

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

TROY U. CARTER

PLAINTIFF

v.

CIVIL NO. 10-5149

MICHAEL J. ASTRUE¹, Commissioner
Social Security Administration

DEFENDANT

J U D G M E N T

Plaintiff, Troy U. Carter, appealed the Commissioner's denial of benefits to this Court. On August 19, 2011, the Court remanded Plaintiff's case to the Commissioner pursuant to sentence six of 42 U.S.C. § 405(g) for further proceedings. (Doc. 12).

On April 26, 2013, Plaintiff filed motion for attorneys fees pursuant to 28 U.S.C. § 2412, the Equal Access to Justice Act. (Doc. 13).

On May 7, 2013, Defendant filed a Motion for the Entry of Final Judgment. (Doc. 16). In the Memorandum Brief in support of Defendant's motion, Defendant stated that a fully favorable decision finding Plaintiff was entitled to benefits was issued on February 11, 2013. (Doc. 17). On the same date, Defendant filed a response to the motion for attorney's fees. (Doc. 18).

When a Court remands a case pursuant to sentence six and retains jurisdiction pending completion of the administrative proceedings, entry of a final judgment is delayed until after the

¹Carolyn Colvin became the Acting Social Security Commissioner on February 14, 2013. Pursuant to Rule 25(d)(1) of the Federal Rules of Civil Procedure, Carolyn Colvin has been substituted for Commissioner Michael J. Astrue as the Defendant in this suit.

post-remand agency proceedings have been completed and the agency's results have been filed with the court. See Shalala v. Schaefer, 509 U.S. 292, 296, 113 S.Ct. 2625 (1993). As all proceedings on remand have been completed and an administrative decision favorable to Plaintiff has been issued, Plaintiff is entitled to the entry of Judgment in his favor.

Accordingly, the Court hereby grants Defendant's motion (Doc. 16), and affirms the favorable decision of the Commissioner and dismisses Plaintiff's complaint. **The parties have sixty days from entry of this Judgment on the docket in which to appeal.**

The Court hereby denies Plaintiff's motion for attorney's fees filed on April 26, 2013 (Doc. 13), as the motion was prematurely filed. If Plaintiff wishes to request an award of attorney's fees and cost under the Equal Access to Justice Act, 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. Id. at 296; 28 U.S.C. §§ 2412(d)(1)(B),(d)(2)(G).

IT IS SO ORDERED AND ADJUDGED this 23rd day of May, 2013.

/s/ Erin L. Setser

HON. ERIN L. SETSER
UNITED STATES MAGISTRATE JUDGE