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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TAMMY LYNN PRICE,
Plaintiff,
v.
NANCY A. BERRYHILL, Acting
Commissioner of Social Security,
Defendant.

No. 2:15-cv-1287 DB

ORDER

This matter is before the court on plaintiff’s unopposed motion for attorney’s fees pursuant to the Equal Access to Justice Act (“EAJA”).¹

Plaintiff brought this action seeking judicial review of a final administrative decision denying plaintiff’s application for Disability Insurance Benefits under Title II of the Social Security Act. On August 31, 2017, following the filing of a motion for summary judgment by plaintiff and a cross-motion for summary judgment by defendant, the court granted plaintiff’s motion in part, reversed the decision of the Commissioner, and remanded this action for further proceedings. (ECF No. 21.)

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¹ Both parties have previously consented to Magistrate Judge jurisdiction in this action pursuant to 28 U.S.C. § 636(c). (See ECF Nos. 8 & 9.)

1 On November 28, 2017, plaintiff filed the pending motion for attorney’s fees. (ECF No.
2 23.) Defendant has not filed an opposition to plaintiff’s motion.

3 **STANDARDS**

4 The EAJA provides that “a court shall award to a prevailing party . . . fees and other
5 expenses . . . incurred by that party in any civil action . . . brought by or against the United States
6 . . . unless the court finds that the position of the United States was substantially justified or that
7 special circumstances make an award unjust.” 28 U.S.C. § 2412(d)(1)(A); see also Gisbrecht v.
8 Barnhart, 535 U.S. 789, 796 (2002). “It is the government’s burden to show that its position was
9 substantially justified or that special circumstances exist to make an award unjust.” Gutierrez v.
10 Barnhart, 274 F.3d 1255, 1258 (9th Cir. 2001).

11 A “party” under the EAJA is defined as including “an individual whose net worth did not
12 exceed \$2,000,000 at the time the civil action was filed[.]” 28 U.S.C. § 2412(d)(2)(B)(i). The
13 term “fees and other expenses” includes “reasonable attorney fees.” 28 U.S.C. § 2412(d)(2)(A).
14 “The statute explicitly permits the court, in its discretion, to reduce the amount awarded to the
15 prevailing party to the extent that the party ‘unduly and unreasonably protracted’ the final
16 resolution of the case.” Atkins v. Apfel, 154 F.3d 986, 987 (9th Cir. 1998) (citing 28 U.S.C. §§
17 2412(d)(1)(C) & 2412(d)(2)(D)).

18 A party who obtains a remand in a Social Security case is a prevailing party for purposes
19 of the EAJA. Shalala v. Schaefer, 509 U.S. 292, 300-01 (1993) (“No holding of this Court has
20 ever denied prevailing-party status . . . to a plaintiff who won a remand order pursuant to sentence
21 four of § 405(g) . . . , which terminates the litigation with victory for the plaintiff.”). “An
22 applicant for disability benefits becomes a prevailing party for the purposes of the EAJA if the
23 denial of her benefits is reversed and remanded regardless of whether disability benefits
24 ultimately are awarded.” Gutierrez, 274 F.3d at 1257.

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1 ANALYSIS

2 Here, the court finds that plaintiff is the prevailing party, that plaintiff did not unduly
3 delay this litigation, and that plaintiff’s net worth did not exceed two million dollars when this
4 action was filed. (ECF No. 2.) Moreover, the court finds that the position of the United States
5 was not substantially justified.

6 A. Substantial Justification

7 “Substantial justification means ‘justified in substance or in the main—that is, justified to
8 a degree that could satisfy a reasonable person.’” Tobeler v. Colvin, 749 F.3d 830, 832 (9th Cir.
9 2014) (quoting Meier v. Colvin, 727 F.3d 867, 870 (9th Cir. 2013)). “Put differently, the
10 government’s position must have a ‘reasonable basis both in law and fact.’” Meier, 727 F.3d at
11 870 (quoting Pierce v. Underwood, 487 U.S. 552, 565 (1988)). “[T]he position of the United
12 States includes both the government’s litigation position and the underlying agency action.”
13 Campbell v. Astrue, 736 F.3d 867, 868 (9th Cir. 2013) (quoting Meier, 727 F.3d at 870); see also
14 Shafer v. Astrue, 518 F.3d 1067, 1071 (9th Cir. 2008) (“the relevant question is whether the
15 government’s decision to defend on appeal the procedural errors committed by the ALJ was
16 substantially justified”). “In determining whether a party is eligible for fees under EAJA, the
17 district court must determine whether the government’s position regarding the specific issue on
18 which the district court based its remand was ‘substantially justified’—not whether the ALJ
19 would ultimately deny disability benefits.” Gardner v. Berryhill, 856 F.3d 652, 656 (9th Cir.
20 2017).

21 As articulated in the August 31, 2017 order, the Administrative Law Judge erred at step
22 two of the sequential evaluation by finding that plaintiff’s carpal tunnel syndrome and mental
23 impairments were non-severe. The ALJ also erred by failing to offer specific and legitimate
24 reasons for rejecting the opinion of an examining physician. (ECF No. 21.) Moreover, the
25 government has failed to argue that its position was substantially justified. Accordingly, the court
26 cannot find that the government’s position had a reasonable basis in law and fact.

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1 B. Plaintiff's Fee Request

2 The EAJA expressly provides for an award of "reasonable" attorney fees. 28 U.S.C. §
3 2412(d)(2)(A). Under the EAJA, hourly rates for attorney fees have been capped at \$125.00 since
4 1996, but district courts are permitted to adjust the rate to compensate for an increase in the cost
5 of living.² See 28 U.S.C. § 2412(d)(2)(A); Sorenson v. Mink, 239 F.3d 1140, 1147-49 (9th Cir.
6 2001); Atkins v. Apfel, 154 F.3d 986, 987 (9th Cir. 1998). Determining a reasonable fee
7 "requires more inquiry by a district court than finding the product of reasonable hours times a
8 reasonable rate." Atkins, 154 F.3d at 988 (quoting Hensley v. Eckerhart, 461 U.S. 424, 434
9 (1983) (internal citations omitted)). The district court must consider "the relationship between
10 the amount of the fee awarded and the results obtained." Id. at 989 (quoting Hensley, 461 U.S.
11 at 437).

12 Here, after drafting a thorough motion for summary judgment, and opposition to
13 defendant's motion for summary judgment, plaintiff successfully obtained a remand for further
14 proceedings. Including the time spent on briefing the EAJA motion, plaintiff's motion seeks
15 compensation for 35.6 hours of attorney time. (ECF No. 23-2.) The court finds the amount of
16 hours expended to be reasonable, especially when compared to the time devoted to similar tasks
17 by counsel in like social security appeals coming before this court. See Stamper v. Colvin, No.
18 2:12-cv-0192 AC, 2013 WL 6839691, at *2 (E.D. Cal. Dec. 23, 2013) (finding 51 hours to be a
19 reasonable amount of time); Boulanger v. Astrue, No. CIV S-07-0849 DAD, 2011 WL 4971890,
20 at *2 (E.D. Cal. Oct. 19, 2011) (finding 58 hours to be a reasonable amount of time); Watkins v.
21 Astrue, No. CIV S-06-1895 DAD, 2011 WL 4889190, at *2 (E.D. Cal. Oct. 13, 2011) (finding 62
22 hours to be a reasonable amount of time); Vallejo v. Astrue, No. 2:09-cv-03088 KJN, 2011 WL
23 4383636, at *5 (E.D. Cal. Sept. 20, 2011) (finding 62.1 hours to be a reasonable amount of time);
24 see also Costa v. Commissioner of Social Sec. Admin., 690 F.3d 1132, 1137 (9th Cir. 2012)

25 ² In accordance with the decision in Thangaraja v. Gonzales, 428 F.3d 870, 876-77 (9th Cir.
26 2005), and Ninth Circuit Rule 39-1.6, the Ninth Circuit Court of Appeals maintains a list of the
27 statutory maximum hourly rates authorized by the EAJA, as adjusted annually. The rates may be
28 found on the Court's website. See <http://www.ca9.uscourts.gov>. Here, plaintiff's requested
attorney rate is equal to, or lower than, the statutory maximum rates established by the Ninth
Circuit. (ECF No. 23-2 at 1.)

1 (“District courts may not apply de facto caps limiting the number of hours attorneys can
2 reasonably expend on ‘routine’ social security cases.”). See generally Moreno v. City of
3 Sacramento, 534 F.3d 1106, 1112 (9th Cir. 2008) (“By and large, the court should defer to the
4 winning lawyer’s professional judgment as to how much time he was required to spend on the
5 case; after all, he won, and might not have, had he been more of a slacker.”).

6 Accordingly, after carefully reviewing the record and the pending motion, the court
7 declines to conduct a line-by-line analysis of counsel’s billing entries. See, e.g., Commissioner,
8 I.N.S. v. Jean, 496 U.S. 154, 161-62 (1990) (“the EAJA—like other fee-shifting statutes—favors
9 treating a case as an inclusive whole, rather than as atomized line-items”); Stewart v. Sullivan,
10 810 F. Supp. 1102, 1107 (D. Haw. 1993); Duran v. Colvin, No. 2:11-cv-2978 DAD, 2013 WL
11 5673415, at *2 (E.D. Cal. Oct. 17, 2013).

12 C. Fee Award

13 Plaintiff “has agreed that any EAJA fees awarded to her . . . be paid directly to her
14 lawyer’s office as its own property.” (Pl.’s Mot. (ECF No. 23) at 1.) However, as plaintiff’s
15 motion acknowledges, an attorney fee award under the EAJA is payable to the litigant and is
16 therefore subject to a government offset to satisfy any pre-existing debt owed to the United States
17 by the claimant. Astrue v. Ratliff, 560 U.S. 586, 592-93 (2010).

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

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The court will incorporate such a provision in this order.

CONCLUSION

Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff’s motion for attorney fees under the Equal Access to Justice Act (ECF No. 23) is granted;
2. Plaintiff is awarded \$6,854.60 in attorney fees under 28 U.S.C. § 2412(d); and
3. Defendant is directed to determine whether plaintiff’s EAJA attorney’s fees are subject to any offset permitted under the United States Department of the Treasury’s Offset Program and, if the fees are not subject to an offset, shall cause payment of fees to be made directly to plaintiff.

Dated: March 29, 2018


DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

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