

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

PENNY ROGERS

PLAINTIFF

v.

No. 2:16-CV-02206

CAROLYN W. COLVIN, Commissioner  
Social Security Administration

DEFENDANT

**ORDER**

The Court has received an amended report and recommendation (Doc. 18) from United States Magistrate Judge Mark E. Ford. The original report and recommendation (Doc. 15) was filed on January 26, 2017. Plaintiff filed a response (Doc. 16) in objection and Defendant filed a reply (Doc. 17). Upon de novo review of the original report and recommendation in light of Plaintiff's objections, the Court finds that the objections offer neither law nor fact requiring departure from the Magistrate's findings and recommendations. Both the original and amended report and recommendation recommend granting Defendant's unopposed motion to remand for further administrative proceedings pursuant to sentence four of 42 U.S.C. § 405(g). Plaintiff objected that the original report and recommendation should not result in a waiver of attorney's fees under the Equal Access to Justice Act, 28 U.S.C. § 2412 ("EAJA"). Defendant replied that this would not occur because EAJA gives Plaintiff the right to seek EAJA fees after remand.<sup>1</sup> The amended report and recommendation was filed to clarify that Plaintiff can still seek EAJA fees and costs following the entry of judgment. Because the amendment does not change the substantive findings and recommendations, but only correctly states the law to alleviate Plaintiff's

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<sup>1</sup> An application for EAJA fees may be filed up to 30 days after the judgment becomes "not appealable" (i.e., 30 days after the 60-day time period 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).

concerns, the Court need not wait for additional objections to be filed to the amended report and recommendation before ruling. Upon due consideration, therefore, the Court finds that the report and recommendation and the amended report and recommendation are proper, contain no clear error, and should be and hereby are ADOPTED IN THEIR ENTIRETY.

IT IS THEREFORE ORDERED that Defendant's unopposed motion to remand (Doc. 14) is GRANTED, and this case is remanded to the Commissioner for further consideration pursuant to sentence four of 42 U.S.C. § 405(g). Judgment will be entered separately.

IT IS SO ORDERED this 3rd day of February, 2017.

*P. K. Holmes, III*

P.K. HOLMES, III  
CHIEF U.S. DISTRICT JUDGE