

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

WO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Brenda S. Mendez,

Plaintiff,

v.

Commissioner of Social Security,

Defendant.

No. CV-13-00838-PHX-NVW

ORDER

Before the Court is Plaintiff’s Application for Attorney Fees Under the Equal Access to Justice Act (Doc. 32). Plaintiff seeks award of her attorney fees incurred in this Court and on appeal. Defendant does not object to Plaintiff obtaining all of the requested fees for her attorney’s district court work, but does object to Plaintiff’s request for attorney’s fees for work on her unsuccessful appeal to the U.S. Court of Appeals for the Ninth Circuit.

On September 25, 2014, the Court vacated the final decision of the Commissioner of Social Security and remanded this case for further administrative proceedings. (Doc. 21.) The Court found that the ALJ erred in multiple, specific ways in weighing medical source evidence and concluded, “[T]he ALJ’s explanation of her weighing of medical source evidence makes it impossible to determine whether it is supported by substantial evidence, but it is plainly not free from legal error.” (*Id.* at 8.) The Court also found the

1 ALJ erred in evaluating Plaintiff’s credibility in multiple, specific ways and concluded:
2 “As with weighing medical source evidence, the ALJ’s rambling explanation of her
3 credibility determination is not free from error and fails to show that it is supported by
4 substantial evidence.” (*Id.* at 10.) Further, the Court found the ALJ erred in weighing a
5 third-party function report because she failed to give reasons germane to the witness for
6 discounting it. (*Id.* at 11.) Finally, the Court found that the ALJ failed to obtain reliable
7 vocational information to decide whether Plaintiff’s impairments prevent her from
8 performing other work that exists in the national economy. (*Id.* at 14.) The vocational
9 expert opined that a person limited to simple, low-stress, not fast-paced work could
10 perform certain jobs, but then admitted he had no information or experience from which
11 he could conclude that those jobs involved simple, low-stress, and not fast-paced work.

12 In its September 25, 2014 order, the Court denied Plaintiff’s request that this case
13 be remanded for award of benefits without further proceedings. A case may not be
14 remanded for award of benefits unless three requirements are satisfied:

- 15 (1) the record has been fully developed and further administrative
16 proceedings would serve no useful purpose; (2) the ALJ has failed to
17 provide legally sufficient reasons for rejecting evidence, whether claimant
18 testimony or medical opinion; and (3) if the improperly discredited
evidence were credited as true, the ALJ would be required to find the
claimant disabled on remand.

19 *Garrison v. Colvin*, 759 F.3d 995, 1020 (9th Cir. 2014). The test incorporates the
20 requirement that “there are no outstanding issues that must be resolved before a
21 determination of disability can be made.” *Id.* at n.26. “Where there is conflicting
22 evidence, and not all essential factual issues have been resolved, a remand for an award
23 of benefits is inappropriate.” *Treichler v. Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090,
24 1101 (9th Cir. 2014). Even in the “rare circumstances” in which all three elements of the
25 test are met, the decision whether to remand a case for additional evidence or simply to
26 award benefits is discretionary. *Id.* at 1101-02. Applying the *Garrison* test, the
27 September 25, 2014 order found that “the record is not fully developed regarding
28

1 Plaintiff's residual functional capacity and whether jobs exist in significant numbers in
2 the national economy that Plaintiff can perform." (Doc. 21 at 15.)

3 Although the September 25, 2014 order vacated the ALJ's unfavorable decision,
4 Plaintiff appealed it, arguing that a remand for computation of benefit was warranted. On
5 appeal, the Ninth Circuit disagreed with Plaintiff:

6 The district court did not abuse its discretion in remanding for further
7 proceedings, because there are outstanding issues that must be resolved
8 before a determination of disability can [b]e made. *Benecke v. Barnhart*,
9 379 F.3d 587, 590, 593 (9th Cir. 2004). Here, the record presents
10 "conflicting evidence, and not all essential factual issues have been
11 resolved" by the ALJ, including (1) assessing Mendez's credibility, (2)
weighing the opinions of medical providers, and (3) incorporating
Mendez's residual functional capacity into the job descriptions presented
by the vocation expert.

12 (Doc. 32-1 at 18.)

13 Upon motion for attorney's fees pursuant to the Equal Access to Justice Act
14 ("EAJA"), a prevailing party is entitled to attorney's fees "unless th[is] court finds that
15 the position of the United States was substantially justified or that special circumstances
16 make an award unjust." 28 U.S.C. § 2412(d)(1)(A). The Supreme Court has defined
17 "substantially justified" as "justified to a degree that could satisfy a reasonable person."
18 *Pierce v. Underwood*, 487 U.S. 552, 565 (1988). The government bears the burden of
19 showing that its position was substantially justified. *Gonzales v. Free Speech Coalition*,
20 408 F.3d 613, 618 (9th Cir. 2005). But a "request for attorney's fees should not result in
21 a second major litigation." *Pierce*, at 563 (quoting *Hensley v. Eckerhart*, 461 U.S. 424,
22 437 (1983)); accord *Decker v. Berryhill*, 856 F.3d 659, 663 (9th Cir. 2017).

23 Defendant does not dispute that Plaintiff is a prevailing party and is entitled to
24 attorney's fees for work that resulted in this Court vacating the ALJ's hearing decision
25 even though Plaintiff did not obtain all of the relief sought in this Court. Defendant
26 contends a fee award may be reduced based on the degree of success in obtaining the
27
28

1 relief sought and urges the Court to deny Plaintiff only the fees incurred pursuing an
2 unsuccessful appeal.

3 Plaintiff contends that all time spent on a case is compensable as long as the
4 attorney's actions are reasonable. Plaintiff asserts, "It was reasonable to argue that
5 Mendez should not be countenanced to wait another several years and engage in further
6 proceedings when she provided relevant and material evidence of disability, which
7 evidence was not properly considered by the ALJ." (Doc. 38 at 8.) However, the
8 mandate from the Ninth Circuit denying her appeal from the September 25, 2014 order
9 did not issue until February 10, 2017. It was not reasonable to spend more time
10 appealing denial of award of benefits than it likely would have taken for further
11 administrative proceedings on remand. Moreover, it was not reasonable to seek remand
12 for award of benefits where there were multiple outstanding issues to be resolved before a
13 determination of disability could be made. Defendant was substantially justified in
14 opposing Plaintiff's request for remand for award of benefits both in this Court and
15 before the Ninth Circuit.

16 IT IS THEREFORE ORDERED that Plaintiff's Application for Attorney Fees
17 Under the Equal Access to Justice Act (Doc. 29) is granted only for fees incurred through
18 September 25, 2014, and is otherwise denied. Plaintiff is awarded attorneys' fees in the
19 amount of \$6,068.75.

20 IT IS FURTHER ORDERED that the Clerk enter judgment in favor of Plaintiff in
21 the amount of \$6,068.75 for attorneys' fees against Defendant, with interest at the federal
22 judgment rate of 1.31 % per annum from the date of entry of judgment.

23 Dated this 6th day of October, 2017.

24
25 

26 _____
27 Neil V. Wake
28 Senior United States District Judge