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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**

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9 Timothy L. Silver,

10 Plaintiff,

11 v.

12 Carolyn W. Colvin, Acting Commissioner  
of Social Security Administration,

13 Defendant.

No. CV-12-00540-PHX-DGC

**ORDER**

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16 Plaintiff has filed a motion for attorney's fees pursuant to the Equal Access to  
17 Justice Act ("EAJA"), 28 U.S.C. § 2412. Doc. 20. A response has been filed, Doc. 21,  
18 but a reply has not been filed. The Court will grant the motion.

19 **I. Background.**

20 An administrative law judge ("ALJ") denied Plaintiff's application for social  
21 security benefits, finding that Plaintiff was not disabled within the meaning of the Social  
22 Security Act. Doc. 1 at 2. That decision became Defendant's final decision when the  
23 Appeals Council denied review. *Id.* Plaintiff brought an action for judicial review in this  
24 Court pursuant to 42 U.S.C. § 405(g). *Id.* The Court ruled in favor of Plaintiff and  
25 remanded the case to Defendant for further proceedings. Doc. 19 at 13.

26 **II. Legal Standard**

27 28 U.S.C. § 2412(d)(1)(A) provides that "a court shall award to a prevailing party  
28 other than the United States fees and other expenses . . . unless the court finds that the

1 position of the United States was substantially justified or that special circumstances  
2 made an award unjust.” “An applicant for disability benefits becomes a prevailing party  
3 for purposes of the EAJA if the denial of her benefits is reversed and remanded  
4 regardless of whether disability benefits ultimately are awarded.” *Gutierrez v. Barnhart*,  
5 274 F.3d 1255, 1257 (9th Cir. 2001). In the Ninth Circuit, “attorney’s fees are to be  
6 awarded to a party winning a sentence four remand unless the commissioner shows that  
7 his position with respect to the issue on which the district court based its remand was  
8 substantially justified.” *Lewis v. Barnhart*, 281 F.3d 1081, 1083 (9th Cir.2002) (internal  
9 citations and quotations omitted). The Supreme Court has stated that “a position can be  
10 justified even though it is not correct, and we believe it can be substantially . . . justified  
11 if a reasonable person could think it correct, that is, if it has a reasonable basis in law and  
12 fact.” *Pierce v. Underwood*, 487 U.S. 552, 566 n. 2 (1988).

## 13 **II. Analysis.**

14 The ALJ rejected the claim because Plaintiff’s impairment was not medically  
15 equal to a listed impairment, Plaintiff had the RFC to perform light work, and Plaintiff  
16 was capable of adjusting to different work. Doc 19 at 3. In making these findings, the  
17 ALJ discredited Plaintiff’s subjective testimony, his mother’s testimony, and a nurse  
18 practitioner’s testimony. *Id.* at 3, 6, 11. The Court found that the ALJ failed to present  
19 “specific, clear and convincing reasons” to justify finding Plaintiff’s testimony not  
20 credible. Doc. 19 at 4 (citing *Smolen v. Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996)).  
21 The Court also found that the ALJ did not properly discredit the mother’s and nurse  
22 practitioner’s testimony. Doc. 19 at 6, 11.

### 23 **A. Was Defendant’s Position Substantially Justified?**

24 Defendant argues that an award of attorney’s fees should be denied because her  
25 position was substantially justified. Doc. 21 at 2. The Court disagrees. Defending  
26 “basic and fundamental [procedural] errors” is not substantially justified. *Shafer v.*  
27 *Astrue*, 518 F.3d 1067, 1071-72 (9th Cir. 2008) (holding the ALJ committed fundamental  
28 error by discrediting Claimant’s testimony without giving clear and convincing reasons

1 and that the Commissioner was not substantially justified in defending it); *see also Jager*  
2 *v. Astrue*, 290 Fed.Appx. 27, 28 (9th Cir. 2008). “Where, as here, the ALJ’s decision was  
3 reversed on the basis of procedural errors, the question is *not* whether [Defendant’s]  
4 position as to the merits of [Plaintiff’s] disability claim was substantially justified.  
5 Rather, the relevant question is whether [Defendant’s] decision to defend on appeal the  
6 procedural errors committed by the ALJ was substantially justified.” *Shafer*, 518 F.3d at  
7 1071-72 (emphasis original). A court should not need to speculate as to the reasons the  
8 ALJ rejected the claimant’s allegations. *Corbin v. Apfel*, 149 F.3d at 1052 (holding that  
9 the Commissioner was not substantially justified in defending an ALJ’s decision where  
10 he rejected Claimant’s testimony without specific findings).

11 The ALJ in this case committed the same errors as in *Shafer* and *Corbin*. The ALJ  
12 offered only bare assertions as to why Plaintiff’s testimony was inconsistent with the  
13 RFC. Doc 19 at 5. The ALJ did provide a detailed reiteration of the reports and opinions  
14 in the record, but failed to offer an analysis on how the record undermined the Plaintiff’s  
15 credibility. *Id.* Just as the Commissioner was not substantially justified in defending the  
16 errors in *Shafer* and *Corbin*, Defendant was not substantially justified in defending this  
17 case.<sup>1</sup>

18 **B. Is the Amount of the Requested Fee Award Reasonable?**

19 Plaintiff’s counsel submitted an itemized statement showing 37.7 hours were  
20 worked and \$350 of costs were incurred. Doc. 20-1 at 3, 6-7. Having reviewed counsel’s  
21 statement and considered the fee award factors, *see Hensley v. Eckerhart*, 461 U.S. 424,  
22 429-30 (1983), the Court finds the requested amounts to be reasonable.<sup>2</sup>

23 **IT IS ORDERED:**

- 24 1. Plaintiffs motion for attorney fees (Doc. 20) is **granted**.

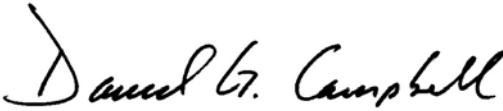
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26 <sup>1</sup> Whether the Commissioner was substantially justified in defending the ALJ’s  
27 decision on the mother’s and nurse practitioner’s testimony will not be reached because  
28 this finding is dispositive.

<sup>2</sup> Pursuant to Defendant’s argument (Doc. 21 at 10), attorney’s fees are to be paid  
to Plaintiff, not counsel. *See Astrue v. Ratliff*, 130 S. Ct. 2521, 2529 (2010).

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2. Plaintiff is awarded **\$6,948.86** in attorney's fees and **\$350.00** in costs pursuant to Equal Access to Justice Act, 28 U.S.C. § 2412.

Dated this 22nd day of July, 2013.



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David G. Campbell  
United States District Judge