

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

TIMOTHY S. FLEMING

PLAINTIFF

vs.

Civil No. 2:13-cv-02120

CAROLYN W. COLVIN

DEFENDANT

Commissioner, Social Security Administration

ORDER

Pending now before the Court is Plaintiff's Motion for Attorney's Fees under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412 (2011). ECF No. 19. Plaintiff filed this Motion after the Court dismissed Plaintiff's case as moot. *See* ECF Nos. 17-18. In the Memorandum Opinion dismissing this case, the Court noted the following:

Further, because this case only became moot after the SSA made a fully favorable decision nearly a year after this case was filed and after Plaintiff prepared the entire appeal in this matter (including the briefing), *the Court also finds Plaintiff is the "prevailing party" and is entitled to an award of attorney's fees and other expenses under EAJA.*

ECF No. 17 at 3 (emphasis added).

Since the time of this Memorandum Opinion, however, the issue of whether Plaintiff is entitled to attorney's fees under EAJA has been more fully briefed, and the Court may need to reconsider whether Plaintiff is entitled to an award of attorney's fees under the EAJA. Importantly, Defendant filed a response to Plaintiff's Motion and questioned whether Plaintiff does indeed qualify as a "prevailing party" for purposes of EAJA. ECF No. 21. In her briefing, Defendant cited the Supreme Court case of *Buckhannon Board and Care Home, Inc. v. West Virginia Department of Health and Human Resources*, 532 U.S. 598, 603 (2001). Upon review, this case appears to address the very issue before the Court as to whether Plaintiff qualifies as a "prevailing party" under EAJA.

Accordingly, before deciding this issue and in order to give Plaintiff the full opportunity to address this issue, the Supreme Court case of *Buckhannon*, and brief any other issues that are relevant to his Motion. **Plaintiff therefore has twenty (20) days from the date of this Order to supply the Court with supplemental briefing in support of his Motion for Attorney's Fees.**

ENTERED this 17th day of July 2014.

/s/ Barry A. Bryant
HON. BARRY A. BRYANT
U.S. MAGISTRATE JUDGE