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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

MICHAEL L. HILL,
Plaintiff,
v.
CAROLYN W. COLVIN, Acting
Commissioner of Social Security,
Defendant.

} Case No. CV 14-05770-DFM
} MEMORANDUM OPINION AND
} ORDER GRANTING PLAINTIFF'S
} MOTION FOR EAJA FEES AND
} COSTS

I.

INTRODUCTION

On April 6, 2015, the Court approved the parties' stipulation to voluntary remand and remanded the case for further administrative proceedings. Dkt. 20. On July 23, 2015, Plaintiff filed a petition for attorney fees, costs, and expenses under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412. Dkt. 23 ("Petition"). Plaintiff seeks an award of \$3,973.52 in attorney's fees based on 18.6 hours of attorney time and 3.2 hours of paralegal time. Petition at 2-3. The Commissioner opposes Plaintiff's application for attorney's fees, arguing that special circumstances make an award of EAJA

1 fees unjust. Dkt. 24 (“Opposition”). On July 29, 2015, Plaintiff filed a reply.
2 Dkt. 25 (“Reply”). Plaintiff’s reply included a request for an additional four
3 hours of attorney time for preparing the reply, bringing Plaintiff’s total request
4 to \$4,733.76. *Id.* at 11.

5 Having considered Plaintiff’s petition, the Commissioner’s opposition,
6 and Plaintiff’s reply, as well as the records and pleadings, the Court finds that
7 no special circumstances exist that warrant the denial of EAJA fees. Thus,
8 Plaintiff is entitled to an award of reasonable attorney’s fees in the amount of
9 \$4,733.76.

10 II.

11 DISCUSSION

12 A. **Plaintiff Is Entitled to Attorney’s Fees Because No Special** 13 **Circumstances Exist That Make An Award Unjust**

14 The Commissioner contends that special circumstances make an award
15 of fees unjust. Specifically, the Commissioner argues that (1) Plaintiff’s counsel
16 falsely implied that he attempted to settle the fees issue before filing the
17 Petition; (2) Plaintiff received two extensions to submit Plaintiff’s portion of
18 the joint stipulation and then missed the deadline by nine days; and (3)
19 Plaintiff failed to raise the issue that compelled the Commissioner to stipulate
20 to voluntary remand. Opposition at 3-6.

21 EAJA provides that a court shall award reasonable attorney’s fees, costs,
22 and other expenses to the prevailing party “unless the court finds that the
23 position of the United States was substantially justified or that special
24 circumstances make an award unjust.” 28 U.S.C. § 2412(d)(1)(A); accord
25 Pierce v. Underwood, 487 U.S. 552, 559 (1988); Lewis v. Barnhart, 281 F.3d
26 1081, 1083 (9th Cir. 2002). “It is the government’s burden to show that its
27 position was substantially justified or that special circumstances exist to make
28 an award unjust.” Gutierrez v. Barnhart, 274 F.3d 1255, 1258 (9th Cir. 2001).

1 First, the Commissioner contends that Plaintiff's counsel's "misleading
2 lack of candor" is a special circumstance making an award of EAJA fees
3 unjust, citing the fact that counsel did not offer to settle this fee dispute until
4 after the Petition was filed. Opposition at 3-4. The Court disagrees. As an
5 initial matter, the Court's case management order does not make settlement
6 discussions mandatory. Dkt. 7 at 3 ("The parties are encouraged to engage in
7 settlement discussions at any time during the pendency of the action, but such
8 discussions are not mandatory."). More importantly, as Plaintiff points out, the
9 Court's case management order contemplates that settlement discussions about
10 fees may take place after a petition is filed rather than before. Id. at 8-9. As a
11 result, nothing in Plaintiff's counsel's actions constitutes a special circumstance
12 that would make an award of EAJA fees unjust.

13 Next, the Commissioner argues that an award of fees would be unjust
14 because Plaintiff obtained two extensions to submit Plaintiff's portion of the
15 joint stipulation and even then missed the deadline by nine days. Opposition at
16 4-5. But requests for extensions of time are common in many cases, including
17 Social Security disability appeals, and often benefit both parties, as
18 demonstrated by the fact that the Commissioner stipulated to both requests.
19 The fact that at least one of the extensions appears to have been related to the
20 terminal illness of Plaintiff's counsel's spouse makes the Commissioner's
21 argument even weaker. And while the Court does not condone counsel's
22 failure to submit Plaintiff's portion of the joint stipulation by the extended
23 deadline, the Commissioner does not explain how that nine-day delay itself
24 would make an award of fees unjust. As a result, the Court is not persuaded
25 that the extensions and missed deadline amount to a special circumstance
26 warranting a denial of the Petition.

27 Last, the Commissioner also claims that Plaintiff's portion of the joint
28 stipulation did not identify the dispositive issue that compelled the

1 Commissioner to stipulate to a voluntary remand and therefore an award of
2 fees would be unjust. Opposition at 6-7. Specifically, the Commissioner
3 contends that Plaintiff only argued that the case should be remanded because
4 the Administrative Law Judge (“ALJ”) relied on vocational expert (“VE”)
5 testimony that conflicted with the Dictionary of Occupational Titles (“DOT”),
6 yet the Commissioner was compelled to voluntarily remand because the ALJ
7 failed to properly address all the medical evidence of record. *Id.* at 6. But the
8 remand stipulation demonstrates that the Commissioner stipulated to a
9 remand to allow the ALJ to “obtain supplemental testimony” from a VE and
10 to “ensure that the VE clarifies any conflicts between his or her testimony and
11 the information in the [DOT].” Dkt. 20 at 2. It thus appears to the Court that
12 Plaintiff’s portion of the joint stipulation raised a dispositive issue. Although
13 the stipulation to voluntary remand also required the ALJ to properly address
14 all the medical evidence of record, the Court is not persuaded that Plaintiff’s
15 failure to raise that issue warrants a denial of EAJA fees.

16 Accordingly, the Court finds that the Commissioner has failed to show
17 that any special circumstance exists to make an award of EAJA fees unjust.
18 *See Gutierrez*, 274 F.3d at 1258. Because the Commissioner does not contest
19 either the amount of time expended or counsel’s hourly rate, the Court finds
20 that EAJA fees are warranted in the full amount of \$4,733.76.

21 **B. EAJA Fees May Be Paid Directly to Plaintiff’s Counsel**

22 Separately, the Commissioner argues that if any EAJA fees are to be
23 awarded, the Court should order the fees paid to Plaintiff notwithstanding
24 Plaintiff’s assignment of any such fees to her counsel. *See* Opposition at 7-8.
25 Contrary to the government’s argument, *Astrue v. Ratliff*, 560 U.S. 586 (2010),
26 does not hold that plaintiff’s counsel is not a proper payee for an EAJA award.
27 *Ratliff* held that because an EAJA award is payable to the litigant as opposed
28 to the litigant’s attorney, it is subject to a government offset to satisfy a pre-

1 existing debt owed by the litigant to the United States. Id. at 589 (“We hold
2 that [an EAJA] fees award is payable to the litigant and is therefore subject to a
3 Government offset to satisfy a pre-existing debt that the litigant owes the
4 United States.”). Like this Court, a number of other courts in this district have
5 concluded that Ratliff does not preclude direct payment to plaintiff’s counsel
6 where there has been a valid assignment, subject to such an offset. See, e.g.,
7 Mang v. Colvin, No. 14-904, 2015 WL 5470339, at *2-3 (Sept. 17, 2015). The
8 Court will accordingly order payment of fees to Plaintiff’s counsel, subject to
9 any offset to which the government is legally entitled.

10 **III.**

11 **CONCLUSION**

12 IT IS THEREFORE ORDERED AS FOLLOWS: (1) Plaintiff’s EAJA
13 Petition is GRANTED; (2) Plaintiff is awarded EAJA fees in the amount of
14 \$4,733.76; and (3) the Commissioner shall pay such amounts, subject to any
15 offset to which the government legally is entitled, directly to Plaintiff’s counsel.

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17 Dated: March 4, 2016



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20 **DOUGLAS F. McCORMICK**
21 United States Magistrate Judge
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