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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Lorrie Owens,
10 Plaintiff,

No. CV-16-00970-PHX-JAT

11 v.

ORDER

12 Commissioner of Social Security
13 Administration,
14 Defendant.

15 Pending before the Court is Plaintiff Lorrie Owens's Motion for Attorneys' Fees
16 pursuant to the Equal Access to Justice Act ("EAJA"). ("Motion," Doc. 27). Defendant,
17 Commissioner of Social Security Administration, has filed her Response (Doc. 28).
18 Having considered the parties' filings, the Court now rules on the Motion.

19 **I. Background**

20 Alan Owens applied for Social Security disability benefits in January 2010.
21 (Doc. 24 at 1). The Administrative Law Judge ("ALJ") initially denied this claim, only to
22 be reversed by the Social Security Administration ("SSA") Appeals Council. (*Id.*). The
23 ALJ denied Mr. Owens's benefits a second time in March 2014, but he died before that
24 decision could be appealed. (Doc. 1 at 1-2). Plaintiff, Mr. Owens's surviving spouse,
25 appealed the ALJ's decision to this court claiming: "1) the [ALJ] did not properly
26 discredit the claimant's subjective symptom testimony; and 2) the ALJ did not properly
27 discredit certain treating medical opinions." (Doc. 25 at 1).

28 The Court found three of the ALJ's six proffered reasons for discrediting

1 claimant’s reported symptoms were not supported by the evidence. (*Id.* at 3–5). These
2 improper reasons included: (1) that “claimant had minimal treatment” and received only
3 “routine, conservative, and non-emergency treatment”; (2) that “claimant’s treatment was
4 limited to conservative treatment and follow-up care, avoidance of caffeine and
5 prescription medications”; and (3) that “Dr. Goodell, the claimant’s neurologist
6 reported . . . that if the claimant had a low stress environment he would be able to work.”
7 (*Id.*).

8 Also, the Court found that the ALJ gave potentially invalid reasons for not
9 crediting the testimony of three of four medical sources. (*Id.* at 8–9). Furthermore, the
10 Court found that this error “call[ed] into question the ultimate conclusion” and was
11 therefore “not harmless.” (*Id.* at 9).

12 Based on these reasons, the Court reversed the ALJ’s decision and remanded for
13 further proceedings. (*Id.*). After the reversal, Plaintiff filed the current Motion requesting
14 attorneys’ fees and costs under the EAJA. (Doc. 27). Defendant’s Response states that
15 they “ha[ve] no objection to [Plaintiff’s] request and will defer to the Court’s assessment
16 of the matter.” (Doc. 28 at 1).

17 **II. Legal Standard**

18 The EAJA allows “a prevailing party other than the United States fees and other
19 expenses . . . incurred by that party in any civil action . . . unless the court finds that the
20 position of the United States was substantially justified or that special circumstances
21 make an award unjust.” 28 U.S.C. § 2412(d)(1)(A) (2012). An applicant for disability
22 benefits becomes a prevailing party for the purposes of the EAJA if the denial of her
23 benefits is reversed and remanded regardless of whether disability benefits are ultimately
24 awarded. *Shalala v. Schaefer*, 509 U.S. 292, 300–02 (1993).

25 The “position of the United States” includes both its litigating position and the
26 “action or failure to act by the agency upon which the civil action is based.”
27 28 U.S.C. § 2412(d)(2)(D). For this position to be substantially justified, it must be
28 “justified in substance or in the main—that is, justified to a degree that could satisfy a

1 reasonable person.” *Pierce v. Underwood*, 487 U.S. 552, 565 (1988) (holding that
2 substantially justified means having a reasonable basis both in law and fact). In EAJA
3 actions, the government bears the burden of proving that its position was substantially
4 justified. *Gonzales v. Free Speech Coalition*, 408 F.3d 613, 618 (9th Cir. 2005).

5 When analyzing the government’s position for substantial justification, the Court’s
6 inquiry should be focused on the issue that was the basis for remand and not the merits of
7 Plaintiff’s claim in its entirety or the ultimate disability determination. *Flores v. Shalala*,
8 49 F.3d 562, 569 (9th Cir. 2008); *see also Corbin v. Apfel*, 149 F.3d 1051, 1052
9 (9th Cir. 1998) (“The government’s position must be substantially justified at each stage
10 of the proceedings.” (citation and quotation marks omitted)).

11 **III. Analysis**

12 Defendant does not oppose Plaintiff’s request for attorneys’ fees. (Doc. 28 at 1).
13 The Court could “treat the government’s non-opposition as constituting a failure to offer
14 a basis for a finding of substantial justification and, thus, a failure to carry its burden of
15 proof.” *Gwaduri v. INS*, 362 F.3d 1144, 1146 (9th Cir. 2004). However, the Court should
16 exercise discretion in awarding fees under EAJA and “has an independent obligation to
17 ensure that the request is reasonable.” *Keyser v. Astrue*, No. 08-1268-CL,
18 2012 WL 78461, at *3 (D. Or. Jan. 10, 2012); *see also Webb v. Ada Cty.*,
19 195 F.3d 524, 527 (9th Cir. 1999) (recognizing that a district court possesses
20 “considerable discretion” in determining the reasonableness of a fee award). Accordingly,
21 the Court reviews the record for reasonableness of Plaintiff’s request.

22 **A. Substantial Justification**

23 The Court agrees with both Plaintiff and Defendant that the government’s position
24 was not substantially justified. First, the Court held that the ALJ erred with her decision
25 to discredit claimant’s testimony, as three of six of findings used to reach that decision
26 were not supported by the record. (Doc. 25 at 3–5). An error is harmless if there is
27 substantial evidence supporting the ALJ’s decision and the “error does not negate the
28 validity of the ALJ’s ultimate conclusion.” *Molina v. Astrue*, 674 F.3d 1104, 1115

1 (9th Cir. 2012). As the Court “cannot determine whether the ALJ’s ultimate conclusion
2 would be changed by more accurate consideration of the evidence,” the error committed
3 by the ALJ was not harmless.

4 Second, the Court held that the ALJ gave potentially invalid reasons for
5 discrediting the testimony of three out of four medical sources. (Doc. 25 at 9). This error
6 also calls into question the ultimate conclusion of the disability determination, and
7 therefore the Court finds that it is not harmless error. Based on these errors, the Court
8 finds that the ALJ’s determination did not have a “reasonable basis both in law and fact,”
9 and accordingly could not be substantially justified. *Pierce*, 487 U.S. at 565.

10 Finally, the Court can identify no special circumstances that would make an award
11 unjust. Based on these findings and Defendant’s non-objection to Plaintiff’s Motion, the
12 Court finds that Plaintiff is entitled to attorneys’ fees under the EAJA.

13 **B. Fee Amount**

14 Plaintiff requests attorneys’ fees in the amount of \$6,050.15, in addition to
15 paralegal fees of \$100, for a total of \$6,150.15. (Doc. 27 at 1). This amount represents the
16 31.4 hours Plaintiff’s counsel has expended on her case multiplied by the hourly rate of
17 \$190.28¹, in addition to two hours of paralegal time multiplied by the hourly rate of
18 \$50.00. (*Id.*). At 31.4 hours, the total amount of hours expended by Plaintiff is within the
19 standard range awarded for Social Security cases. *Costa v. Comm’r of Soc. Sec.*,
20 690 F.3d 1132, 1136 (9th Cir. 2012) (“Many district courts have noted that twenty to
21 forty hours is the range most often requested and granted in social security cases.”
22 (citations omitted)). Also, “a prevailing party that satisfies EAJA’s other requirements
23 may recover its paralegal fees from the Government at prevailing market rates.”
24 *Richlin Sec. Serv. Co. v. Chertoff*, 553 U.S. 571 (2008). Therefore, the Court finds the
25 amount of fees reasonable and awards them to Plaintiff in the requested amount.

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27 ¹ The base hourly rate for EAJA cases is \$125 per hour. The rate of \$190.28 is
28 used in Plaintiff’s fee calculation after taking the Ninth Circuit Court of Appeals’s cost of
living adjustment into consideration. *Statutory Maximum Rates Under the Equal Access
to Justice Act*, http://www.ca9.uscourts.gov/content/view.php?pk_id=0000000039 (last
visited July 12, 2017).

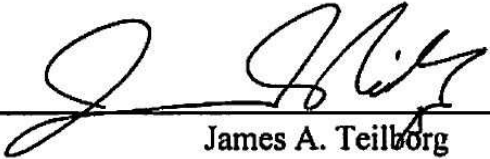
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IV. Conclusion

Based on the foregoing,

IT IS ORDERED that Plaintiff’s Motion for an Award of Attorney’s Fees under the EAJA, (Doc. 27), is GRANTED in the amount of \$6,150.15. This award shall be payable directly to Plaintiff and is subject to offset to satisfy any pre-existing debt that Plaintiff owes the United States pursuant to *Astrue v. Ratliff*, 560 U.S. 586, 594 (2010).

Dated this 26th day of July, 2017.



James A. Teilborg
Senior United States District Judge