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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LATOYA N. PETERS O/B/O,
MINOR CHILD, K.R.,

Plaintiff,

No. CIV S-09-1891 KJM

vs.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

ORDER

_____/

Plaintiff's motion for an award of attorney's fees is pending before the court. Plaintiff seeks fees under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d)(1), in the amount of \$8,190, based on 45.0 hours of attorney time and an hourly rate of \$182.00. Defendant does not contest that plaintiff is entitled to an award of fees under EAJA but contends that the hourly rate claimed is excessive and that the amount of hours claimed is unreasonable.

The EAJA directs the court to award a reasonable fee. In determining whether a fee is reasonable, the court considers the hours expended, the reasonable hourly rate, and the results obtained. See Commissioner, INS v. Jean, 496 U.S. 154 (1990); Hensley v. Eckerhart, 461 U.S. 424 (1983); Atkins v. Apfel, 154 F.3d 986 (9th Cir. 1998).

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1 Defendant contends the hourly rate claimed by plaintiff exceeds the rate allowed
2 under EAJA. See 28 U.S.C. § 2412(d)(2)(A). At the direction of the court, defendant has
3 submitted evidence supporting the calculation of hourly rates, using the CPI-U for the western
4 region, the region in which attorney services in this case were performed. The appropriate hourly
5 rate for services provided in 2009 is \$174.89; the appropriate hourly rate for 2010 is \$176.27.
6 See Ramon-Sepulveda v. INS, 863 F.2d 1458, 1463 (9th Cir. 1988).

7 Defendant also contends that the hours expended by plaintiff's counsel are
8 unreasonable. Specifically, defendant argues plaintiff spent time on issues which were not the
9 basis of remand and that plaintiff should have focused instead on the preliminary issue of
10 whether remand was appropriate under AR 04-1(9), which ultimately was the basis on which the
11 parties stipulated to a voluntary remand. Defendant also contends the claimed fifteen hours for
12 preparation of the motion for attorneys' fees and reply is excessive.

13 In reviewing the transcript, plaintiff's briefing on the motion for summary
14 judgment and order granting remand in this case, the briefing on the motion for attorneys' fees
15 and the time expended on tasks as set forth in plaintiff's schedule of hours, the court has
16 determined the hours claimed are unreasonable and a reduction in the number of hours
17 compensated is warranted. The court notes counsel represented plaintiff at the administrative
18 level and raised the same arguments at the administrative level as were raised in the motion for
19 summary judgment. Administrative Transcript 9, 78; Docket No. 15. Although the court is
20 sympathetic to the needs of plaintiff's counsel to ensure issues are not waived by failing to raise
21 them before the district court, in this case it appears much of the time spent briefing the issues in
22 the motion for summary judgment recapitulated matters that had already been raised by
23 plaintiff's counsel at the administrative level and thus did not require a great expenditure of time.

1 Moreover, plaintiff's counsel failed to raise the issue of AR 04-1(9),¹ which required remand of
2 this matter no matter what other issues were raised by plaintiff, as recognized by defendant. As
3 to the amount of time claimed in connection with the attorneys' fees motion, fifteen hours spent
4 on a routine motion raising no novel issues is excessive.

5 The court therefore will reduce the number of hours compensated to fifteen hours
6 for preparation of the motion for summary judgment and four hours for preparation of the motion
7 for attorneys' fees and one hour for the reply. Calculating at the rates set forth above, plaintiff
8 will be compensated fifteen hours for work performed in 2009 in the amount of \$2,623.35 and
9 five hours for work performed in 2010 in the amount of \$881.35 for a total amount of \$3,504.70.
10 Because plaintiff's counsel has submitted no evidence of a valid assignment of EAJA fees to
11 counsel, the court will direct the fees be paid to plaintiff, and not to plaintiff's counsel.

12 Accordingly, IT IS HEREBY ORDERED that fees pursuant to the EAJA are
13 awarded to plaintiff in the amount of \$3,504.70.

14 DATED: June 24, 2010.

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17 U.S. MAGISTRATE JUDGE

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22 peters.fee

23 ¹ Acquiescence Ruling 04-1(9) applies to claimants within the Ninth Circuit and provides
24 in pertinent part: “[f]or cases that are subject to this Ruling, ALJs and AAJs [Administrative
25 Appeals Judges] (when the Appeals Council makes a decision) must make reasonable efforts to
26 ensure that a qualified pediatrician or other individual who specializes in a field of medicine
appropriate to the disability of the individual (as identified by the ALJ or AAJ) evaluates the case
of the individual.