

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
EL DORADO DIVISION

CATHERINE A. BIVENS

PLAINTIFF

V.

NO. 09-1031

MICHAEL J. ASTRUE,
Commissioner, Social Security Administration

DEFENDANT

ORDER

Plaintiff, Catherine A. Bivens, appealed the Commissioner's denial of benefits to the Court. On May 10, 2010, a Judgment was entered remanding Plaintiff's case to the Commissioner, pursuant to sentence four of 42 U.S.C. § 405(g). (Doc.10). On September 14, 2010, Plaintiff's counsel moved for an award of \$1,740.00 in attorney's fees under 28 U.S.C. §2412, the Equal Access to Justice Act (hereinafter "EAJA"), requesting compensation for 12 attorney hours of work before the Court at an hourly rate of \$145.00 per hour. (Doc. 11). Defendant filed a response, objecting to Plaintiff's application, alleging that it was not timely filed. (Doc. 14).

A request for an award of attorney's fees and costs under the EAJA may be filed up until 30 days after the judgment becomes "not appealable" i.e., 30 days after the 60-day time for appeal has ended. See Shalala v. Schaefer, 509 U.S. 292, 296 (1993); 28 U.S.C. §§ 2412(d)(1)(B),(d)(2)(G). Therefore, to be timely, a request for attorney's fees under the EAJA should have been filed no later than August 10, 2010. As stated above, Plaintiff's counsel filed this petition requesting attorney's fees on September 14, 2010.

Since Plaintiff's counsel filed the petition for fees after the deadline for filing said

petition had expired, Plaintiff's request for attorney's fees under the EAJA is denied as untimely.

IT IS SO ORDERED this 8th day of March, 2011.

1/s/ Erin L. Setser

HON. ERIN L. SETSER

UNITED STATES MAGISTRATE JUDGE