

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION

FRANCILLE KAY HENDERSON

PLAINTIFF

vs.

Civil No. 6:12-cv-06122

CAROLYN W. COLVIN
Commissioner, Social Security Administration

DEFENDANT

ORDER

Before the Court is Plaintiff's Motion for Attorney Fees under the EAJA. ECF No. 14. Plaintiff filed this Motion on February 6, 2014. *Id.* Defendant responded to this Motion on February 10, 2014 and claims this Motion should be denied as premature because the time to appeal the judgment in this matter has not yet expired. ECF No. 16. Defendant did not respond to the merits of Plaintiff's Motion because she claims this Motion is premature. *Id.*

The judgment in this action was entered on January 29, 2014, and Defendant is correct that the judgment in this case may still be appealed by the U.S. Government. *See* FED. R. APP. P. 4(a)(1)(B) (permitting the U.S. Government sixty days to appeal a judgment). Further, an EAJA application should not be filed until this judgment is final and the time to appeal has expired. *See Melkonyan v. Sullivan*, 501 U.S. 89, 102 (1991).

Accordingly, this Motion is **DENIED** without prejudice to refile. Plaintiff may refile this Motion after the Government's time to appeal the judgment in this matter has expired. After Plaintiff refiles this Motion, the Government will then be given the opportunity to respond to the merits of this Motion.

ENTERED this 12th day of February 2014.

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