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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

STEPHEN DANIEL HICKS,
Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,
Defendant.

No. 2:17-cv-02480-TLN-KJN

ORDER

Presently pending before the court is plaintiff's February 21, 2019 motion for attorney fees, costs, and expenses pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d). (ECF No. 23.) Defendant has opposed the motion as premature. (ECF No. 27.)

EAJA entitles a prevailing party to apply for attorney fees and expenses. However, a motion for such fees and expenses shall be filed "within thirty days of final judgment in the action." 28 U.S.C. § 2412(d)(1)(B). Under EAJA, a final judgment is "a judgment that is final and not appealable." 28 U.S.C. § 2412(d)(2)(G). Here, the court entered judgement in favor of plaintiff on February 6, 2019. (ECF No. 22.) "[T]he time for appeal does not end until 60 days after 'entry of judgement.'" Shalala v. Schaefer, 509 U.S. 292, 302 (1993). Thus, the judgement will not be final for the purposes of EAJA, until April 8, 2019. Consequently, plaintiff's EAJA motion (ECF No. 23) is premature.

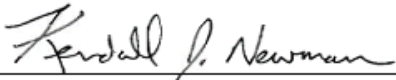
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Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's motion for attorney fees, costs, and expenses (ECF No. 23) is DENIED as premature, subject to renewal after the judgment is final.

IT IS SO ORDERED.

Dated: March 29, 2019


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE