

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

TIMIKA MONTGOMERY o/b/o K.M.

PLAINTIFF

V.

NO. 4:09-4001

MICHAEL J. ASTRUE,
Commissioner of Social Security

DEFENDANT

ORDER

Before the Court is Plaintiff's Application and Affidavit for Attorney's Fees under 28 U.S.C. § 2412 The Equal Access to Justice Act.¹ **(Doc. #19)**. The Defendant has responded, objecting to such an award because Plaintiff is not a prevailing party. **(Doc. #21)**. Plaintiff has not filed a reply to Defendant's response.

On February 18, 2010, the undersigned entered a Memorandum Opinion and Judgment in this matter, reversing the decision of the Administrative Law Judge (ALJ) and remanding the matter to the Commissioner for consideration of new and material evidence, pursuant to sentence six of 42 U.S.C. § 405(g). **(Doc. # 17, 18)**.

In Melkonyan v. Sullivan, 501 U.S. 89 (1991), the United States Supreme Court held that in sentence six cases, the EAJA filing period "does not begin to run until after the [post-remand] proceedings are completed, the Secretary returns to court, the court enters a final judgment, and the appeal period runs." Id. at 102.

¹The Court notes that no brief in support of the motion was filed by Plaintiff's counsel, as required by Local Rule 7.2.

Since the administrative proceedings in this matter are still pending, the undersigned finds that the EAJA motion for fees filed by Plaintiff's counsel is premature and therefore **denied** as premature and dismissed.

ENTERED this 17th day of June, 2010.

/s/ Erin L. Setser

HON. ERIN L. SETSER
UNITED STATES MAGISTRATE JUDGE