

1 **WO**

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Mayra Serna,

10 Plaintiff,

11 v.

12 Carolyn W. Colvin,

13 Defendant.
14

No. CV-13-02416-PHX-JZB

ORDER

15 Pending before the Court is Plaintiff's Motion for Award of Attorney's Fees
16 Pursuant to the Equal Access to Justice Act. (Doc. 38.) For the reasons below, the Court
17 will grant Plaintiff's Motion.

18 **I. Background**

19 On December 10, 2010, Plaintiff Mayra Serna filed an application for
20 Supplemental Security Income benefits under Title XVI of the Social Security Act on
21 behalf of her minor child R.S.S. (Doc. 34 at 1.) Following the initial denial and denial
22 upon reconsideration, the Administrative Law Judge (ALJ) issued a decision finding
23 R.S.S. not disabled within the meaning of the Social Security Act. (*Id.* at 1-2.) Plaintiff
24 appealed this decision to the Appeals Council, which denied review. (*Id.* at 2.) Plaintiff
25 then filed an action for judicial review of the final decision of the Commissioner of the
26 Social Security Administration (SSA). (*Id.* at 1.)

27 On March 31, 2015, the Court vacated the SSA's decision and remanded to the
28 SSA for further proceedings. (*Id.* at 16.) More specifically, the Court found that the ALJ

1 erred in weighing the opinions of Dr. Guzman, R.S.S.’s treating psychiatrist, for three
2 reasons. (*Id.* at 9-11.) First, the ALJ failed to provide specific and legitimate reasons
3 supported by substantial evidence for not giving Dr. Guzman’s opinions controlling
4 weight. (*Id.* at 9-10.) Second, the ALJ erred in affording substantial weight to the
5 opinions of non-examining sources because those opinions did not consider all of the
6 relevant evidence. (*Id.* at 10.) Third, the Court found the ALJ erred in failing to
7 determine whether Dr. Guzman’s opinions were nonetheless entitled to some deference
8 even if not entitled to controlling weight. (*Id.* at 10-11.) Separately, the Court also held
9 that the ALJ erred by failing to obtain a complete case evaluation from a qualified
10 specialist based on the entire record. (*Id.* at 12-14.)

11 Plaintiff now moves for an award of attorneys’ fees pursuant to the Equal Access
12 to Justice Act (“EAJA”), 28 U.S.C. § 2412. Plaintiff seeks a total of \$6,963.65 in fees
13 and argues that Defendant’s position was not substantially justified. (Doc. 42 at 2.)
14 Defendant opposes Plaintiff’s Motion, arguing that the Court should not award fees
15 because “a reasonable person could think that the government’s position—both the ALJ’s
16 decision and the Commissioner’s litigation position—was correct as it had a reasonable
17 basis in fact and law.” (Doc. 41 at 4.)

18 **II. Legal Standard**

19 The EAJA provides that the Court:

20 shall award to a prevailing party other than the United States fees and other
21 expenses . . . incurred by that party in any civil action . . . including
22 proceedings for judicial review of agency action, brought by or against the
23 United States in any court having jurisdiction of that action, unless the
court finds that the position of the United States was substantially justified
or that special circumstances make an award unjust.

24 28 U.S.C. § 2412(d)(1)(A). An order from the Court reversing the decision of the SSA
25 and remanding for further proceedings, pursuant to sentence four of 42 U.S.C. § 405(g),
26 makes the claimant a “prevailing party” for purposes of the EAJA. *Shalala v. Schaefer*,
27 509 U.S. 292, 302 (1993); *see also Gutierrez v. Barnhart*, 274 F.3d 1255, 1257 (9th Cir.
28 2001) (“An applicant for disability benefits becomes a prevailing party for the purposes

1 of the EAJA if the denial of her benefits is reversed and remanded regardless of whether
2 disability benefits ultimately are awarded.”).

3 Because the EAJA creates a presumption that a prevailing party is entitled to fees,
4 the government bears the burden of showing that its position was “substantially
5 justified.” *Tobeler v. Colvin*, 749 F.3d 830, 832 (9th Cir. 2014). “Substantial justification
6 means ‘justified in substance or in the main—that is, justified to a degree that could
7 satisfy a reasonable person.’” *Id.* (quoting *Meier v. Colvin*, 727 F.3d 867 (9th Cir. 2013)).
8 The government’s position “must have a reasonable basis both in law and fact.” *Id.*
9 (internal quotation marks omitted). The “position of the United States” within the
10 meaning of the EAJA statute includes “both the government’s litigation position and the
11 underlying agency action giving rise to the civil action.” *Id.* “Where . . . the ALJ’s
12 decision was reversed on the basis of procedural errors, the question is *not* whether
13 [Defendant’s] position as to the merits of [Plaintiff’s] disability claim was substantially
14 justified. Rather, the relevant question is whether [Defendant’s] decision to defend on
15 appeal the procedural errors committed by the ALJ was substantially justified.” *Shafer v.*
16 *Astrue*, 518 F.3d 1067, 1071 (9th Cir. 2008). (emphasis in original) (citations omitted).

17 **III. Analysis**

18 Defendant does not contest the amount of fees requested, but instead argues that
19 its and the ALJ’s positions were substantially justified. (Docs. 41 at 3-6.) The Court
20 disagrees. As the Court explained in its March 31, 2015 Order, the ALJ erred in failing
21 to offer specific and legitimate reasons supported by substantial evidence for not giving
22 Dr. Guzman’s opinions controlling weight, based on a longstanding legal standard. *See*
23 20 C.F.R. § 404.1527(c)(2). The Court finds that Defendant’s decision to defend the
24 ALJ’s failure to support his weighing of Dr. Guzman’s opinions was not substantially
25 justified. *See Shafer*, 518 F.3d at 1072 (“The ALJ rejected a treating physician’s opinion
26 in favor of a non-treating physician’s opinion without providing clear and convincing
27 reasons, and committed several errors in assessing [Plaintiff’s] residual functional
28 capacity. It follows *a fortiori* the government’s defense of the ALJ’s procedural errors

1 was not substantially justified, and [Plaintiff] is entitled to attorney’s fees under the
2 EAJA.”); *Flores v. Shalala*, 49 F.3d 562, 570 n.11 (9th Cir. 1995) (expressing doubt that
3 “the government’s decision to defend its actions in court would be substantially justified
4 [when] the underlying administrative decision would not [be substantially justified]”).

5 Furthermore, with respect to the ALJ’s failure to have a medical expert evaluate
6 Plaintiff’s case based on the entire record, the ALJ had a statutory duty to obtain such an
7 evaluation pursuant to 42 U.S.C. § 1382c(a)(3)(I). As the Court noted in its March 31,
8 2015 Order, at the time of the ALJ’s decision, the state agency consultants’ evaluations
9 were more than eight months old and “a significant amount of relevant evidence [had
10 been] added to the record.” (Doc. 34 at 13.) Although Defendant asserts that its defense
11 of the ALJ on this point was substantially justified because “the subsequent record
12 contained normal mental status examinations . . . and records from educational
13 professionals establishing that R.S.[S] was at age and grade level and that they had no
14 concerns about R.S.[S]’s communication, physical development, behavior, or social
15 emotional functioning,” Defendant concedes that “the state agency consultants did not
16 have the benefit of reviewing the whole record.” (Doc. 41 at 6.) Therefore, the Court
17 finds that Defendant’s defense of the ALJ’s failure to have a medical expert evaluate
18 Plaintiff’s case based on the entire record was not substantially justified. Because
19 Defendant’s position was not substantially justified and Plaintiff is the prevailing party,
20 Plaintiff is entitled to an award of attorneys’ fees.

21 Plaintiff is seeking \$6,963.65 in attorneys’ fees. Defendant has not challenged the
22 total amount of fees requested, the hourly rate, or the time expended for the work
23 performed. The Court has reviewed the Itemization of Services attached to Plaintiff’s
24 Motion and the work and fees discussed in her Reply, and finds the amounts are
25 reasonable for this case.

26 Lastly, the check for EAJA fees shall be made payable to Plaintiff. *See Astrue v.*
27 *Ratliff*, 560 U.S. 586, 589 (2010) (holding that a § 2412(d) fees award is payable to the
28 litigant, not his attorney). The Court will order the check, payable to Plaintiff, be mailed

1 to Plaintiff's counsel's office.

2 Accordingly,

3 **IT IS ORDERED** that Plaintiff's Motion for Award of Attorney's Fees Pursuant
4 to the Equal Access to Justice Act (Doc. 38) is granted.

5 **IT IS FURTHER ORDERED** that Plaintiff is awarded \$6,963.65 in attorneys'
6 fees. This award shall be payable to Plaintiff and mailed to Plaintiff's attorney.

7 Dated this 30th day of October, 2015.

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

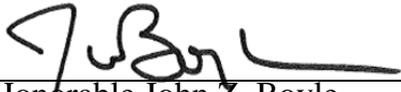
24

25

26

27

28



Honorable John Z. Boyle
United States Magistrate Judge