

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

DONNA BERRY-WELCH

PLAINTIFF

v.

CIVIL NO. 10-2160

MICHAEL J. ASTRUE, Commissioner  
Social Security Administration

DEFENDANT

**ORDER**

Plaintiff, Donna Berry-Welch, appealed the Commissioner's denial of benefits to this court. ECF No. 1. On February 24, 2011, judgment was entered remanding Plaintiff's case to the Commissioner pursuant to sentence four of 42 U.S.C. § 405(g). ECF No. 15. On June 17, 2011, Plaintiff moved for an award of \$2666.50 in attorney's fees and costs under 28 U.S.C. § 2412, the Equal Access to Justice Act ("EAJA"), requesting compensation for 15.10 attorney hours at an hourly rate of \$165.00, 3.50 paralegal hours at an hourly rate of \$50.00. ECF No. 16. Defendant has filed a response agreeing to the hourly rates requested by Plaintiff. ECF No. 18.

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, 113 S.Ct. 2625 (1993); 28 U.S.C. §§ 2412(d)(1)(B), (d)(2)(G). Thus, in this instance, a request for attorney's fees under the EAJA should have been filed no later than May 25, 2011. Plaintiff's counsel did not file her EAJA petition until June 17, 2011. Therefore, Plaintiff's request for EAJA fees is untimely. Accordingly, Plaintiff's motion for EAJA fees is DENIED.

IT IS SO ORDERED this 18th day of July, 2011.

/s/ J. Marschewski

HON. JAMES R. MARSCHEWSKI  
CHIEF U.S. MAGISTRATE JUDGE