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IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

JOSE LUIS GAVINA PLAINTIFF

V. NO. 2:10-CV-02101

MICHAEL J. ASTRUE, Commissioner
Social Security Administration DEFENDANT

O R D E R

For reasons stated in a memorandum opinion of this date, I conclude that the decision of the Commissioner denying benefits to the plaintiff is not supported by substantial evidence and should be reversed and remanded for further consideration pursuant to sentence four of 42 U.S.C. § 405(g). **The parties have sixty days from entry of the judgment on the docket in which to appeal.**

If plaintiff wishes to request an award of attorney's fees and cost under the Equal Access to Justice Act (EAJA) 28 U.S.C. § 2412, an application 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, 113 S.Ct. 2625 (1993); 28 U.S.C. §§ 2412(d)(1)(B), (d)(2)(G). The court, however, will not grant an application for attorney's fees absent a showing of good cause for the failure to present the letter from Dr. Capocelli dated November 11, 2009 prior to the hearing before the ALJ on May 12, 2009.

IT IS SO ORDERED this July 15, 2011.

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/s/ J. Marschewski
HONORABLE JAMES R. MARSCHEWSKI
Chief United States Magistrate Judge