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8 IN THE UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 SHARICE ROBINSON
11 on behalf of VONCHEE COSSEY,

12 Plaintiff,

No. CIV S-08-2296 DAD

13 v.

14 MICHAEL J. ASTRUE,
Commissioner of Social Security,ORDER15 Defendant.
16 _____/17 This matter is before the court on plaintiff's fully briefed motion for attorney fees
18 pursuant to the Equal Access to Justice Act (EAJA).19 Plaintiff brought this action seeking judicial review of a final administrative
20 decision denying her application for Supplemental Security Income (SSI) child's disability
21 benefits under Title XVI of the Social Security Act (the Act) for her six-year-old son VonChee
22 Cossey. On September 20, 2010, following the filing of a motion for summary judgment by
23 plaintiff and a cross-motion for summary judgment by defendant, the court granted plaintiff's
24 motion, reversed the decision of the Commissioner and remanded the action for further
25 proceedings.

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1 The court's decision was based upon the conclusion that the Administrative Law
2 Judge (ALJ) had failed to comply with the requirements of 42 U.S.C. § 1382c(a)(3)(1) as
3 interpreted by the Ninth Circuit in Howard ex rel. Wolff v. Barnhart, 341 F.3d 1006 (9th Cir.
4 2003), and as described by the Commissioner in AR 04-1(9), 69 Fed. Reg. 22578, 2004 WL
5 875081 (Apr. 26, 2004). The court remanded the matter for further proceedings to allow the ALJ
6 to seek testimony based upon a medical expert's review of the entire record. Judgment was
7 accordingly entered for plaintiff on September 21, 2010.¹

8 Plaintiff seeks a fee award of \$2,662.50 for 17.75 hours of attorney time expended
9 in connection with this action, at a rate of \$150 per hour. Defendant has filed a statement of non-
10 opposition to plaintiff's motion for \$2,662.50 in attorney fees.

11 The EAJA provides that "a court shall award to a prevailing party . . . fees and
12 other expenses . . . incurred by that party in any civil action . . . brought by or against the United
13 States . . . unless the court finds that the position of the United States was substantially justified
14 or that special circumstances make an award unjust." 28 U.S.C. § 2412(d)(1)(A). See also
15 Gisbrecht v. Barnhart, 535 U.S. 789, 796 (2002). A "party" under the EAJA is defined as
16 including "an individual whose net worth did not exceed \$2,000,000 at the time the civil action
17 was filed[.]" 28 U.S.C. § 2412(d)(2)(B) (i). The term "fees and other expenses" includes
18 "reasonable attorney fees." 28 U.S.C. § 2412(d)(2)(A). "The statute explicitly permits the court,
19 in its discretion, to reduce the amount awarded to the prevailing party to the extent that the party
20 'unduly and unreasonably protracted' the final resolution of the case." Atkins v. Apfel, 154 F.3d
21 986, 987 (9th Cir. 1998) (citing 28 U.S.C. §§ 2412(d)(1)(C) & 2412(d)(2)(D)).

22 A party who obtains a remand in a Social Security case is a prevailing party for
23 purposes of the EAJA. Shalala v. Schaefer, 509 U.S. 292, 300-01 (1993) ("No holding of this
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25 ¹ The undersigned apologizes to the parties, and in particular to plaintiff's counsel, for
26 the delay in the issuance of this order. The court will be taking steps to ensure that such delay
does not occur in the future.

1 Court has ever denied prevailing-party status . . . to a plaintiff who won a remand order pursuant
2 to sentence four of § 405(g) . . . , which terminates the litigation with victory for the plaintiff.”).
3 “An applicant for disability benefits becomes a prevailing party for the purposes of the EAJA if
4 the denial of her benefits is reversed and remanded regardless of whether disability benefits
5 ultimately are awarded.” Gutierrez v. Barnhart, 274 F.3d 1255, 1257 (9th Cir. 2001).

6 Here, the court finds that plaintiff is the prevailing party. Moreover, the court
7 finds that plaintiff did not unduly delay this litigation, and that her net worth did not exceed two
8 million dollars when this action was filed. The court also finds that the position of the
9 Commissioner was not substantially justified. See Corbin v. Apfel, 149 F.3d 1051, 1053 (9th
10 Cir. 1998) (“While the government’s defense on appeal of an ALJ’s procedural error does not
11 automatically require a finding that the government’s position was not substantially justified, the
12 defense of basic and fundamental errors such as the ones in the present case is difficult to
13 justify.”); Sampson v. Chater, 103 F.3d 918, 921-22 (9th Cir. 1996) (finding no substantial
14 justification where the Commissioner “did not prove that her position had a reasonable basis in
15 either fact or law” and “completely disregarded substantial evidence” of the onset of disability).

16 The EAJA expressly provides for an award of “reasonable” attorney fees. 28
17 U.S.C. § 2412(d)(2)(A). Under the EAJA, hourly rates for attorney fees have been capped at
18 \$125.00 since 1996, but district courts are permitted to adjust the rate to compensate for an
19 increase in the cost of living.² See 28 U.S.C. § 2412(d)(2)(A); Sorenson v. Mink, 239 F.3d 1140,
20 1147-49 (9th Cir. 2001); Atkins v. Apfel, 154 F.3d 986, 987 (9th Cir. 1998). Determining a
21 reasonable fee “requires more inquiry by a district court than finding the product of reasonable
22 hours times a reasonable rate.” 154 F.3d at 988 (quoting Hensley v. Eckerhart, 461 U.S. 424,
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24 ² In accordance with Thangaraja v. Gonzales, 428 F.3d 870, 876-77 (9th Cir. 2005), and
25 Ninth Circuit Rule 39-1.6, the Ninth Circuit Court of Appeals maintains a list of the statutory
26 maximum hourly rates authorized by the EAJA, as adjusted annually. The rates may be found on
the Court’s website. See <http://www.ca9.uscourts.gov>. Here, plaintiff’s requested rate is well
below the statutory maximum rates established by the Ninth Circuit.

1 434 (1983) (internal citations omitted)). The district court must consider “the relationship
2 between the amount of the fee awarded and the results obtained.” Id. at 989 (quoting Hensley,
3 461 U.S. at 437).

4 Here, plaintiff’s attorney obtained an award of benefits despite defendant’s cross-
5 motion for summary judgment. Having reviewed the itemization of attorney hours spent, the
6 court finds that the claimed 17.75 hours of attorney time is reasonable in this case and that the
7 number of hours claimed by plaintiff’s counsel is comparable to the amount of time devoted to
8 similar tasks by counsel in other social security appeals coming before this court.

9 Plaintiff’s motion includes a request that any EAJA fees awarded be paid directly
10 to plaintiff’s attorney. However, subsequent to the filing of plaintiff’s motion, the United States
11 Supreme Court ruled that an attorney fee award under the EAJA is payable to the litigant and is
12 therefore subject to a government offset to satisfy any pre-existing debt owed to the United States
13 by the claimant. Astrue v. Ratliff, ___ U.S. ___, ___, 130 S. Ct. 2521, 2526-27, 2529 (2010). In
14 this regard, defendant has filed an opposition to plaintiff’s request that the EAJA fees awarded be
15 paid directly to plaintiff’s attorney, citing the decision in Ratliff.

16 Subsequent to the decision in Ratliff, some courts have ordered payment of the
17 award of EAJA fees directly to plaintiff’s counsel pursuant to plaintiff’s assignment of EAJA
18 fees, provided that the plaintiff has no debt that requires offset. See Blackwell v. Astrue, No.
19 CIV 08-1454 EFB, 2011 WL 1077765, at *5 (E.D. Cal. Mar. 21, 2011); Dorrell v. Astrue, No.
20 CIV 09-0112 EFB, 2011 WL 976484, at *2-3 (E.D. Cal. Mar. 17, 2011); Calderon v. Astrue, No.
21 1:08-cv-01015 GSA, 2010 WL 4295583, at *8 (E.D. Cal. Oct. 22, 2010); Castaneda v. Astrue,
22 No. EDCV 09-1850-OP, 2010 WL 2850778, at *3 (C.D. Cal. July 20, 2010). Similarly, in
23 recently submitted stipulations and proposed orders for the award of attorney fees under the
24 EAJA, the parties have stipulated that, if plaintiff does not owe a federal debt, the government
25 will consider the plaintiff’s assignment of EAJA fees and expenses to plaintiff’s attorney and
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1 shall honor the assignment by making the fees and expenses payable directly to counsel. The
2 court will incorporate such a provision in this order.

3 Accordingly, IT IS HEREBY ORDERED that:

4 1. Plaintiff's motion for attorney fees under the Equal Access to Justice Act (Doc.
5 No. 25) is granted;

6 2. Plaintiff is awarded \$2,662.50 for attorney fees under 28 U.S.C. § 2412(d); and

7 3. Defendant shall determine whether plaintiff's EAJA attorneys fees are subject
8 to any offset permitted under the United States Department of the Treasury's Offset Program and,
9 if the fees are not subject to an offset, shall honor plaintiff's assignment of EAJA fees and shall
10 cause the payment of fees to be made directly to plaintiff's counsel pursuant to the assignment
11 executed by plaintiff.

12 DATED: November 3, 2011.

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DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

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