (EAJA), a prevailing party is entitled to attorney’s fees “unless th[is] 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). Under the EAJA, the government’s “position” includes both its litigating position and the action or failure to act by the agency upon which the civil action is based. 28 U.S.C. § 2412(d)(2)(D). Here, then, it includes the ALJ’s decision and the Commissioner’s arguments to this Court in defense of the ALJ’s decision. However, it does not include “issues raised by the plaintiff but not addressed by the district

1 court” in its remand order. *Hardisty v. Astrue*, 592 F.3d 1072, 1079 (9th Cir. 2010).

2 The Supreme Court has defined “substantially justified” as “justified to a degree that
3 could satisfy a reasonable person.” *Pierce v. Underwood*, 487 U.S. 552, 565 (1988). The
4 government bears the burden of showing that its position was substantially justified.
5 *Gonzales v. Free Speech Coalition*, 408 F.3d 613, 618 (9th Cir. 2005).

6 **II. Background**

7 Sandoval applied for disability benefits largely based on severe depression. She was
8 denied at the various stages of the disability process, culminating in an unfavorable ALJ
9 decision that Sandoval appealed to this Court. In September 2010, this Court vacated the
10 ALJ decision for various reasons (discussed as necessary below) and remanded with
11 instructions that the ALJ revisit certain issues.

12 Sandoval’s attorney, Stephanie Lake, has now moved for attorney’s fees and costs
13 under the EAJA. Lake requests \$5,236.10 in fees, representing 30.4 hours of work at the rate
14 of \$172.24 per hour; and \$350 in court costs, representing the District Court filing fee. The
15 Commissioner filed an opposition to Lake’s request, arguing that this case does not merit an
16 EAJA award. But should this Court conclude otherwise, the Commissioner does not dispute
17 the amount Lake claims. The Commissioner disputes only whether the award should go to
18 Lake or to Sandoval. Lake did not file a reply in support of her motion.

19 **III. Analysis**

20 **A. The Commissioner’s Position Was Not Substantially Justified**

21 The parties do not dispute that Sandoval is a “prevailing party” for purposes of the
22 EAJA. The question, then, is whether the ALJ’s decision and the Commissioner’s defense
23 of that decision in this Court was substantially justified.

24 This Court reversed the ALJ for a number of reasons, but the Court will focus only
25 on one such reason here, specifically, the ALJ’s reasons for discrediting Sandoval’s
26 subjective testimony about the severity of her depression.

27 If an ALJ concludes that the claimant’s symptom testimony is not credible, the ALJ
28 must “make[] specific findings stating clear and convincing reasons for doing so. The ALJ

1 must state specifically which symptom testimony is not credible and what facts in the record
2 lead to that conclusion.” *Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996) (citation
3 omitted). This has been the law in the Ninth Circuit for over twenty years. *See Swenson v.*
4 *Sullivan*, 876 F.2d 683, 687 (9th Cir. 1989) (“The [ALJ]’s reasons for rejecting excess
5 symptom testimony must be clear and convincing if medical evidence establishes an
6 objective basis for some degree of the symptom and no evidence affirmatively suggests that
7 the claimant was malingering.”). Yet the Commissioner’s failure to follow it — or to take
8 it seriously — remains one of the most frequently noticed errors both in precedential¹ and
9 non-precedential² decisions.

10 Here, the ALJ discredited Sandoval’s testimony because Sandoval “had no significant
11 limitations in her ability to care for her daughter, her apartment, and her finances.” This fails
12 the “clear and convincing” standard, and it further contradicts established Ninth Circuit
13 precedent holding “that disability claimants should not be penalized for attempting to lead
14 normal lives in the face of their limitations. . . . Only if the level of activity were inconsistent
15 with Claimant’s claimed limitations would these activities have any bearing on Claimant’s
16 credibility.” *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998). On remand, the ALJ may
17 find that Sandoval’s “level of activity [is] inconsistent with [her] claimed limitations.” If the
18 ALJ supports that finding with clear and convincing reasons, this Court would likely be
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21 ¹*See, e.g., Shafer v. Astrue*, 518 F.3d 1067, 1072 (9th Cir. 2008); *Lingenfelter v.*
22 *Astrue*, 504 F.3d 1028, 1036–40 (9th Cir. 2007); *Webb v. Barnhart*, 433 F.3d 683, 687–88
23 (9th Cir. 2005); *Robinson v. Barnhart*, 469 F. Supp. 2d 793, 799–802 (D. Ariz. 2006);
Bergfeld v. Barnhart, 361 F. Supp. 2d 1102, 1115 (D. Ariz. 2005).

24 ²*See, e.g., Stillwater v. Comm’r*, 361 F. App’x 809, 811–12 (9th Cir. 2010); *Whitehorn*
25 *v. Astrue*, 321 F. App’x 679, 681 (9th Cir. 2009); *Page v. Comm’r*, 304 F. App’x 520, 522
26 (9th Cir. 2008); *Wright v. Astrue*, 234 F. App’x 750, 751 (9th Cir. 2007); *Rochin v. Barnhart*,
27 204 F. App’x 601, 602–03 (9th Cir. 2006); *Shafer v. Barnhart*, 120 F. App’x 688, 696 (9th
28 Cir. 2005); *Barry v. Astrue*, No. CV-09-1677-PHX-NVW, 2010 WL 3168630, at *10 (D.
Ariz. Aug. 10, 2010); *Romero v. Astrue*, No. CIV 08-544-TUC-CKJ, 2009 WL 4693914, at
*12–13 (D. Ariz. Dec. 4, 2009); *White v. Astrue*, No. CV-07-2202 PHX-DGC, 2008 WL
2687097, at *2 (D. Ariz. July 2, 2008)

1 required to uphold it. But the ALJ had an obligation to state clear and convincing reasons
2 the first time, and failed to do so. That failure would be sufficient on its own to merit the
3 remand that this Court ordered, and it was not substantially justified.

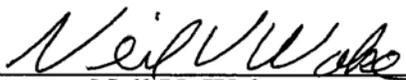
4 **B. The EAJA Award Belongs to the Claimant**

5 The Supreme Court recently held that the fees awarded under the EAJA must be paid
6 to the claimant, not the attorney. *Astrue v. Ratliff*, 130 S. Ct. 2521, 2524 (2010). The
7 Commissioner therefore requests that, should this Court award fees, it do so directly to
8 Sandoval. Sandoval has not challenged this argument, and this Court's independent review
9 has uncovered no reason why *Ratliff* does not control in this case. The Court will therefore
10 award fees and costs directly to Sandoval. Whether Sandoval has assigned that award to her
11 attorney is a matter for Sandoval and her attorney to resolve.

12 IT IS THEREFORE ORDERED that "Plaintiff's Application for Attorney's Fees
13 Pursuant to the Equal Access to Justice Act 28 U.S.C. § 2412(d)(1)(A)" (Doc. 20) is
14 GRANTED.

15 IT IS FURTHER ORDERED that the Clerk enter judgment in favor of Plaintiff Elaine
16 Sandoval in the amount of \$5,586.10 to (representing \$5,236.10 in attorney's fees and \$350
17 in costs) against Defendant, with interest at the federal judgment rate from the date of entry
18 of judgment.

19 DATED this 10th day of March, 2011.

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23 Neil V. Wake
24 United States District Judge
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